

Announcement of Funding Opportunity

2018-2023 Migrant Education Tutorial and Support Services (METS) Program

Legislative Authority	Title I, Part C – Education of Migratory Children under the <i>Elementary and Secondary Education Act</i> (ESEA) of 1965, as amended by the <i>Every Student Succeeds Act</i> (ESSA) of 2015
Purpose of Grant	<p>The grant supports <u>eight</u> (8) Migrant Education Tutorial and Support Services (METS) program centers across New York State. The program goals of the METS are to support the identification and recruitment of migrant-eligible children and youth, agricultural workers, fishers, and their families, and to provide them with data-driven, evidence-based supplemental educational programs and support services based on their needs. The METS program centers will implement activities including, but not limited to, strategic tutoring and academic support, mentoring, and academic and/or career counseling, English language acquisition and literacy development, and seek to strengthen family-school-community partnerships, encourage parent and family engagement, facilitate social-emotional well-being, foster positive self-identity, and increase students’ access to educational opportunities through promoting advocacy to self-advocacy and identity development, and other supportive services. This is to ensure that all migrant children and youth will have the opportunity to graduate from high school, earn a high school equivalency diploma (HSE), complete career and technical education courses (CTE), or succeed at other alternative educational opportunities, in order to be ready for college, careers, and life, prepared to pursue the future of their choosing.</p>
Project Period	<p>The grant contract period will be for <u>five (5) years</u>, anticipated from <u>September 1, 2018 to August 31, 2023</u>.</p> <p>The five-year contract period is subject to:</p> <ul style="list-style-type: none"> • the availability of funds and level of funding from the U.S. Department of Education (ED) for the period; and • successful program delivery and implementation by the individual METS program centers in the prior year, based on the requirements of the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP) and Theory of Action (ToA). <p>The State Service Delivery Plan (SDP) and the Theory of Action (ToA) can be viewed at: http://nysmigrant.org/downloads/Service-Delivery-Plans</p>
Eligible Applicants	Local Education Agencies (LEAs) (i.e., school districts that operate local public elementary and secondary schools), Boards of Cooperative Educational Services (BOCES), and Institutions of Higher Education (IHEs).
Amount of Funding	Estimated funds totaling approximately 6.7 million dollars will be available statewide each year of the five-year grant contract period, 2018-2023, subject to the availability of funds and level of funding from the U.S. Department of Education (ED) for each

	grant contract period and successful program delivery and implementation by the individual METS program centers in the previous year.
Application Due Date and Mailing Address	<p>Applicants must submit one (1) original and two (2) copies of the application, postmarked no later than <u>April 25, 2018</u> to:</p> <p style="padding-left: 40px;">New York State Education Department ATTN: State Migrant Education Program Grant Grants Management 89 Washington Avenue Room 464 EBA Albany, NY 12234</p>
Questions and Answers	<p>All questions must be submitted via email to MIGRANTRFP18-23@nysed.gov by <u>April 3, 2018</u>. A complete list of all Questions and Answers will be posted to NYSED's P-12 Funding Opportunities website no later than <u>April 11, 2018</u>.</p> <p>Please note that all potential applicants may contact the Statewide Identification and Recruitment/MIS2000/MSIX program center (ID&R) and the Statewide Migrant Technical Assistance and Support Center (M-TASC) with questions concerning migrant student data and migrant programs and services respectively as evidenced in the ESSA Consolidated State Plan and State Migrant Service Delivery Plan. They can be reached via email at MIGRANTRFP18-23@nysed.gov in the period between the official release of this Grant RFP and April 3, 2018. Both the questions asked, and the responses provided, will be posted in the Q&A above no later than <u>April 11, 2018</u>.</p>
Non-Mandatory Notice of Intent	<p>The Notice of Intent (NOI) is not a requirement for submitting a complete application by the application date. However, NYSED strongly encourages all prospective applicants to submit an NOI to ensure a timely and thorough review and rating process. A non-profit applicant's NOI will also help to facilitate timely review of their prequalification materials. The notice of intent is a simple email notice stating your organization's (use the legal name) intent to apply for this grant. Please also include your organization's NYS Vendor ID. The due date is <u>April 18, 2018</u>. Please send the NOI via email to Kin T. Chee at kin.chee@nysed.gov.</p>

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2018-2023 Migrant Education Tutorial and Support Services (METS)

Application Guidance

Purpose

As per Section 1301 [20 U.S.C. 6391] of Title I, Part C of the *Elementary and Secondary Education Act (ESEA)* of 1965, as amended by the *Every Student Succeeds Act (ESSA)* of 2015, the purposes of this grant contract are as follows:

1. To assist the New York State Migrant Education Program (NYS-MEP) in developing and implementing high-quality and comprehensive educational programs and support services during the school year and during summer or intersession periods, based on the requirements of the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP), and Theory of Action (ToA), that address the unique educational needs of migratory children;
2. To ensure that migratory children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and challenging State academic standards;
3. To ensure that migratory children receive full and appropriate opportunities to meet the same challenging State academic standards that all children are expected to meet;
4. To help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to succeed in school; and
5. To help migratory children benefit from State and local systemic reforms.

A migrant child or youth is defined as one who made a qualifying move in the preceding 36 months as a migratory agricultural worker or a migratory fisher, or with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

Migratory children and youth move to different parts of the country during the school year with their families or on their own, and whether it is a singular or regular occurrence, these moves cause interruptions in their formal education. Due to such mobility, migrant students often have difficulty in accessing high quality, effective instruction in schools, and may suffer from social isolation and lack of a sense of belonging to their schools and communities due to language barriers and cultural differences. Research has shown that migrant children often function two or more grade levels behind their peers. They are 20% less likely to continue their education past eighth grade and have a 50% chance of graduating from high school. Migrant children are also at a disadvantage because many of them live in poverty and may work with their parents to support their families. They often suffer from health-related issues.

Recognizing these needs, the New York State Education Department (NYSED or “the Department”) established the *Migrant Education Tutorial and Support Services (METS)*

model over forty years ago to provide educational programs and support services such as advocacy, coordination with schools and community agencies, and other outreach activities to migrant-eligible children and youth in schools and homes throughout New York State.

Continuing this mission, the next iteration of the Migrant Education Tutorial and Support Services (METS) program centers, as described in this grant contract, will deliver needs- and data-driven, evidence-based supplemental academic programs and support services to all migrant children and their families in New York State, utilizing a comprehensive management system and a holistic approach that addresses each student as a whole person. These migrant students include preschool children, in-school children, in-school adolescents and Out-of-School Youth (OSY), ages 3-21.

Project Period

The grant contract period will be for five (5) years, from anticipated September 1, 2018 to August 31, 2023.

The five-year contract period is subject to:

- the availability of funds and level of funding from the U.S. Department of Education (ED) for the period; and
- successful program delivery and implementation by the individual METS program centers in the previous year, based on the requirements of the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP) and Theory of Action (ToA).

The approved ESSA Consolidated State Plan can be viewed at: <http://www.p12.nysed.gov/accountability/essa.html>. The State Service Delivery Plan (SDP) and Theory of Action (ToA) can be viewed at: <http://nysmigrant.org/downloads/Service-Delivery-Plans>.

Project Funding

Estimated funds totaling approximately 6.7 million dollars will be available statewide each year of the five-year grant contract period, 2018-2023, subject to the availability of funds and level of funding from the U.S. Department of Education (ED) and successful program delivery and implementation by the individual METS program centers in the previous year.

The annual allocation for each METS program center will be based on two factors:

1. The annual award amount that New York State Education Department (NYSED or “the Department”) receives from U.S. Department of Education (ED) for Title I, Part C – Education of Migratory Children Program; and
2. The State-approved migrant funding formula.

Please refer to Attachment A for the current funding formula.

Note that the allocation amounts identified below for each METS region (i.e., program, center) are based on current data. Please use the funding levels listed below for the application submission and first year (9/1/18-8/31/19) Budget and Budget Narrative.

The actual funding amount for each METS region will be determined annually based on the two factors listed above, subject to the State Education Department’s (SED) approval.

One award will be made for each METS region (i.e., program, center). An applicant must serve a METS region in its entirety without exceptions.

The counties included in each METS region are:

	METS Region	Year 1 Funding*	Counties	Number of Students**
1	Northwest	\$697,430	1. Monroe 2. Niagara 3. Orleans	K-12: 210 PreK: 64 OSY: 206
2	Southwest	\$848,986	1. Allegany 2. Cattaraugus 3. Chautauqua 4. Erie 5. Genesee 6. Livingston 7. Ontario 8. Seneca 9. Steuben 10. Wyoming 11. Yates	K-12: 208 PreK: 66 OSY: 381
3	North-Central	\$847,762	1. Jefferson 2. Lewis 3. Oswego 4. Wayne	K-12: 242 PreK: 97 OSY: 300
4	South-Central	\$752,071	1. Broome 2. Cayuga 3. Chemung 4. Chenango 5. Cortland 6. Delaware 7. Onondaga 8. Otsego 9. Schoharie 10. Schuyler 11. Tompkins	K-12: 231 PreK: 70 OSY: 272

			12. Tioga	
5	Northeast	\$1,031,397	1. Clinton 2. Essex 3. Franklin 4. St. Lawrence	K-12: 438 PreK: 197 OSY: 151
6	Eastern	\$880,384	1. Albany 2. Columbia 3. Fulton 4. Greene 5. Hamilton 6. Herkimer 7. Madison 8. Montgomery 9. Oneida 10. Rensselaer 11. Saratoga 12. Schenectady 13. Warren 14. Washington	K-12: 314 PreK: 108 OSY: 203
7	Southeast	\$1,031,940	1. Dutchess 2. Orange 3. Putnam 4. Rockland 5. Sullivan 6. Ulster 7. Westchester	K-12: 414 PreK: 125 OSY: 264
8	Long Island- Metro	\$610,030	1. Nassau 2. Suffolk <u>AND</u> Five Boroughs of New York City: 1. Brooklyn 2. Bronx 3. Queens 4. Manhattan 5. Staten Island	K-12: 225 PreK: 44 OSY: 137

* Subject to the availability of funds and level of funding from the U.S. Department of Education (ED) for the period.

** These student counts are based on the approved 2016-17 CSPR data submissions.

Please refer to Attachment B, "New York State Map and METS Regions," for visual assistance.

Background on METS Regions

The chart below provides approximate numbers of students in different categories based on recent data. Please note this information is provided for background information only. Although these categories are consistent with the funding formula, applicants should use the amounts indicated under Project Funding above to develop the 2018-2019 Budget and Budget Narrative submitted with their application.

METS/Regions	3-Year Average Identified Ages 3-22	Summer Served	Priority for Service	Low or Below Grade	English Language Learners	Mobility within 1 year	Preschool 3-5 years of age
Northwest	495	309	111	128	123	408	38
Southwest	678	337	94	117	114	502	34
North-Central	602	349	138	167	122	533	62
South-Central	565	338	87	141	140	372	50
Northeast	709	554	169	277	10	557	125
Eastern	601	418	111	250	227	402	63
Southeast	702	491	140	259	246	540	75
Long Island Metro	387	283	118	172	186	230	32

Eligible Applicants

Local Education Agencies (LEAs), Boards of Cooperative Educational Services (BOCES), and Institutions of Higher Education (IHEs) are eligible to apply.

New Prequalification Requirement

The State of New York has implemented a new statewide prequalification process (described on the [Grants Reform website](https://grantsreform.ny.gov/Grantees) (<https://grantsreform.ny.gov/Grantees>)) designed to facilitate prompt contracting for not-for-profit vendors. All not-for-profit vendors are required to pre-qualify prior to grant application. This includes all currently funded not-for-profit institutions that have already received an award and are in the middle of the program cycle. The pre-qualification must be completed by all not-for-profit institutions prior to application in order to receive an award under this RFP. Please review the additional information regarding this requirement in the Prequalification for Individual Applications section below.

Description of Program

To carry out the purpose of this part, the New York State Education Department (NYSED or “the Department”) seeks to establish eight (8) Migrant Education Tutorial and Support Services (METS) program centers across the State. These METS program centers,

working in partnerships with parents, schools, colleges and universities, community-based organizations, and other relevant stakeholder groups, are required to support the identification and recruitment of migrant-eligible children and youth, agricultural workers, fishers, and their families, and to provide them with data-driven, evidence-based instructional programs and support services based on their needs, interests, and learning goals. These programs and services include, but are not limited to, strategic tutoring and academic support; English language acquisition and literacy development; strengthening family-school-community partnerships; facilitating social-emotional well-being and fostering positive identity development; encouraging parent and family engagement; and increasing students' access to educational opportunities through advocacy to self-advocacy and identity development, and other supportive services. The goal is to ensure that all migrant children will graduate from high school ready for college, careers, and life, prepared to pursue the future of their choosing.

Allowable Expenditures

The METS program centers may use grant funds for activities, programs, and services relating to migrant children and youth as well as their families to the extent that:

- specific use of such funds is consistent with the purpose of Title I, Part C and meets federal guidelines for “reasonable and necessary costs” as outlined in [OMB's Uniform Guidance for Grants](#); and
- specific use of such funds is consistent with the service delivery requirements as outlined in the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP) and the Theory of Action (ToA) for the New York State Migrant Education Program (NYS-MEP).

Required Activities that Target the Needs of Migratory Children and Families:

1. Increase the academic achievement of migrant children by providing needs- and data-driven, evidence-based and effective (best practices) supplemental subject content and English language instruction educational programs, demonstrating the effectiveness of the programs in increasing migrant student performance towards meeting State Performance Targets (SPTs) and Measurable Program Outcomes (MPOs) in terms of English proficiency for out-of-school youth (OSY); student academic achievement in the core academic subjects, especially English Language Arts (ELA) and Mathematics for in-school children; improved scores on the Early Childhood Assessment (ECA) for preschool children; and graduation rates for in-school adolescents.
2. Provide high-quality and effective professional development to the METS program center's Migrant Educators, including Early Childhood Specialists, Adolescent Specialists, and Out-of-School Youth (OSY) Specialists that is designed to:
 - improve the instruction and assessment of migrant children and youth;
 - coordinate and provide support services as needed; and

- enhance the ability of Migrant Educators to understand and use data, curricula, assessment measures, and instructional strategies for migratory children and youth.

The METS is required to demonstrate the effectiveness of the professional development in increasing the students' academic achievement and/or English proficiency and/or substantially increasing the subject matter knowledge and teaching skills of the Migrant Educators. The professional development shall be sustained (not stand-alone, one-day, or short-term workshops), intensive, collaborative, job-embedded, data-driven, and student- and family-focused, and of sufficient intensity and duration to have a positive and lasting impact on the Migrant Educators' performance and the achievement of migrant children and youth.

3. Provide mentoring, and academic and/or career counseling; develop programs and services to strengthen family-school-community partnerships; encourage parent and family engagement; facilitate social-emotional well-being; foster positive identity development; coordinate and provide support services and referrals as needed; and increase students' access to educational opportunities through promoting advocacy to self-advocacy and identity development.
4. Conduct parent and family engagement to build the capacity of parents and guardians to be active participants in their children's education; provide opportunities for identity development and community building; develop skills and confidence to advocate for their children in schools and the community; and provide training on topics in response to their questions and concerns.
5. Conduct both local and statewide Parent Advisory Council (PAC) meetings, where parents and guardians are consulted on the planning, operation, and evaluation of the migrant education initiatives, programs, and services.
6. Conduct community engagement, including preschool programs, dental and health services, social services, and legal services, to support the education of migrant children and youth and the needs of their families.

Required Uses:

Support for the recruitment, hiring, and training of effective METS Program Director, Data Specialist, Administrative Assistant/Support Staff, and Migrant Educators. Please note that all the positions listed below are required positions to implement the METS program and must be retained throughout the contract term.

- - METS Program Director - .80-1.0 FTE - Ensures programs and services meet organization goals and requirements. Develops and implements processes and policies, directs staff, and works with different stakeholders to define, prioritize, and develop projects and programs. Requires a

Master's degree or higher. Experience with migrant program management preferred.

- Data Specialist - .80-1.0 FTE – Enters data into and extracts data from MIS2000 and MSIX databases, prepares reports for use by Program Director and Migrant Educators, and analyzes data to generate reports that provide formative and summative data useful in evaluating and improving programs and instruction. Experience with MIS2000 student information system and the Migrant Student Information Exchange Initiative (MSIX) national records transfer system, as well as experience working with schools and school districts as it relates to migrant student data preferred. Demonstrated successful experience as a Migrant Data Specialist may be substituted for formal academic qualifications.
- Administrative Assistant/Support Staff* - .50-1.0 FTE
- Migrant Educators implement instructional programs and provide supportive services to all migrant-eligible preschool children, in-school children, in-school adolescents, and out-of-school youth (OSY), ages 3-21, and their families under the supervision of the METS Program Director. The Migrant Educators' essential duties include, but are not limited to:
 - Support the identification and recruitment of migrant-eligible children and youth;
 - Provide 1:1 as well as group tutoring in ELA and English as a New Language (ENL), Math, and core content subjects, academic advising, and academic success support functions to ensure ongoing academic progress of migrant children and youth;
 - Work closely with migrant children, their families, and school-related personnel (e.g., classroom teachers, guidance counselors, school nurses, principals, etc.) to identify all academic options including, but not limited to, postsecondary studies, extracurricular activities, mentorship, research opportunities, and internships; support and counsel students in selection of option(s) best suited to student's goals, interests, and skills through different tools including the Migrant Personal Learning Plan (PLP) and Graduation Plan (GP);
 - Monitor and assess student academic progress through a variety of reporting tools including MIS2000, MSIX, observations, assessment data, consultations with teachers and related staff, etc., and work closely and collaboratively with students, parents, teachers and other staff to ensure migrant students' academic success through data inquiry cycles and actions;
 - Coordinate and provide guidance and advice, including referrals as needed, to migrant children and youth; ensure access to opportunities for developing their personal leadership capacity, and support their growth in being able to advocate for themselves and to develop a positive self-identity;

- Coordinate meetings and ensure that schools provide translation and/or interpretation for effective communication between parents and school staff using strategies like Authentic Voices for bilingual communication;
- Maintain student files and records on MIS2000 and MSIX, as required; and
- Work collaboratively and collegially with all stakeholders, including migrant children and youth, their parents, teachers and other school staff, community-based organizations, etc. to facilitate comprehensive and holistic student support.

The responsibilities of these Migrant Educators and their positions represent required tasks associated with grant deliverables based on the requirements of the approved ESSA Consolidated State Plan, the State Service Delivery Plan (SDP), the Theory of Action (ToA), as well as (emerging) data and needs of all migrant children and youth, and their families, as outlined in this Announcement for Funding Opportunity, and are not representative of specified FTEs. The total FTEs will vary based on the number of migrant eligible children and families served, as well as their identified needs. Experience working with migrant-eligible children and youth, their families, as well as classroom teachers, principals, guidance counselors, school nurses, community- and faith-based organizations and other relevant stakeholder groups to support the needs of migrant children and youth and their families preferred. Demonstrated successful experience as Migrant Educators, as evidenced by migrant students' success, may be substituted for formal academic qualifications.

Cont'd: Allowable Uses:

- Provision of strategic tutoring, mentoring, and academic and/or career counseling for migrant children and youth.
- Updating migrant program objectives and effective instruction strategies based on emerging needs and data analysis.
- Identification, development, and acquisition of curricular materials, educational software, and technologies to be used in the program.
- Improving instruction, including the provision of appropriate educational technology.
- Supplemental instructional programs and support services, including the payment of costs associated with the provision of additional materials and supplies and transportation.
- Other supplemental instructional programs and services that are designed to assist migratory children and their families to achieve in schools, such as programs of introduction to the educational system, civics education, applying to colleges and universities, etc.

- Family literacy resources, parent and family outreach, training activities, and local and statewide Parent Advisory Council (PAC) meetings designed to assist parents and families to become active participants in the education of their children.
- Provision of training to both parents and Migrant Educators on the effective use of Community Interpreters.
- Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with migrant children, to assist parents and families of migrant children and youth by offering comprehensive community services.
- Parent, family, and community engagement through community participation programs, parent outreach, and training activities to migrant children and their families.
- Provide effective professional development opportunities for all Migrant Educators, as well as classroom teachers, principals, and administrators, including early education teachers and other school or community-based organization personnel that:
 - are designed to improve the instruction and assessment of migrant children and youth;
 - enhance the ability of classroom teachers and principals to understand and implement curricula, assessment measures and practices, and instructional strategies for migratory children and youth;
 - are effective in increasing the English language development, acquisition, and proficiency and/or substantially increasing the subject matter knowledge and teaching skills of teachers of migratory children and youth; and
 - are of sufficient intensity and duration to have a positive and lasting impact on instruction.
- Offer opportunities, including referrals, for credit accrual, test preparation courses, high school equivalency diploma (HSE) programs, career and technical education (CTE) high school courses, or other courses that help adolescent migrant students and out-of-school youth achieve success and to earn a high school diploma or its equivalent.
- Consultant costs should be itemized, reasonable, and supportive of the State Migrant Education Program, the State Service Delivery Plan (SDP) and Theory of Action (ToA).
- In collaboration and coordination with the Statewide Identification and Recruitment/MIS2000/MSIX (ID&R) program center, all METS personnel (Program Directors, Data Specialists, and Migrant Educators) will enter migrant student data in the web snap system, starting with OSY student data in 2018-19.

Compliance with OMB Circulars A-21, A-110, and other related directives as applicable, is required. See the following links for more information:

- http://www.whitehouse.gov/omb/fedreg_a-21rev
- <http://www.whitehouse.gov/omb/circulars/a110/a110.html>

Proposal Narrative and 2018-19 Work Plan

Applicants must submit a Proposal Narrative with this application, for the 5-Year grant contract period of September 1, 2018 to August 31, 2023. The Proposal Narrative will be reviewed and scored.

Applicants must also complete the 2018-19 Work Plan with this application, for the initial 12-month project period of September 1, 2018 to August 31, 2019. Please see Attachment C for 2018-19 Work Plan template. The Work Plan must bear the original signature of the Chief School/Administrative Officer or his/her designee. The 12-month 2018-19 Work Plan will be reviewed and scored.

Budget (FS-10)

Applicants must submit an FS-10 Budget and Budget Narrative with this application, for the initial 12-month project period of September 1, 2018 to August 31, 2019. The 12-month Budget and Budget Narrative will be reviewed and scored.

Applicants must complete the 2018-19 FS-10 Budget and Budget Narrative forms. Budgeted costs must be in compliance with applicable State and federal laws and regulations and the Department's fiscal guidelines. These guidelines, as well as the FS-10 Budget and Budget Narrative forms, are available online at the [Grants Finance website](#). The completed FS-10 Budget form must bear the original signature of the Chief School/Administrative Officer.

Information about the categories of expenditures and general information on allowable costs, applicable cost principles and administrative regulations are available in the [Fiscal Guidelines for Federal and State Aided Grants](#).

The budget should be reasonable and appropriate to cover program expenses.

Indirect Cost Cap

- School district and BOCES must use the restricted indirect cost rates calculated by the State Education Department (SED).
- Institutions of Higher Education (IHEs) may use an indirect cost rate of up to 8%.

For more information, visit the [Grants Finance website](#).

Application Submission Instructions

If an applicant wishes to serve more than one METS region, the applicant must submit a separate application for each METS region it wishes to serve.

A complete application should include all items on the Application Checklist in the order listed on the checklist.

Proposals postmarked after April 25, 2018 will not be reviewed and scored for consideration.

Method of Award

It is estimated that funds totaling approximately 6.7 million dollars will be available in the first year of this grant contract. Funds will be allocated across the eight (8) regions based on the current State-approved allocation formula. See Attachment A. One award will be made for each METS region (i.e., METS program center). An applicant must serve a region in its entirety, without exceptions, for the entirety of the funded period from September 1 to August 31 during each year of the five-year grant contract period, 2018-2023, subject to the availability of funds and level of funding from the U.S. Department of Education (ED) and successful program delivery and implementation by the individual METS program centers in the previous year.

Each eligible proposal received will be reviewed by at least two reviewers. Each reviewer will score the proposal according to the indicated point criteria in the Proposal Narrative, 2018-19 Work Plan, the 2018-19 Budget and Budget Narrative using the Proposal Evaluation Rubric. If individual scores are more than 15 points apart, another reviewer will score the application. The two scores closest in numeric value will be averaged to calculate the final average score of the application. If the third reviewer's score is equal to the average of the two original scores, the third reviewer's score will become the final score.

Budgets will be adjusted to eliminate any unallowable or inappropriate expenditure.

Each proposal will be categorized according to the METS region it serves. Proposals in each METS region will be ranked in order of final average scores from highest to lowest. Awards will be made to the highest-ranking proposal in each region. In the event of tied scores, proposals with the highest score on the Proposal Narrative will be ranked higher. Only proposals that receive a final average score of 60 or more will be considered for funding.

Entities' Responsibility

Projects must operate under the jurisdiction of the local board of education, or other appropriate governing body, and are subject to at least the same degree of accountability as all other expenditures of the local agency. The local board of education, or other appropriate governing body, is responsible for the proper disbursement of, and accounting for project funds. Written agency policy concerning wages, mileage and travel allowances, overtime compensation, or fringe benefits, as well as State rules pertaining

to competitive bidding, safety regulations, inventory control, data security and confidentiality, and transportation must be followed. Supporting or source documents are required for all grant related transactions entered into the local agency's recordkeeping systems. Source documents that authorize the disbursement of grant funds consist of purchase orders, contracts, time and effort records, delivery receipts, vendor invoices, travel documentation and payment documents.

Supporting documentation for grants and grant contracts must be kept for at least six (6) years after the last payment was made unless otherwise specified by program requirements. Additionally, audit or litigation will "freeze the clock" for records retention purposes until the issue is resolved. All records and documentation must be available for inspection by State Education Department (SED) officials or its representative(s).

For additional information about grants, please refer to the [Fiscal Guidelines for Federal and State Aided Grants](#).

Reporting

Grantees must submit an annual performance report (APR) at the end of each grant period but no later than the first Friday in October of each year of the grant. The performance report should demonstrate that substantial progress has been made towards meeting the project goals and the program performance indicators. The State Education Department (SED) will make additional information about the annual performance report available to grantees after contract grant awards are issued. Grantees that do not demonstrate adequate performance may be discontinued.

Monitoring

Under federal and State law, the State Education Department (SED) is required to monitor the METS program centers on a regular basis to ensure compliance with all applicable federal and State Migrant Education Program (MEP) requirements and policies.

SED will conduct on-site monitoring visits and desktop reviews on a two- to three-year cycle during which METS program centers are monitored for compliance. As a result of these on-site monitoring visits and desktop reviews, the Department will issue a compliance monitoring report within 30 days of completion of the monitoring visit or desktop review. The Department will also implement a self-assessment protocol to promote use of best practices and to proactively detect and correct non-compliance at each METS program center.

In the instance where compliance findings are identified, a corrective action plan is requested detailing resolution of compliance items cited and program improvements needed. The corrective action plan must be submitted to SED within 30 days of receipt of the monitoring report.

Accessibility of Web-Based Information and Applications

Any documents, web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department (NYSED or “the 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, including documents, and applications are accessible to persons with disabilities. Documents, 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.

Requirements of Education Law § 2-d

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

Bidders should complete items #3 and #6 of Appendix S-1 and return it with their application for NYSED review.

Contract Terms and Conditions

Grant awards to not-for-profit entities will require that the awardee enter into a grant contract, the form of which is contained in an attachment to this RFP. In addition to being signed by the awardee and NYSED Counsel, the contract will need to be submitted for review and approval by the NYS Attorney General and the Office of the State Comptroller. All provisions of this RFP are subordinate to the terms and conditions of the grant contract. The contents of this RFP, any subsequent correspondence related to final contract negotiations, and such other stipulations as agreed upon may be made a part of the final contract developed by NYSED.

Requirements for Funding

Registration in Federal System for Award Management (SAM) – In order to be awarded federal funds, an agency must be registered (and then maintain a current registration) in the federal [System for Award Management \(https://www.sam.gov/\)](https://www.sam.gov/) known as SAM. SAM is a government-wide, web-enabled database that collects, validates, stores and disseminates business information about organizations receiving federal funds. Information on an agency’s registration in SAM needs to be provided on the Payee Information Form that must be submitted with the application.

Payee Information Form/NYSED Substitute W-9 – The [Payee Information Form](#) is a packet containing the Payee Information Form itself and an accompanying NYSED Substitute W-9. The NYSED Substitute W-9 may or may not be needed from your agency. Please follow the specific instructions provided with the form. The Payee Information Form is used to establish the identity of the applicant organization and enables it to receive federal (and/or State) funds through the New York State Education Department (NYSED).

PREQUALIFICATION FOR INDIVIDUAL APPLICATIONS

Pursuant to the New York State Division of Budget Bulletin H-1032, dated June 7, 2013, New York State has instituted key reform initiatives to the grant contract process which require not-for-profits to register in the Grants Gateway and complete the Vendor Prequalification process for proposals to be evaluated. Information on these initiatives can be found on the [Grants Reform Website \(https://grantsreform.ny.gov/\)](https://grantsreform.ny.gov/).

Proposals received from not-for-profit applicants that have not Registered and are not Prequalified in the Grants Gateway by 5:00 PM on the proposal due date of April 25, 2018 cannot be evaluated. Such proposals will be disqualified from further consideration

Below is a summary of the steps that must be completed to meet registration and prequalification requirements. The [Vendor Prequalification Manual](#)* on the Grants Reform Website details the requirements and an [online tutorial](#)** are available to walk users through the process.

*https://grantsreform.ny.gov/sites/default/files/docs/VENDOR_POLICY_MANUAL_V.2_10.10.13.pdf

**<https://www.youtube.com/watch?v=Py1hqveEiF4&list=UUYnWskVc7B3ajjOVfOHL6UA&index=14>

1) Register for the Grants Gateway.

- On the Grants Reform Website, download a copy of the [Registration Form for Administrator](#)*. A signed, notarized original form must be sent to the Division of Budget at the address provided in the instructions. You will be provided with a Username and Password allowing you to access the Grants Gateway.
- If you have previously registered and do not know your Username, please email grantsreform@budget.ny.gov. If you do not know your Password please click the [Forgot Password](#)** link from the main log in page and follow the prompts.

*<https://grantsreform.ny.gov/sites/default/files/registration-form-for-administrator-fillable.pdf>

******https://grantsgateway.ny.gov/IntelliGrants_NYSGG/login2.aspx

2) Complete your Prequalification Application.

- Log in to the [Grants Gateway](#)*. **If this is your first time logging in**, you will be prompted to change your password at the bottom of your Profile page. Enter a new password and click SAVE.
- Click the *Organization(s)* link at the top of the page and complete the required fields including selecting the State agency you have the most grants with. This page should be completed in its entirety before you SAVE. A *Document Vault* link will become available near the top of the page. Click this link to access the main Document Vault page.
- Answer the questions in the *Required Forms* and upload *Required Documents*. This constitutes your Prequalification Application. Optional Documents are not required unless specified in this Request for Proposal.
- Specific questions about the prequalification process should be referred to your agency representative at prequal@nysed.gov or to the Grants Reform Team at grantsreform@budget.ny.gov.

* https://grantsgateway.ny.gov/IntelliGrants_NYSGG/login2.aspx

3) Submit Your Prequalification Application

- After completing your Prequalification Application, click the **Submit Document Vault Link** located below the Required Documents section to submit your Prequalification Application for State agency review. Once submitted the status of the Document Vault will change to *In Review*.
- If your Prequalification reviewer has questions or requests changes you will receive email notification from the Gateway system.
- Once your Prequalification Application has been approved, you will receive a Gateway notification that you are now prequalified to do business with New York State.

Vendors are strongly encouraged to begin the process as soon as possible in order to participate in this opportunity.

Debriefing Procedures

All unsuccessful applicants may request a debriefing within fifteen (15) calendar days of receiving notice from the New York State Education Department (NYSED). Bidders may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Contact person at:

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

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

Contract Award Protest Procedures

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

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

New York State Education Department
Contract Administration Unit
ATTN: Jessica Hartjen
89 Washington Avenue
Room 501W EB
Albany, NY 12234

3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of the receipt of the protest. The original protest and decision will be filed with the Office of the New York State Comptroller (OSC) when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.
4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

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

The following M/WBE requirements apply when an applicant applies for grant funding that exceeds \$25,000 for the full grant period.

All forms referenced here can be found in the M/WBE Documents section at the end of this RFP.

All applicants are required to comply with the New York State Education Department's (NYSED or "the Department") Minority and Women-Owned Business Enterprises (M/WBE) policy. Compliance can be achieved by one of the three methods described below. Full participation by meeting or exceeding the M/WBE participation goal for this grant is the preferred method.

M/WBE participation includes services, materials, or supplies purchased from minority and women-owned firms certified with the NYS Division of Minority and Women Business Development. Not-for-profit agencies are not eligible for this certification. For additional information and a listing of currently certified M/WBEs, see the [NYS MWBE Directory](#).

The M/WBE participation goal for this grant is 30% of each applicant's total discretionary non-personal service budget each year of the grant. Discretionary non-personal service budget is defined as total annual budget, excluding the sum of funds budgeted for:

1. direct personal services (i.e., professional and support staff salaries) and fringe benefits; and
2. rent, lease, utilities and indirect costs, if these items are allowable expenditures. The M/WBE Goal Calculation Worksheet is provided for use in calculating the dollar amount of the M/WBE goal for this grant application.

All requested information and documentation should be provided at the time of submission. If this cannot be done, the applicant will have thirty days from the date of notice of award to submit the necessary documents and respond satisfactorily to any follow-up questions from the Department. Failure to do so may result in loss of funding.

METHODS TO COMPLY

An applicant can comply with NYSED's M/WBE policy by one of three methods:

1. **Full Participation** - This is the preferred method of compliance. Full participation is achieved when an applicant meets or exceeds the participation goals for this grant.

COMPLETE FORMS:

- M/WBE Goal Calculation Worksheet
- M/WBE Cover Letter
- M/WBE 100 Utilization Plan

- M/WBE 102 Notice of Intent to Participate
- 2. Partial Participation, Partial Request for Waiver** - This is acceptable only if good faith efforts to achieve full participation are made and documented, but full participation is not possible.
COMPLETE FORMS:
- M/WBE Goal Calculation Worksheet
 - M/WBE Cover Letter
 - M/WBE 100 Utilization Plan
 - M/WBE 101 Request for Waiver
 - M/WBE 102 Notice of Intent to Participate
 - M/WBE 105 Contractor's Good Faith Efforts
- 3. No Participation, Request for Complete Waiver** - This is acceptable only if good faith efforts to achieve full or partial participation are made and documented, but do not result in any participation by M/WBE firm(s).
COMPLETE FORMS:
- M/WBE Goal Calculation Worksheet
 - M/WBE Cover Letter
 - M/WBE 101 Request for Waiver
 - M/WBE 105 Contractor's Good Faith Efforts

GOOD FAITH EFFORTS

Applicants must make a good faith effort to solicit NYS certified M/WBE firms as subcontractors and/or suppliers to achieve the goals for this grant. Solicitations may include, but are not limited to: advertisements in minority and women-centered publications; solicitation of vendors found in the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#); and the solicitation of minority and women-oriented trade and labor organizations.

Good faith efforts include actions such as setting up meetings or announcements to make M/WBEs aware of supplier and subcontracting opportunities, identifying logical areas of the grant project that could be subcontracted to M/WBE firms, and utilizing all current lists of M/WBEs who are available for and may be interested in subcontracting or supplying goods for the project.

Applicants should document their efforts to comply with the stated M/WBE goals and submit this with their applications as evidence. Examples of acceptable documentation can be found in form M/WBE 105, Contractor's Good Faith Efforts. NYSED reserves the right to reject any application for failure to document "good faith efforts."

REQUEST FOR WAIVER

When full participation cannot be achieved, applicants must submit a Request for Waiver (M/WBE 101). Requests for Waivers must be accompanied by documentation explaining

the good faith efforts made and reasons they were unsuccessful in obtaining M/WBE participation.

NYSED reserves the right to approve the addition or deletion of subcontractors or suppliers to enable applicants to comply with the M/WBE goals, provided such addition or deletion does not impact the technical proposal and/or increase the total budget.

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

NYSED's M/WBE Coordinator is available to assist applicants in meeting the M/WBE goals. The Coordinator can be reached at MWBE@.nysed.gov.

Equal Employment Opportunity Reporting (EEO) Pursuant to Article 15-A of the New York State Executive Law

Applicants must complete and submit form EEO 100: Staffing Plan.

NYSED's Reservation of Rights

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

Vendor Responsibility

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

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.

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.

* http://www.osc.state.ny.us/vendrep/forms_vendor.htm

** http://www.osc.state.ny.us/vendrep/form_ac3291s.htm

*** http://www.osc.state.ny.us/vendrep/info_vrsystem.htm

Subcontractors:

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

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

Workers' Compensation Coverage and Debarment

New York State Workers' Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State and additional requirements which

provide for the debarment of vendors that violate certain sections of WCL. The WCL requires, and has required since introduction of the law in 1922, the heads of all municipal and State entities to ensure that businesses have appropriate workers' compensation and disability benefits insurance coverage *prior* to issuing any permits or licenses, or *prior* to entering into contracts.

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

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

PROOF OF COVERAGE REQUIREMENTS

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

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

Proof of Workers' Compensation Coverage

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

- **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
 - **Form SI-12**– Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance;
- or

- **CE-200**– Certificate of Attestation of Exemption from NYS Workers’ Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

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

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

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

**2018-2023
MIGRANT EDUCATION TUTORIAL AND
SUPPORT SERVICES (METS) PROGRAM CENTERS**

Application Cover Page

Agency Code

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Name Applicant agency:	Name and Title of Contact Person:
Address:	Telephone:
City: Zip Code:	Fax:
County:	E-Mail:
<p>I hereby certify that I am the applicant's chief school/administrative officer and that the information contained in this application is, to the best of my knowledge, complete and accurate. I further certify, to the best of my knowledge, that any ensuing program and activity will be conducted in accordance with all applicable Federal and State laws and regulations, application guidelines and instructions, Assurances, Certifications, Appendix A, Appendix A-1G and that the requested budget amounts are necessary for the implementation of this project. It is understood by the applicant that this application constitutes an offer and, if accepted by the New York State Education Department or renegotiated to acceptance, will form a binding agreement. It is also understood by the applicant that immediate written notice will be provided to the grant program office if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.</p>	
Original Signature of Chief Administrative Officer (in blue ink)	Typed Name of Chief Administrative Officer:
Date:	

Application Checklist

Listed below are the required documents for a complete application package, in the order that they should be submitted. Use this checklist to ensure that your application submission is complete and in compliance with application instructions.

Required Documents	Checked- Applicant	Checked – SED	
Application Cover Page with Original Signature of Chief Administrative Officer	<input type="checkbox"/>	<input type="checkbox"/>	
Payee Information Form (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	
Application Checklist	<input type="checkbox"/>	<input type="checkbox"/>	
2018-23 Proposal Narrative	<input type="checkbox"/>	<input type="checkbox"/>	
2018-19 Work Plan	<input type="checkbox"/>	<input type="checkbox"/>	
Completed Appendix S-1 (complete questions #3 and #6)	<input type="checkbox"/>	<input type="checkbox"/>	
2018-19 FS-10 Budget (signature required)	<input type="checkbox"/>	<input type="checkbox"/>	
2018-19 Budget Narrative	<input type="checkbox"/>	<input type="checkbox"/>	
Worker’s Compensation Documentation (encouraged)	<input type="checkbox"/>	<input type="checkbox"/>	
Disability Benefits Documentation (encouraged)	<input type="checkbox"/>	<input type="checkbox"/>	
Is the applicant prequalified, if required? (While no documentation is required with the application, the applicant may be required to prequalify to be eligible for this grant opportunity)	<input type="checkbox"/>	<input type="checkbox"/>	
M/WBE Documents Package (original signatures required) <input type="checkbox"/> Full Participation <input type="checkbox"/> Request Partial Waiver <input type="checkbox"/> Request Total Waiver			
	Forms Required		
Type of Form	Full Participation	Request Partial Waiver	Request Total Waiver
Calculation of M/WBE Goal Amount	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M/WBE Cover Letter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M/WBE 100 Utilization Plan	<input type="checkbox"/>	<input type="checkbox"/>	N/A
M/WBE 102 Notice of Intent to Participate	<input type="checkbox"/>	<input type="checkbox"/>	N/A
M/WBE 105 Contractor’s Good Faith Efforts	N/A	<input type="checkbox"/>	<input type="checkbox"/>

M/WBE 101 Request for Waiver Form and Instructions	N/A	<input type="checkbox"/>	<input type="checkbox"/>
EE0 100 Staffing Plan and Instructions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SED Comments:

Has the applicant complied with the application instructions? Yes No

SED Reviewer: _____ Date: _____

Page Limits

The Proposal Narrative and Budget Narrative are to be submitted on single-spaced 8.5" x 11" pages with one-inch margins. Charts and/or tables are not required to adhere to this standard. Use a Times Roman or Arial font in a 12-point size. If the Proposal Narrative and Budget Narratives exceed the page limit, the reviewers will not read the excess pages. Do not include any attachments or addenda.

- Proposal Narrative: No more than 25 pages
- Budget Narrative: No more than 3 pages

The 2018-19 Work Plan is to be submitted using the attached Excel form. See Attachment C. The purpose of the Work Plan Template is to break down the goal setting process into smaller, more actionable steps for the specified program period. This template helps with outlining what is needed to accomplish each goal, including collaboration, resources, due date or frequency, anticipated obstacles and solutions. Please ensure:

- to use SMART goal setting that are (1) Specific; (2) Measurable; (3) Attainable; (3) Relevant; (4) Trackable; and (5) Time Bound; and
- that the goals identified are based on data and the needs of migrant children and youth and their families, and that they are aligned to the approved ESSA State Consolidated State Plan, the 2016-19 State Service Delivery Plan (SDP), the Theory of Action (ToA), and the State Performance Targets (SPTs) and Measurable Performance Outcomes (MPOs).

The Theory of Action (ToA) explains the holistic approach and outlines the specific changes that the State intends to improve, specifically in the areas of Subject Content and Instruction, Advocacy to Self-Advocacy, and Identity Development, to improve instruction and learning by migrant children and youth, as well as to ensure that they develop the knowledge and skills for self-advocacy and to develop a positive self-identity. The ToA elaborates on which actions to take programmatically so that migrant children and youth will be ready for college, careers, and life, prepared to pursue the future of their choosing.

PROPOSAL NARRATIVE (60 points)

Provide a comprehensive description of the proposed project. Be clear, precise and adhere to the following required format. The narrative will be reviewed in accordance with the following points and according to the Proposal Narrative Rubric.

Section 1: Abstract (0 points, but required)

Identify the METS region for which you are applying. Provide a concise one-page summary that describes the entire proposal. The summary should provide the reader a quick overview of the program, its goals, and objectives, and the evaluation plan.

Section 2: Need for Program (5 points)

Describe the needs and characteristics of the unique and mobile migrant-eligible children and youth, ages 3-21, within the designated METS region for which you are applying.

Section 3: Program Activities (30 points)

Please ensure that these program activities are aligned and support the implementation of the State Service Delivery Plan (SDP) and Theory of Action (ToA), and that they are in response to the needs and characteristics of migrant children and youth identified above. For the SDP and ToA, including State Performance Targets (SPTs), Measurable Performance Outcomes (MPOs), Key Strategies, please see: <http://nysmigrant.org/downloads/Service-Delivery-Plans>. The New York State Migrant Education Program (NYS-MEP) adopts an integrated and holistic approach to providing academic and social supports to ensure that migrant children and youth are college-, career-, and life-ready.

3.1: Five (5) points in total for Sections A-G

- A. Describe the steps to be taken to ensure that high quality, coordinated, and efficient and comprehensive academic programs and support services are provided to migrant-eligible children and youth, ages 3-21, including the effective use of data in the cycle of inquiry and action (e.g., Data Driven Instruction and Inquiry).
- B. Describe the project activities to be conducted that address the following at-risk factors that may affect migrant-children and youth during the school year and summer:
 - Cultural and language barriers;
 - Educational disruptions;
 - Social isolation;
 - High mobility;
 - Health-related problems;

- Homelessness; and
 - Limited English proficiency.
- C. Describe the project activities to be conducted during the school year and summer to address the unique needs of migrant-eligible:
- preschool children;
 - in-school children;
 - in-school adolescents; and
 - out-of-school youth.
- D. Describe the strategies and project activities to be implemented to ensure that migrant adolescents graduate from high school and are ready to pursue one or more of the following that is/are integrated with life-readiness (including their capacity to lead and self-advocate, as well as to develop a positive self-identity):
- post-secondary education;
 - career and technical education; and/or
 - gainful employment.
- E. Describe the quality and effective professional development to be conducted to ensure that Migrant Educators, and Data Specialists (as appropriate), will remain highly effective in supporting migrant-eligible children and youth to learn and achieve high performance standards so that they will be ready for college, careers, and life, prepared to pursue the future of their choosing.
- F. Describe the project activities to be conducted that address how the proposed program will work with local schools and school districts to ensure that they properly identify and report those students that are migrant-eligible and those whose eligibility has expired, and to serve such migrant-eligible students through an integrated partnership and in a holistic way that addresses each student as a whole person. This comprehensive management approach will involve accessing and verifying school records and state assessment scores.
- G. Describe the project activities to be conducted that support and strengthen parent, family, and community engagement. These activities are intended to be positive and goal-oriented relationships that seek to enhance:
- family well-being;
 - parent-child relationships;
 - families as lifelong educators;
 - families as learners;
 - family connections to school and community; and
 - families as advocates and leaders.

3.2: Five (5) points in total for Sections H-I

- H. Describe the program activities to be conducted that address how migratory children and youth who have made a qualifying move within the previous one-

year period and who are failing, or most at risk of failing, to meet the challenging State academic standards or who have dropped out of school will be given “priority for services”.

- I. Describe the program activities, including strategic tutoring and other evidence-based activities, strategies, and interventions, as well as, support services, to be conducted that serve to ensure that all migratory in-school children and youth reach challenging academic standards and graduate with a high school diploma, or its equivalent, that prepares them for responsible citizenship, further learning, and productive employment.

3.3: Twenty (20) points in total for Sections J-K

- J. Describe the program activities that will be implemented to meet the New York State Migrant Education Program (NYS-MEP) State Performance Targets (SPTs) and Measurable Program Outcomes (MPOs) indicated in the charts below for the following goal areas:

- English Language Arts (ELA);
- Mathematics;
- Graduation Rate;
- Preschool Children; and
- Out-of-School Youth.

- K. Describe program activities that will be implemented to ensure that the required services and strategies will be addressed to meet the performance outcomes as outlined in the charts below and in the State Service Delivery Plan (SDP). For the SDP, please see:

<http://nysmigrant.org/downloads/Service-Delivery-Plans>

Goal Area: English Language Arts	
State Performance Target	Decrease the gap between grades 3-8 migrant students and the economically disadvantaged subgroup on the NYS Assessment in English Language Arts by 15% each year starting in 2017.
Overall Strategy	Provide academic instruction to support the development of foundational skills and content knowledge based on state and local standards.
Strategy 1.1	Each year beginning in fall 2016, all migrant students in grades K-12 will have a complete, updated NYS MEP Migrant Student Needs Assessment within 45 school days of enrollment in the METS program.
Strategy 1.2	Each migrant student in grades K-8 on the Academic Services Intensity Rubric Level 3 will complete an initial NYS Migrant ELA Assessment within 45 school days of enrollment in the METS program each school year. Level 3 students will complete a post assessment using the same instrument following a schedule to be determined annually by the NYS MEP.
Strategy 1.3	Beginning in fall 2016, all K-8 migrant students at Level 3 on the Academic Services Intensity Rubric targeted for ELA services through the NYS MEP Migrant Student Needs Assessment will receive 30 or more hours of supplemental instruction in ELA during the regular school year, and 5 or more additional hours of ELA instruction if present during summer.

Goal Area: English Language Arts	
Implementation Indicator	1.1. Each year beginning in fall 2016, 90% of migrant students in grades K-12 will have a complete, updated NYS MEP Migrant Student Needs assessment within 45 school days of enrollment in the METS program.
Implementation Indicator	1.2 Each year, 90% of K-8 migrant students targeted for Level 3 ELA services will receive 30 or more hours of supplemental instruction in ELA during the regular school year and an additional 5 or more hours of instruction if present during summer.
Measurable Program Outcome	1.3 Beginning in fall 2016, 80% of Grade 3-8 migrant students receiving Level 3 supplemental academic instruction in ELA during the regular school year will gain 10 or more NCEs from the Fall to Spring administration of the NYS Migrant ELA Assessment.

Goal Area: Mathematics	
State Performance Target	Decrease the gap between grades 3-8 migrant students and the economically disadvantaged subgroup on the NYS Assessment in Mathematics by 15% each year starting in 2017.
Overall Strategy	Provide academic instruction to support the development of foundational skills and content knowledge based on state and local standards.
Strategy 2.1	Each migrant student in grades K-8 on the Academic Services Intensity Rubric Level 3 will complete an initial NYS Migrant Mathematics Assessment within 45 school days of enrollment in the METS program each school year. Level 3 students will complete a post assessment using the same instrument following a schedule to be determined annually by the NYS MEP.
Strategy 2.2	Beginning in fall 2016, all K-8 migrant students at Level 3 on the Academic Services Intensity Rubric targeted for Mathematics services through the NYS MEP Migrant Student Needs Assessment will receive 30 or more hours of supplemental instruction in Mathematics during the regular school year, and an additional 5 or more hours of Mathematics instruction if present during summer.
Implementation Indicator	2.1 Each year, 90% of K-8 migrant students targeted for Level 3 Mathematics services will receive 30 or more hours of supplemental instruction in Mathematics during the regular school year and an additional 5 or more hours of instruction if present during summer.
Measurable Program Outcome	2.2 Beginning in fall 2016, 80% of Grade 3-8 migrant students receiving Level 3 supplemental academic instruction in Mathematics during the regular school year will gain 10 or more NCEs from the Fall to Spring administration of the NYS Migrant Mathematics Assessment.

Goal Area: Graduation	
State Performance Target	Decrease the gap in the statewide 4-year cohort graduation rate between migrant students and all NYS students by 10% annually beginning in 2017.
Overall Strategy	Provide academic instruction to support the development of foundational skills and content knowledge based on state and local standards.
Strategy 3.1	Each year beginning in fall 2016, all grade 9-12 migrant students at Level 3 on the Academic Services Intensity Rubric will receive 30 or more hours of supplemental academic instruction during the regular school year, and an additional 5 or more hours of instruction if present during summer. ¹
Strategy 3.2	Each year beginning in fall 2016, all migrant students in grades 9-12 at Level 3 on the Academic Services Intensity Rubric will complete a MEP Graduation Plan Part One, ² within 45 school days of enrollment in the METS program.

⁷ Excludes PFS students who are performing at or above mastery on the state assessments, have refused services, or have limited availability per the specific terms of the *NYS MEP Academic Services Intensity Rubric*.

⁸ that outlines the student's selected pathway and high school graduation options, credits needed, and related requirements

Goal Area: Graduation	
Strategy 3.3	Each year beginning in fall 2016, all migrant students in grades 9-12 will participate in 4 or more hours of advocacy and individual support.
Implementation Indicator	3.1 Each year beginning in fall 2016, 90% of grade 9-12 migrant students at Level 3 on the Academic Services Intensity Rubric will receive 30 or more hours of supplemental academic instruction during the regular school year, and an additional 5 or more hours of instruction if present during summer.
Implementation Indicator	3.2 Each year beginning in fall 2016, 90% of migrant students in grades 9-12 at Level 3 on the Academic Services Intensity Rubric will complete or update a NYS MEP Graduation Plan Part One within 45 school days of enrollment.
Implementation Indicator	3.3 Beginning in 2016, 70% of migrant students in grades 9-12, will participate in 4 or more hours of advocacy and individual support.
Measurable Program Outcome	3.4 By 2018, 70% of migrant students that started grade 9 while enrolled in the NYS MEP will pass Algebra I by the start of grade 11.

Goal Area: Out of School Youth (OSY)	
State Performance Target (Statement of Intention)	Provide and coordinate education and support services that meet the prioritized needs of out of school youth.
Strategy	Provide instruction to support the development of language proficiency, educational goals or life skills.
Strategy 4.1	Beginning in fall 2016, all migrant OSY will have a complete, updated NYS Migrant Student Needs Assessment within 45 working days of enrollment in the METS program.
Strategy 4.2	Each OSY determined to be a candidate for educational services will have a NYS MEP Personal Learning Plan (PLP) within 45 working days of enrollment in the METS program.
Strategy 4.3	Beginning in fall 2016, OSY determined to be candidates for instruction in English through the NYS MEP Migrant Student Needs Assessment will participate in 12 or more hours of English instruction within each program year.
Implementation Indicator	4.1 Beginning in fall 2016, 65% of migrant OSY determined to be candidates for educational services, increasing to 75% by 2018, will complete a NYS MEP Personal Learning Plan (PLP) within 45 working days of their COE approval date.
Implementation Indicator	4.2 Each year beginning in fall 2016, 70% of OSY determined be candidates for instruction in English on the Migrant Student Needs Assessment will participate in 12 or more hours of English language instruction within each program year.
Measurable Program Outcome	4.3 80% of migrant OSY who participate in 12 or more hours of English instruction will demonstrate pre-post gains of 10% on the NYS Migrant Assessment of English Learning.

Goal Area: Preschool Children	
State Performance Target (Statement of Intention)	Provide and/or coordinate education and support services that meet the prioritized needs of preschool children ages P3-P5.
Strategy	Provide referrals and/or educational services to children P3-P5 to prepare students to enter Kindergarten ready to learn.
Strategy 5.1	Beginning in fall 2016, all migrant children ages P3-P5 will have a complete, updated NYS Migrant Student Needs Assessment.
Strategy 5.2	Each Level 2 preschool child ages P3-P5 determined to be a candidate for educational services will have an initial NYS MEP Early Childhood Assessment Tool (ECA).

Goal Area: Preschool Children	
Strategy 5.3	Beginning in fall 2016, Level 2 migratory preschool children ages P3-P5 determined to be candidates for educational services will participate in 12 or more hours of educational services within each program year.
Implementation Indicator	Each year beginning in fall 2016, 70% of Level 2 migrant preschool children ages P3-P5 determined be candidates for educational services will participate in 12 or more hours of educational services within each program year.
Measurable Program Outcome	70% of Level 2 migrant preschool children ages P3-P5 who participate in 12 or more hours of educational services will demonstrate pre-post gains of 10% on the NYS MEP Early Childhood Assessment.

Section 4: Parent and Family Engagement (10 points)

4.1 The proposed program conducts outreach to all migrant parents and families.

- A. Describe the program activities and strategies to be implemented that promote meaningful parent and family engagement and strengthen the partnership between the proposed program and all migrant parents and family members.
- B. Describe how the proposed program will support these parent and family engagement strategies with engagement activities within other relevant federal, State, and local laws and programs (e.g., Title I, Part A and Title III), to the extent feasible and appropriate.
- C. Describe the program activities and strategies to be implemented that reach all migrant parents and family members at home, in the community, and/or at school, to the extent practicable.

4.2 The proposed program implements programs, activities, and procedures to engage migrant parents and family members.

- D. Describe how the proposed program would provide coordination, technical assistance, professional development, and/or other support to assist and build the capacity of schools within the designated METS region in planning and implementing effective migrant parent and family engagement activities.
- E. Describe the program and strategies to be implemented to ensure that a local Migrant Parent Advisory Council (PAC) will be built and fostered within a designated METS region, with active participation of parents.
- F. Describe the program and strategies to be implemented to ensure that members of the local migrant Parent Advisory Council (PAC) will actively participate in the statewide migrant Parent Advisory Council (PAC), as per requirements under the ESSA Consolidated State Plan, the Migrant State Service Delivery Plan (SDP), and the Theory of Action (ToA).

4.3 The proposed program plans and implements such programs, activities, and procedures with meaningful consultation with parents of participating migrant children and youth.

- G. Describe how the proposed program will conduct, with meaningful local PAC engagement, evaluation of the content and effectiveness of the parent and family engagement activities and strategies in improving the quality and effectiveness of educational programs and support services for migrant children and youth, including (1) identifying barriers to greater participation by migrant parents and family members; (2) the needs of migrant parents and family members to assist with the learning of their children, including engaging with school personnel and teachers; and (3) strategies to support successful school and family interactions.
- H. Describe how the proposed program will inform migrant parents and family members of the goals and activities of the Migrant Education Program (MEP), as well as the statewide Comprehensive Needs Assessment (CNA), the State Service Delivery Plan (SDP), and the approved ESSA Consolidated State Plan.
- I. Describe how the proposed program will encourage and support migrant parents and family members to become actively involved in the update and/or revision of the statewide Comprehensive Needs Assessment (CNA) and the State Service Delivery Plan (SDP) to improve such programmatic goals and activities.

Section 5: Evaluation Plan (5 points)

- A. Describe how the proposed program will assess progress made towards meeting the Migrant Education Program's (MEP) State Performance Targets (SPTs) and the Measurable Performance Outcomes (MPOs).
- B. Describe how the proposed program will assess progress made in meeting the strategies and performance objectives outlined in the approved ESSA Consolidated State Plan, the State Migrant Education Program's (MEP) Service Delivery Plan (SDP), and the Theory of Action (ToA).
- C. Describe how the proposed program will assess the impact of strategic tutoring and other evidence-based activities, strategies, and interventions, including support services, on student achievement and outcomes.
- D. Describe how the proposed program will use evaluation results to change or modify program activities and strategies that are not meeting the needs of migrant children and youth, as well as their families.

Section 6: Background and Experience (5 points)

Describe the sponsoring agency of the proposed program and its relevant staff members' background and experience in terms of the following activities:

- A. Providing educational programs and support services to traditionally underserved populations like migrant children and youth; homeless children and youth; English Learners; immigrant children and youth; racial/ethnic minority children and youth; LGBTQ children and youth; and economically disadvantaged children and youth.
- B. Using strategic tutoring and other evidence-based activities, strategies, and interventions to serve the teaching and learning needs of traditionally underserved populations like migrant children and youth; homeless children and youth; English Learners; immigrant children and youth; racial/ethnic minority children and youth; LGBTQ children and youth; and economically disadvantaged children and youth.
- C. Collaborating, consulting, and coordinating (involving joint planning and integration of services) with other agencies including, but not limited to, Local Education Agencies (LEAs), Local Operating Agencies (LOAs), Institutions of Higher Education (IHEs), social agencies, and community- and faith-based organizations, to provide educational programs, support and health-related services to migrant children and youth.
- D. Collecting, collating, analyzing, interpreting, and reporting of migrant student achievement data, as well as the secure handling and storing of such data, as it relates to the implementation of educational programs and support services for migrant children and youth.
- E. Implementing data informed practice and decision-making as it relates to the implementation to educational programs and support services for migrant children and youth.
- F. Preparing migrant children and youth for successful transitions from elementary to middle school; from middle to high school; and from high school to post-secondary education and/or employment.
- G. Establishing inter- and intra-state coordination between and among different migrant education programs, Local Education Agencies (LEAs), Local Operating Agencies (LOAs), Institutions of Higher Education (IHEs), social agencies, and community- and faith-based organizations, within and outside New York State, in support of the needs of migrant children and youth, as well as their families.

Section 7: Organizational Capacity (5 points)

Describe how the sponsoring agency, and the proposed program, has the ability and organizational capacity to perform the following activities:

- A. Ensure sound and effective fiscal and programmatic management. Include an organizational chart for both school year and summer programs.

- B. Develop, maintain, and update an inventory of equipment purchased with grant funds. The inventory should include in its labeling of all equipment purchased with grant funds a statement specifying that such equipment is the sole property of the New York State Education Department (NYSED).
- C. Provide facilities and resources for year-round program implementation to effectively serve the needs of migrant children and youth, as well as their families.
- D. Ensure uninterrupted direct programs and services to migrant children and youth, as per Service Level using the Academic Service Intensity Rubric (ASIR), and following the New York State Migrant Education Program's (NYS-MEP) Service Level Requirements Chart (SLRC), on a year-round basis. See SDP: <http://nysmigrant.org/downloads/Service-Delivery-Plans>
- E. Ensure appropriate staff qualifications and experience to meet the unique needs of migrant children and youth, as well as their families.
- F. Ensure appropriate and effective supervision of field-based Migrant Educators tasked with providing educational programs and support services to migrant children and youth, as well as their families.
- G. Ensure that all migrant student data are entered into MIS2000 student information system and populated into the Migrant Student Information Exchange Initiative (MSIX) national records transfer system in a timely and consistent basis.
- H. Ensure that all migrant-related data and information are handled, processed, and disposed in a secure and confidential manner, in compliance with all federal, State, and local laws, regulations, and policies.
- I. Ensure that all migrant staff members are provided with training and support as it relates to personal health and safety in the implementation of the migrant education program.
- J. Ensure that migrant staff members are provided with training and support as it relates to transportation safety policies and procedures in the conveyance of migrant children and/or their families, in compliance with all relevant laws, regulations, and policies.
- K. Ensure that Migrant Educators will enter migrant student data in the web snap system, starting with OSY student data in 2018-19 and all student data (Preschool, Grades K-12, and OSY) in subsequent program years, in collaboration and consultation with the Statewide ID&R/MIS2000/MSIX program center.
- L. Ensure that the proposed program will work collaboratively with the Statewide Support Services Team (SST), including the *Identification and Recruitment/MIS2000/MSIX (ID&R)* program center and the *Migrant Technical*

Assistance and Support Center (M-TASC) program center, so that the following activities are implemented with fidelity and in a timely, consistent, and effective manner. They include (1) the accurate identification and recruitment of migrant-eligible children and youth; (2) the timely transfer of educational and health records; and (3) the provision of educational programs and support services that address cognitive-educational, behavioral, emotional, communication, and/or health issues that migrant children and youth often face.

2018-19 WORK PLAN (20 points)

To operationalize your Proposal Narrative for the initial 12-month project period of September 1, 2018 to August 31, 2019, please complete the attached 2018-19 Work Plan template (see Attachment C). The Work Plan template is to break down the goal-setting process for the **first year** of the project into smaller, more actionable steps. This template helps with outlining what is needed to accomplish each goal, including collaboration, resources, due date or frequency, anticipated obstacles and solutions.

To receive the maximum points, the 2018-19 Work Plan must contain goals and actions that are (1) specific; (2) measurable; (3) attainable; (3) relevant; (4) trackable; and (5) time bound. In addition, the goals and strategies identified must be based on data and the needs of migrant children and youth and their families, and that they are aligned to the 2016-19 State Service Delivery Plan (SDP), the Theory of Action (ToA), and the State Performance Targets (SPTs) and Measurable Performance Outcomes (MPOs). State Education Department (SED) staff will not review or consider those items that do not meet these criteria. Please note that there are pull-down menus, located to the right of each box with the arrow pointing down, in the sections under “Measurable Program Outcomes” (MPOs) and “Theory of Action Focus Area”.

The 2018-19 Work Plan must bear the original signature of the Chief School/Administrative Officer or his/her designee.

The approved ESSA Consolidated State Plan can be viewed at: <http://www.p12.nysed.gov/accountability/essa.html>. The State Service Delivery Plan (SDP) and Theory of Action (ToA) can be viewed at: <http://nysmigrant.org/downloads/Service-Delivery-Plans>.

FORM FS-10 BUDGET AND BUDGET NARRATIVE (20 points)

Using the Form FS-10 Budget form, provide an itemized budget and brief narrative of how the requested funds will be used for the **first year** of the project

Budgeted items must be reasonable in cost and necessary for the project to receive the maximum points. State Education Department (SED) staff will eliminate any unallowable or unreasonable items in the budget. Grantees will not be allowed to substitute new items for those that have been eliminated.

Budgeted costs must be in compliance with applicable State and federal laws and regulations and the State Education Department's (SED) Fiscal Guidelines. These guidelines, as well as the FS-10 form, are available online on the [Grants Finance website](#). The FS-10 must bear the original signature of the Chief School/Administrative Officer.

Information about the categories of expenditures and general information on allowable costs, applicable cost principles and administrative regulations are available in the [Fiscal Guidelines for Federal and State Aided Grants](#).

M/WBE Documents

M/WBE Goal Calculation Worksheet
(This form should reflect Year 1 budget totals)

RFP # and Title: _____

Applicant Name: _____

The M/WBE participation for this grant is 30% of each applicant's total discretionary non-personal service budget for each year of the grant. Discretionary non-personal service budget is defined as the total annual budget, excluding the sum of funds budgeted for direct personal services (i.e., professional and support staff salaries) and fringe benefits, as well as rent, lease, utilities, and indirect costs, if these are allowable expenditures. Please complete the following table to determine the dollar amount of the M/WBE goal for this grant application.

	Budget Category	Amount budgeted for items excluded from M/WBE calculation	Totals
1.	Total Budget		
2.	Professional Salaries		
3.	Support Staff Salaries		
4.	Fringe Benefits		
5.	Indirect Costs		
6.	Rent/Lease/Utilities*		
7.	Sum of lines 2, 3, 4, 5, and 6		
8.	Line 1 minus Line 7		
9.	M/WBE Goal percentage (30%)		0.30
10.	Line 8 multiplied by Line 9 =M/WBE goal amount		

*If not included in #5

M/WBE COVER LETTER Minority & Woman-Owned Business Enterprise Requirements

NAME OF GRANT PROGRAM: _____

NAME OF APPLICANT _____

In accordance with the provisions of Article 15-A of the NYS Executive Law, 5 NYCRR Parts 140-145, Section 163 (6) of the NYS Finance Law and Executive Order #8 and in fulfillment of the New York State Education Department (NYSED) policies governing Equal Employment Opportunity and Minority and Women-Owned Business Enterprise (M/WBE) participation, it is the intention of the New York State Education Department to provide real and substantial opportunities for certified Minority and Women-Owned Business Enterprises on all State contracts. It is with this intention the NYSED has assigned M/WBE participation goals to this contract.

In an effort to promote and assist in the participation of certified M/WBEs as subcontractors and suppliers on this project for the provision of services and materials, the bidder is required to comply with NYSED's participation goals through one of the three methods below. Please indicate which one of the following is included with the M/WBE Documents Submission:

- Full Participation – No Request for Waiver (PREFERRED)
- Partial Participation – Partial Request for Waiver
- No Participation – Request for Complete Waiver

By my signature on this Cover Letter, I certify that I am authorized to bind the Bidder's firm contractually.

Typed or Printed Name of Authorized Representative of the Firm
--

Typed or Printed Title/Position of Authorized Representative of the Firm
--

Signature/Date

M/WBE UTILIZATION PLAN

INSTRUCTIONS: All bidders/applicants submitting responses to this procurement/project must complete this M/WBE Utilization Plan unless requesting a total waiver and submit it as part of their proposal/application. The plan must contain detailed description of the services to be provided by each Minority and/or Women-Owned Business Enterprise (M/WBE) identified by the bidder/applicant.

Bidder/Applicant's Name _____

Telephone/Email: _____/_____

Address _____

Federal ID No.: _____

City, State, Zip _____

RFP No.: _____

Certified M/WBE	Classification (check all applicable)	Description of Work (Subcontracts/Supplies/Services)	Annual Dollar Value of Subcontracts/Supplies/Services
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____

PREPARED BY (Signature) _____ DATE _____

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER/APPLICANT'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-1, 5 NYCRR PART 143 AND THE ABOVE REFERENCE SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL/APPLICATION DISQUALIFICATION.

NAME AND TITLE OF PREPARER: _____
(print or type)

TELEPHONE/E-MAIL _____

DATE _____

REVIEWED BY _____ DATE _____

UTILIZATION PLAN APPROVED YES/NO DATE _____

NOTICE OF DEFICIENCY ISSUED YES/NO DATE _____

NOTICE OF ACCEPTANCE ISSUED YES/NO DATE _____

**M/WBE SUBCONTRACTORS AND SUPPLIERS
NOTICE OF INTENT TO PARTICIPATE**

INSTRUCTIONS: Part A of this form must be completed and signed by the Bidder/Applicant unless requesting a total waiver. Parts B & C of this form must be completed by MBE and/or WBE subcontractors/suppliers. The Bidder/Applicant must submit a separate M/WBE Notice of Intent to Participate form for each MBE or WBE as part of the proposal/application.

Bidder/Applicant Name: _____ Federal ID No.: _____

Address: _____ Phone No.: _____

City _____ State _____ Zip Code _____ E-mail: _____

Signature of Authorized Representative of Bidder/Applicant's Firm _____
Print or Type Name and Title of Authorized Representative of Bidder/Applicant's Firm

Date: _____

PART B - THE UNDERSIGNED INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE PROCUREMENT/APPLICATION:

Name of M/WBE: _____ Federal ID No.: _____

Address: _____ Phone No.: _____

City, State, Zip Code _____ E-mail: _____

BRIEF DESCRIPTION OF SERVICES OR SUPPLIES TO BE PERFORMED BY MBE OR WBE:

DESIGNATION: ___ MBE Subcontractor ___ WBE Subcontractor ___ MBE Supplier ___ WBE Supplier

PART C - CERTIFICATION STATUS (CHECK ONE):

___ The undersigned is a certified M/WBE by the New York State Division of Minority and Women-Owned Business Development (MWBD).

___ The undersigned has applied to New York State's Division of Minority and Women-Owned Business Development (MWBD) for M/WBE certification.

THE UNDERSIGNED IS PREPARED TO PROVIDE SERVICES OR SUPPLIES AS DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH THE BIDDER/APPLICANT CONDITIONED UPON THE BIDDER/APPLICANT'S EXECUTION OF A CONTRACT WITH THE NYS EDUCATION DEPARTMENT.

The estimated dollar amount of the agreement \$ _____

Signature of Authorized Representative of M/WBE Firm _____

Date _____

Printed or Typed Name and Title of Authorized Representative _____

M/WBE CONTRACTOR GOOD FAITH EFFORTS CERTIFICATION (FORM 105)

PROJECT/CONTRACT # _____

I, _____
(Bidder/Applicant)

_____ of _____
(Title) (Company)

_____ (_____) _____
(Address) (Telephone Number)

do hereby submit the following as *evidence* of our good faith efforts to retain certified minority- and women-owned business enterprises:

(1) Copies of its solicitations of certified minority- and women-owned business enterprises and any responses thereto;

(2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;

(3) Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;

(4) Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the directory of certified businesses;

(5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;

(6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises.

(7) Describe any other action undertaken by the bidder to document its good faith efforts to retain certified minority - and women- owned business enterprises for this procurement

Submit additional pages as needed.

Authorized Representative Signature

Date

M/WBE CONTRACTOR UNAVAILABLE CERTIFICATION

RFP#/PROJECT NAME _____

I, _____
 (Authorized Representative) (Title) (Bidder/Applicant's Company)

 (Address) (_____) (Phone)

I certify that the following New York State Certified Minority/Women Business Enterprises were contacted to obtain a quote for work to be performed on the abovementioned project/contract.

List of date, name of M/WBE firm, telephone/e-mail address of M/WBEs contacted, type of work requested, estimated budgeted amount for each quote requested.

<u>DATE</u>	<u>M/WBE NAME</u>	<u>PHONE/EMAIL</u>	<u>TYPE OF WORK</u>	<u>ESTIMATED BUDGET</u>	<u>REASON</u>
1.					
2.					
3.					
4.					
5.					

To the best of my knowledge and belief, said New York State Certified Minority/Women Business Enterprise contractor(s) was/were not selected, unavailable for work on this project, or unable to provide a quote for the following reasons: Please check appropriate reasons given by each MBE/WBE firm contacted above.

- _____ A. Did not have the capability to perform the work
- _____ B. Contract too small
- _____ C. Remote location
- _____ D. Received solicitation notices too late
- _____ E. Did not want to work with this contractor
- _____ F. Other (give reason) _____

Authorized Representative Signature **Date** **Print Name**

REQUEST FOR WAIVER FORM

BIDDER/APPLICANT NAME:

TELEPHONE:

ADDRESS:

EMAIL:

FEDERAL ID NO.:

CITY, STATE, ZIPCODE:

RFP#/PROJECT NO.:

INSTRUCTIONS: By submitting this form and the required information, the bidder/applicant certifies that Good Faith Efforts have been taken to promote M/WBE participation pursuant to the M/WBE goals set forth under this RFP/Contract. Please see Page 2 for additional requirements and document submission instructions.

BIDDER/APPLICANT IS REQUESTING (check all that apply):	
<input type="checkbox"/> MBE Waiver - A waiver of the MBE goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial _____%	<input type="checkbox"/> WBE Waiver - A waiver of the WBE goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial _____%
<input type="checkbox"/> Waiver Pending ESD Certification (check here if subcontractor or supplier is not certified M/WBE, but an application for certification has been filed with Empire State Development)	
Subcontractor/Supplier Name: _____ Date of application filing: _____	

PREPARED BY (*Signature*): _____

DATE: _____

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER/APPLICANT'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.

NAME OF PREPARER:	FOR AUTHORIZED USE ONLY
TITLE OF PREPARER: TELEPHONE: EMAIL:	REVIEWED BY: _____ DATE: _____ WAIVER GRANTED <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> TOTAL WAIVER <input type="checkbox"/> PARTIAL WAIVER <input type="checkbox"/> ESD CERTIFICATION WAIVER <input type="checkbox"/> NOTICE OF DEFICIENCY <input type="checkbox"/> CONDITIONAL WAIVER COMMENTS:

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form, please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1-11, as listed below. If a Waiver Pending ESD Certification is requested, please see Item 11 below. Copies of the following information and all relevant supporting documentation must be submitted along with the request.

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Bidder/Applicant and the M/WBEs undertaken for purposes of complying with the certified M/WBE participations goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number and email address of the Bidder/Applicant's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

NOTE: Unless a Total Waiver has been granted, Bidder/Applicant will be required to submit all reports and documents pursuant to the provisions set forth in the procurement and/or contract, as deemed appropriate by NYSED, to determine M/WBE compliance.

EQUAL EMPLOYMENT OPPORTUNITY - STAFFING PLAN (Instructions on Page 2)

Applicant Name: _____

Telephone: _____

Address: _____

Federal ID No.: _____

City, State, ZIP: _____

Project No: _____

Report includes:

Work force to be utilized on this contract OR

Applicant's total work force

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO - Job Categories	Total Work Force	Race/Ethnicity - report employees in only one category																	
		Hispanic or Latino		Not-Hispanic or Latino															
				Male								Female							
		Male	Female	White	African-American or Black	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran	White	African-American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran
Executive/Senior Level Officials and Managers																			
First/Mid-Level Officials and Managers																			
Professionals																			
Technicians																			
Sales Workers																			
Administrative Support Workers																			
Craft Workers																			
Operatives																			
Laborers and Helpers																			
Service Workers																			
TOTAL																			

PREPARED BY (Signature): _____

DATE: _____

NAME AND TITLE OF PREPARER: _____

TELEPHONE/EMAIL: _____

STAFFING PLAN INSTRUCTIONS

General Instructions: All Bidders/Applicants in the proposal/application must complete an EEO Staffing Plan (EEO 100) and submit it as part of the package. Where the work force to be utilized in the performance of the State contract/project can be separated out, the Bidder/Applicant shall complete this form only for the anticipated work force to be utilized on the State contract/project. Where the work force to be utilized in the performance of the State contract/project cannot be separated out, the Bidder/Applicant shall complete this form for Bidder/Applicant's total work force.

Instructions for Completing:

1. Enter the Project number that this report applies to, along with the name, address, and federal ID number of the Bidder.
2. Check the appropriate box to indicate if the work force being reported is just for the contract/project or the Bidder/Applicant's total work force.
3. Check off the appropriate box to indicate if the Bidder completing the report is the contractor or subcontractor.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and race/ethnic background and enter under the heading Race/Ethnicity. Contact the M/WBE Coordinator, mwbe@nysed.gov, if you have any questions.
6. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in designated areas.

RACE/ETHNIC IDENTIFICATION

For purposes of this form NYSED will accept the definitions of race/ethnic designations used by the federal Equal Employment Opportunity Commission (EEOC), as those definitions are described below or amended hereafter. (Be advised these terms may be defined differently for other purposes under NYS statutory, regulatory, or case law). Race/ethnic designations as used by the EEOC do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. The race/ethnic categories for this survey are:

- **Hispanic or Latino** - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
- **White (Not Hispanic or Latino)** - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Black or African American (Not Hispanic or Latino)** - A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)** - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian (Not Hispanic or Latino)** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **American Indian or Alaska Native (Not Hispanic or Latino)** - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- **Two or More Races (Not Hispanic or Latino)** - All persons who identify with more than one of the above five races.
- **Disabled** - Any person who has a physical or mental impairment that substantially limits one or more major life activity; has a record of such an impairment; or is regarded as having such an impairment
- **Vietnam Era Veteran** - a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

EEO 100

New York State Education Department

ASSURANCES AND CERTIFICATIONS FOR FEDERAL PROGRAM FUNDS

The following assurances and certifications are a component of your application. By signing the certification on the application cover page you are ensuring accountability and compliance with applicable State and federal laws, regulations, and grants management requirements.

Federal Assurances and Certifications, General:

- Assurances – Non-Construction Programs
- Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

Federal Assurances and Certifications, ESEA:

The following are required as a condition for receiving any federal funds under the Elementary and Secondary Education Act.(ESEA)

- ESEA Assurances
- School Prayer Certification

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Education Department Program Contact listed in the Application. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, and by signing the Application Cover Page, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 CFR Part 200, Audits of States, Local Governments, and Non-Profit Organizations.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

**Standard Form 424B (Rev. 7-97), Prescribed by 2 CFR Part 200, Authorized for Local
Reproduction, as amended by New York State Education Department**

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

These certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 2 CFR Part 200, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

This certification is required by OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 CFR Part 180

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of any offenses listed in 2 CFR §180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period; and ;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in 2 CFR §180.800(a); and
- (d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**3. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION –
LOWER TIERED COVERED TRANSACTIONS**

The terms “debarment,” “suspension,” “excluded,” “disqualified,” “ineligible,” “participant,” “person,” “principal,” “proposal,” and “voluntarily excluded” as used in this certification have the meanings set forth in 2 CFR Part 180, Subpart I, “Definition.” A transaction shall be considered a “covered transaction” if it meets the definition in 2 CFR Part 180 Subpart B, “What is a covered transaction?”

A. The applicant certifies that it and its principals:

- (a) Upon approval of their application, in accordance with 2 CFR Part 180 Subpart C, they shall not enter into any lower tier nonprocurement covered transaction with a person without verifying that the person is not excluded or disqualified unless authorized by USDOE.
- (b) Will obtain an assurance from prospective participants in all lower tier covered nonprocurement transactions and in all solicitations for lower tier covered nonprocurement transactions that the participants will comply with the provisions of 2 CFR Part 180 subparts A,B, C and I.
- (c) Will provide immediate written notice to the New York State Education Department if at any time the applicant and its principals learn that a certification or assurance was erroneous when submitted or has become erroneous because of changed circumstances.

**NEW YORK STATE DEPARTMENT OF EDUCATION
ELEMENTARY AND SECONDARY EDUCATION ACT (ESEA) ASSURANCES**

These assurances are required for programs funded under the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act of 2015.

As the chief school officer of the applicant, by signing the Application Cover Page, I certify that:

- (1) the applicant will comply with the requirements of Education Law § 3214(3)(d) and (f) and the Gun-Free Schools Act (20 U.S.C. § 7151);
- (2) the applicant will comply with the requirements of 20 U.S.C. § 7908 on military recruiter access;
- (3) the applicant will comply with the requirements of 20 U.S.C. § 7904 on constitutionally protected prayer in public elementary and secondary schools;
- (4) the applicant will comply with the requirements of Education Law § 2802(7), and any state regulations implementing such statute and 20 U.S.C. § 7912 on unsafe school choice; and
- (5) the applicant will comply with all fiscal requirements that apply to the program, including but not limited to any applicable supplement not supplant or local maintenance of effort requirements.
- (6) the applicant understands the importance of privacy protections for students and is aware of the responsibilities of the grantee under section 20 U.S.C. 1232g (FERPA) (ESSA §854

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

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
[MWBE 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. RECIPROCIITY 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 G

General

- A. In the event that the 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. This agreement is subject to applicable Federal and State Laws and regulations and the policies and procedures stipulated in the NYS Education Department Fiscal Guidelines found at <http://www.nysed.gov/cafe/>.
- C. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.
- D. Any modification to this Agreement that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of this Agreement must be approved by the Commissioner of Education and the Office of the State Comptroller when:
 - a. The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; or
 - b. The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts of more than five million dollars.
- E. Funds provided by this contract may not be used to pay any expenses of the State Education Department or any of its employees.

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.

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.

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 written agreement 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 in accordance with the policies stipulated in the aforementioned Fiscal guidelines.
- 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. All inquiries, requests, and notifications regarding this agreement shall be directed to the Program Contact or Fiscal Contact shown on the Grant Award included as part of this agreement.
- I. 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.
- J. The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement.

Rev. 5/12/14

APPENDIX R:
DATA SECURITY AND PRIVACY PLAN PROVISIONS

1. The individually identifiable data provided to or stored by the Contractor pursuant to this agreement (the "Data") are sensitive, requiring appropriate levels of security to prevent unauthorized disclosure or modification. The Contractor shall take all reasonable measures to protect the confidentiality of the Data as required by federal and state laws and regulations applicable to the Contractor. These may include but are not limited to the New York State Social Services Law, Personal Privacy Protection Law and Education Law §2-d; the federal Social Security Act and Family Educational Rights and Privacy Act; internet security laws; and any regulations promulgated thereunder.
2. The Contractor has full and final responsibility for the security of the Data. The Contractor agrees to implement reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of the Data. Such security measures may be reviewed by the State, both through an informal audit of policies and procedures and/or through inspection of security methods used within the Contractor's infrastructure, storage, and other physical security. The Contractor should review its implementation and maintenance of its security review periodically to protect the data in strict compliance with statutory and regulatory requirements.
3. The Contractor's security measures must also include:
 - a. Provision that access to the Data is restricted solely to staff who need such access to carry out the responsibilities of the Contractor under this agreement, and that such staff will not release such Data to any unauthorized party;
 - b. All confidential Data are stored on computer and storage facilities maintained within Contractor's computer networks, behind appropriate firewalls;
 - c. Access to computer applications and Data are managed through appropriate user ID/password procedures;
 - d. Contractor's computer network storing the Data is scanned for inappropriate access through an intrusion detection system. NYSED has the right to perform a site visit to review the vendor's security practices if NYSED feels it is necessary;
 - e. That Contractor has a disaster recovery plan that is acceptable to the State;
 - f. Satisfactory redundant and uninterruptible power and fiber infrastructure provisions; and
 - g. A copy of the Contractor's security review evidencing compliance with these requirements must be submitted to NYSED for review and approval within 6 months of the signing of the contract or before the first certification test is performed, whichever occurs first.
4. The Data must be returned to NYSED upon termination or expiration of this Agreement, or at such point that the Data are no longer needed for the purpose referenced in this Agreement, or, at the sole discretion of NYSED, securely destroyed. All hard copies of personally identifiable Data in the possession of the Contractor must be securely destroyed, and all electronic Data must be purged from the network in a manner that does not permit retrieval of the data. The contractor is specifically prohibited from commingling any data from outside sources into the Data received from NYSED, except as specifically authorized by NYSED.
5. If personally identifiable data of students, teachers or building principals will be disclosed to the Contractor by NYSED for purposes of the Contractor providing services to NYSED, the Contractor must comply with the following requirements of Education Law §2-d (Chapter 56, Subpart L of the Laws of 2014) and any implementing regulations:

- a. Any officers or employees of the third-party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access;
 - b. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
 - c. not use the education records for any other purposes than those explicitly authorized in its contract;
 - d. except for authorized representatives of the third-party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:
 - (i) without the prior written consent of the parent or eligible student; or
 - (ii) unless required by statute or court order and the party provides a notice of the disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
 - e. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody; and
 - f. use encryption technology consistent with Education Law §2-d and any implementing regulations.
6. If requested by NYSED to make any disclosure of aggregated data using the Data provided to or stored by the Contractor, Contractor must ensure that the disclosed aggregated data cannot reasonably be used to identify a particular individual. Aggregated data will be considered identifiable if the disclosure has less than five (5) data elements per cell or the data elements per cell comprise 100% of the subject population.
7. Contractor agrees that all Data shall remain at all times the property of the State, and may not be used for any purpose other than the purpose outlined in this Agreement without the express written permission of NYSED. The Contractor has no ownership of or licensing rights to the Data except as provided in this Agreement, and Contractor specifically agrees that it will not sell, give or otherwise transfer the Data to any third party without NYSED's express prior approval.
8. The Contractor must ensure that these confidentiality and security provisions apply to any subcontractor engaged by the Contractor for the work under this agreement. The Contractor shall take full responsibility for the acts and omissions of its subcontractors, and the use of subcontractors shall not impair the rights of NYSED against the Contractor in accordance with this Agreement.
9. Hardware, software and services acquired by the Contractor under this Agreement may not be used for other activities beyond those described in the scope of the contract unless authorized in advance by NYSED.
10. Security of Location - Server room will remain a restricted access, locked room with access via security cards. The list of staff with access to the server room will continue to be reviewed quarterly against the number of times each staff gained access to the server room.
11. Breach Notification:
- a. Contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement with an educational agency shall be required to notify such educational agency of any breach of security resulting in an unauthorized release of such data in accordance with

Education Law §2-d and any implementing regulations. Upon such notification, the educational agency shall take appropriate action in accordance with Education Law §2-d and any implementing regulations.

- b. If the State is required, pursuant to Education Law §2-d(6)(b), to notify one or more parent, eligible student, teacher or principal of an unauthorized release of student data by the Contractor or its assignee, the Contractor shall promptly reimburse the State for the full cost of such notification.
- c. Contractor acknowledges that it may be subject to penalties under Education Law §§2-d (6) and 2-d(7) for unauthorized disclosure of personally identifiable student, teacher or principal data.
- d. Contractor agrees that it will cooperate and promptly comply with any inquiries from the State based upon the State's receipt of a complaint or other information indicating that an improper or unauthorized disclosure of personally identifiable information may have occurred. Contractor will permit on-site examination and inspection, and will provide at its own cost necessary documentation or testimony of any employee, representative or assignee of Contractor relating to the alleged improper disclosure of data.

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

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

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

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

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

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

Parents’ rights under FERPA include:

1. The right to inspect and review the student's education records within 45 days after the day the school or school district receives a request for access.
2. The right to request amendment of the student’s education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student’s privacy rights under FERPA. Complete student records are maintained by schools and school districts and not at NYSED, which is the secondary repository of data, and NYSED make amendments to school or school district records. Schools and school districts are in the best position to make corrections to students’ education records.
3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent (including but not limited to disclosure under specified conditions to: (i) school officials within the school or school district with legitimate educational interests; (ii) officials of another school for purposes of enrollment or transfer;

(iii) third party contractors providing services to, or performing functions for an educational agency; (iv) authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as NYSED; (iv) (v) organizations conducting studies for or on behalf of educational agencies) and (vi) the public where the school or school district has designated certain student data as “directory information” (described below). The attached FERPA Model Notification of Rights more fully describes the exceptions to the consent requirement under FERPA).

4. Where a school or school district has a policy of releasing “directory information” from student records, the parent has a right to refuse to let the school or school district designate any all of such information as directory information. Directory information, as defined in federal regulations, includes: the student’s name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received and the most recent educational agency or institution attended. Where disclosure without consent is otherwise authorized under FERPA, however, a parent’s refusal to permit disclosure of directory information does not prevent disclosure pursuant to such separate authorization.
5. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA.

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

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

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

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

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

- The New York State Education Department (“NYSED”);
- Each public-school district;
- Each Board of Cooperative Educational Services or BOCES; and
- All schools that are:
 - a public elementary or secondary school;
 - a universal pre-kindergarten program authorized pursuant to Education Law §3602-e;
 - an approved provider of preschool special education services;
 - any other publicly funded pre-kindergarten program;
 - a school serving children in a special act school district as defined in Education Law 4001; or

- certain schools for the education of students with disabilities - an approved private school, a state-supported school subject to the provisions of Education Law Article 85, or a state-operated school subject to Education Law Article 87 or 88.

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

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

- (a) The student’s name;
- (b) The name of the student’s parent or other family members;
- (c) The address of the student or student’s family;
- (d) A personal identifier, such as the student’s social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student’s date of birth, place of birth, and Mother’s Maiden Name³;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

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

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

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

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

- (A) A student’s PII cannot be sold or released by the educational agency for any commercial or marketing purposes.
 - PII may be used for purposes of a contract that provides payment to a vendor for providing services to an educational agency as permitted by law.

³ Please note that NYSED does not collect certain information defined in FERPA, such as students’ social security numbers, biometric records, mother’s maiden name (unless used as the mother’s legal name).

- However, sale of PII to a third party solely for commercial purposes or receipt of payment by an educational agency, or disclosure of PII that is not related to a service being provided to the educational agency, is strictly prohibited.

(B) Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by an educational agency.

- This right of inspection is consistent with the requirements of FERPA. In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student's educational record.
- NYSED will develop policies for annual notification by educational agencies to parents regarding the right to request student data. Such policies will specify a reasonable time for the educational agency to comply with such requests.
- The policies will also require security measures when providing student data to parents, to ensure that only authorized individuals receive such data. A parent may be asked for information or verifications reasonably necessary to ensure that he or she is in fact the student's parent and is authorized to receive such information pursuant to law.

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

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

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

other staff of an educational agency, making allegations of improper disclosure of student data and/or teacher or principal APPR data by a third-party contractor or its officers, employees or assignees.

○ When appointed, the Chief Privacy Officer of NYSED will also provide a procedure within NYSED whereby parents, students, teachers, superintendents, school board members, principals, and other persons or entities may request information pertaining to student data or teacher or principal APPR data in a timely and efficient manner.

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

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

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

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

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

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

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

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

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

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

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

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

8. Data Security and Privacy Standards

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

9. No Private Right of Action

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

ATTACHMENT

Model Notification of Rights under FERPA for Elementary and Secondary Schools

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

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

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

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

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

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

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer or contractor outside of the school who performs an institutional service of function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

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

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

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

Washington, DC 20202

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

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

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

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in §99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(2) are met. (§99.31(a)(1))
- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of §99.34. (§99.31(a)(2))
- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency in the parent or eligible student's State (SEA). Disclosures under this provision may be made, subject to the requirements of §99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (§§99.31(a)(3) and 99.35)
- About financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to §99.38. (§99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§99.31(a)(6))
- To accrediting organizations to carry out their accrediting functions. (§99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))
- To appropriate officials about a health or safety emergency, subject to §99.36. (§99.31(a)(10))
- Information the school has designated as "directory information" under §99.37. (§99.31(a)(11))

Appendix S-1: Attachment to Parents' Bill of Rights for Contracts Involving Disclosure of Certain Personally Identifiable Information

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

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

Disclosure of Student Data

Disclosure of APPR Data

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

The METS program centers are required to provide high quality, coordinated and comprehensive academic programs and support services to all migrant-eligible children and youth through the effective use of data in a cycle of inquiry and action (e.g., data driven instruction). Furthermore, such data will also be critical in identification and recruitment efforts of migrant-eligible children and youth as a result of mobility

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

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

1. The New York State Identification and Recruitment/MIS2000/MSIX program center at SUNY Oneonta
2. The Migrant Technical Assistance and Support Center at SUNY Brockport

Applicant should detail in this section any additional entities or subcontract with whom data will be shared.

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

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

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

Contract expiration date: ***August 31, 2023***

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

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

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

Student Data

APPR Data

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

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

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