

## REQUEST FOR PROPOSAL (RFP)

RFP#15-014

### NEW YORK STATE EDUCATION DEPARTMENT

#### **Title: New York City Preschool Provider Bilingual/English as a New Language Professional Development Center**

The New York State Education Department (NYSED) Office of Special Education is seeking proposals for the establishment of a **New York City (NYC) Preschool Provider Bilingual/English as a New Language Professional Development Center (Preschool Bilingual/ENL PDC)**. The purpose of the Preschool Bilingual/ENL PDC will be to provide in-service training which section 4410 preschool special education programs can include in their Interim Alternative Bilingual Placement (IABP) plans so they can continue enrolling English language learners (ELLs) with disabilities. The project is intended to increase the capacity of preschool providers in NYC to serve preschool students with disabilities who are ELLs by providing professional development to administrators, paraprofessionals<sup>1</sup>, teachers and related service providers employed by approved preschool programs on topics including, but not limited to, bilingual and ENL methodology, cultural and linguistic diversity and the integration of bilingual programming throughout a school.

The Preschool Bilingual/ENL PDC will also develop procedures to ensure that the paraprofessionals and professionals participating in the above training have information on tuition assistance provided by the Intensive Teacher Institute in Bilingual Special Education (ITI-BSE) and registered ITI-BSE programs leading to a bilingual extension or certification in Teaching English to Speakers of Other Languages (TESOL) or Teaching Students with Disabilities from Birth to Grade 2 (TSWD).

Subcontracting will be limited to thirty percent (30%) of the total contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel.

Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprises (M/WBE) participation goals for this RFP through one of three methods. Compliance methods are discussed in detail in the M/WBE Participation Goals section below.

NYSED will award **one** contract pursuant to this RFP. The contract resulting from this RFP will be for a 5-year period, anticipated to begin January 1, 2016 and end December 31, 2020.

**Service Area:** The service area is the NYC metropolitan area.

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<sup>1</sup> For purposes of this RFP, paraprofessional means teaching assistant or teacher aide.

**Mandatory Requirements:** See Mandatory Requirements section of the RFP.

**Components contained in RFP #15-014 are as follows:**

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

Questions regarding the request must be submitted by **email** to [RFP15014@nysed.gov](mailto:RFP15014@nysed.gov) no later than the close of business September 28, 2015. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Question and Answer Summary will be posted no later than October 7, 2015 at <http://www.p12.nysed.gov/compcontracts/compcontracts.html>. The following are the designated contacts for this procurement:

**Program Matters**

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**M/WBE Matters**

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The following documents must be submitted in separately sealed envelopes, as detailed in the Submission section of the RFP, and must be received at NYSED no later than **October 20, 2015 by 3:00 PM:**

1. Submission Documents labeled **Submission Documents - RFP #15-014 Do Not Open**
2. Technical Proposal labeled **Technical Proposal - RFP #15-014 Do Not Open**
3. Cost Proposal labeled **Cost Proposal - RFP #15-014 Do Not Open**
4. M/WBE Documents labeled **M/WBE Documents - RFP #15-014 Do Not Open**
5. CD-ROM containing the technical, cost, submission and M/WBE proposals submitted using Microsoft Word. Place in a separate envelope labeled **CD-ROM-RFP #15-014 Do Not Open**.

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Jessica Hartjen, RFP #15-014  
Contract Administration Unit  
89 Washington Avenue, Room 503W EB  
Albany, NY 12234

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

## 1.) DESCRIPTION OF SERVICES TO BE PERFORMED

### WORK STATEMENT AND SPECIFICATIONS

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

#### Introduction

The New York State Education Department (NYSED) is seeking bids to establish a **New York City (NYC) Preschool Provider Bilingual/English as a New Language (ENL) Professional Development Center (Preschool Bilingual/ENL PDC)** for a five-year period beginning January 1, 2016 and ending December 31, 2020, subject to continuing availability of Individuals with Disabilities Education Act (IDEA) Part B Discretionary funds.

#### Background and Purpose

There is a significant shortage of bilingual special education teachers and related service providers available for special education services to preschool students with disabilities who are ELLs and are attending section 4410 preschool programs in New York City. The Preschool Bilingual/ENL PDC will address shortages of certified preschool personnel who hold bilingual extensions or certification in Teaching English to Speakers of Other Languages (TESOL) and are therefore qualified to provide services to ELL preschoolers with disabilities by:

1. providing in-service training, on topics outlined in the Deliverables, to preschool personnel so preschools may offer Interim Alternative Bilingual Placements (IABPs),
2. coordinating its efforts with the Office of Special Education's NYC Office of Special Education Quality Assurance (SEQA), and
3. developing procedures to ensure paraprofessionals and professionals participating in the above training have information about the Intensive Teacher Institute in Bilingual Special Education (ITI-BSE).

### MANDATORY REQUIREMENTS

The eligible bidder must be able to meet the Mandatory Requirements found below and must submit the Mandatory Requirements Certification Form located in 5.) Submission Documents, signed by an authorized person. **Bids that do not include this form will be disqualified.**

**Mandatory Requirements:**

**Staffing Requirements and Qualifications of Project Personnel**

Project Director

The project must include one (1) individual at a minimum of .1 full time equivalents (FTE) to serve as the Project Director. This position must be filled by one individual.

*Mandatory minimum qualifications:*

- Master's degree in education/teaching and/or educational administration, speech-language pathology (SLP)/speech and language disabilities/communication disorders, psychology/school psychology, school counseling, social work, TESOL or linguistics; and
- a minimum of one year of experience directing or coordinating an in-service or pre-service program.

Instructors

Instructors may be full-time employees or consultants hired on a daily or hourly basis to provide training on the five major topics mentioned in the Deliverables section of this RFP (i.e., bilingual and ENL methodology, cultural and linguistic diversity, effective professional/paraprofessional teams, working with or as an interpreter and the integration of bilingual programming throughout a school).

*Mandatory minimum qualifications:*

All instructors must have:

- a master's or doctoral degree in education/teaching and/or educational administration, speech language pathology/speech language disabilities/communications disorders, psychology/school psychology, school counseling, social work, TESOL, or linguistics;
- a minimum of one year experience related to educational services for culturally and linguistically diverse (CLD) preschoolers.

**Budget Maximum**

Cost proposals for this RFP may not exceed \$100,000 in any contract year.

Please be aware that the Evaluation Criteria assign a significant portion of the proposal score to financial criteria (30 percent), so bidders are encouraged to submit budgets that are cost-effective.

**The Mandatory Requirements Certification Form (found in section 5. Submission Documents) must be filled out, signed and submitted with the Technical Proposal. Bids that do not include this form will be disqualified.**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION GOALS PURSUANT TO ARTICLE 15-A OF THE NEW YORK STATE EXECUTIVE LAW**

For purposes of this procurement, NYS Education Department hereby establishes an overall goal of 20% of the total contract amount for M/WBE participation, 12% for Minority-Owned Business Enterprises (“MBE”) participation and 8% for Women-Owned Business Enterprises (“WBE”) participation based on the current availability of qualified MBEs and WBEs. All bidders must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. Minority and Women-Owned Business Enterprise (M/WBE) participation includes any and all services, materials or supplies purchased from New York State certified minority and women-owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with NYSED’s Minority and Women-Owned Business Enterprise goals as described below.

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

Bidders should submit subcontracting/supplier forms that meet or exceed NYSED’s participation goals for this procurement. All subcontracting/supplier forms must be submitted with the bid proposal. In addition, bidders must complete and submit **M/WBE 100: Utilization Plan**, **M/WBE 102: Notice of Intent to Participate** and **EEO 100: Staffing Plan**. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

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

**DOCUMENTATION OF GOOD FAITH EFFORTS**

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not limited to: advertisements in minority centered publications; solicitation of vendors found in the NYS Directory of Certified Minority and Women-Owned Business Enterprises (<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing NYSED’s Certification of Good Faith Efforts (Form **M/WBE 105**). See the M/WBE

Submission Documents for detailed examples of and required forms to document good faith efforts.

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

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

**REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS**

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

**REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS**

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

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) must be reported to NYSED M/WBE Program Unit using **M/WBE 103** Quarterly M/WBE Compliance Report. This report must be submitted on a quarterly basis and can be found at [www.oms.nysed.gov/fiscal/MWBE/forms.html](http://www.oms.nysed.gov/fiscal/MWBE/forms.html).

**DELIVERABLES**

***1. Training***

The successful bidder will:

- a. review training materials (to be provided by NYSED) which were developed under the current contract, #C010677, which address, but are not limited to, the topics listed below and decide whether the successful bidder will use them “as is” during

the first year of the contract or update the content, based on recent research; (A bibliography for references cited below is contained in Attachment A at the end of this RFP.)

- I. Bilingual and ENL methodology:
  - A. Theories of bilingualism and dimensions of language proficiency and their implications for services for bilingual preschoolers with disabilities:
    1. Common Underlying Proficiency (Cummins, 1981);
    2. Language loss (Wong-Fillmore, 1991);
    3. Basic interpersonal communication skills (BICS) versus cognitive/academic language proficiency (CALP) (Cummins, 2000);
    4. Comprehensible input (Krashen & Terrell, 1983);
    5. Language acquisition versus language learning (Krashen, 1985); and
    6. Transfer of skills from the native language (Lanauze & Snow, 1989).
  - B. Bilingual program models (additive versus subtractive; developmental, transitional, maintenance, and dual language), their objectives and characteristics.
  - C. The benefits of using the native language to assess current levels of performance and provide instruction to improve outcomes in the domains of behavior/management, self-help skills, social-emotional development, cognitive/academic development, language/communication, and physical development.
  - D. Grouping/placement options based on the native language of students to provide opportunities for use of the native language and efficient use of bilingual paraprofessionals.
  - E. Benefits of repeated meaningful and naturalistic opportunities to acquire and practice the native and second language as well as the benefits of direct instruction that involves the use of bilingual and ENL methodology.
  - F. English language skills displayed by typically-developing preschoolers at various stages of second language acquisition, including code-switching.
  - G. Benefits of using methods such as total physical response (Asher, 1969) with students who are non-verbal or at the beginner level of English language development.
  - H. Pros and cons of adult code-switching and simultaneous interpretation during service delivery.
- II. Cultural and linguistic diversity:
  - A. Cultural perspectives on:
    1. expectations for the development of young children;
    2. perceived roles for parents/families, teachers, and related service providers in educating children and promoting their development; and
    3. concepts of ability and disability.
  - B. Ways in which linguistic diversity impacts the development of young children and may affect interactions
    1. between school personnel and children, and

2. between school personnel and families (Hanson, Gutierrez, Morgan, Brennan & Zercher, 1997).
  - C. Non-verbal communication (such as gestures, physical proximity, or turn-taking) in cross-cultural contexts.
  - D. Socioeconomic or cultural differences among people from the same country or members of the same ethnic or linguistic group that may affect interactions in educational settings.
  - E. How history of language use and age of exposure to the native and second language can affect the development of each language.
  - F. Cultural bias in testing.
- III. Effective professional/paraprofessional teams:
- A. Activities in which paraprofessionals, teachers and related service providers should engage to ensure preschoolers with disabilities are given meaningful, developmentally appropriate opportunities to achieve goals and objectives on their IEPs.
  - B. Transdisciplinary planning, which includes input from paraprofessionals to ensure that thematic units and individual lessons include activities and concepts that are familiar to culturally and linguistically diverse preschoolers and provide meaningful opportunities for practice.
- IV. Working with or as an interpreter:
- A. Selecting an interpreter. Professionals and interpreters must be aware of socioeconomic, dialectical and other differences between the interpreter and the student or family which could affect interactions and result in miscommunication. Additional skills and knowledge needed by interpreters include: (adapted from Fradd & Wilen, 1990, p. 3)
    1. Knowledge/Understanding of US culture
    2. Understanding of the native culture of the student
    3. Oral proficiency and literacy in English
    4. Proficiency in the native language and literacy in that language
    5. Experience in educational interpreting
    6. Understanding of institutional rules, requirements and ethics (e.g., confidentiality, security of test items)
    7. Knowledge of typical child development and child-rearing practices in the US and the native country or culture
    8. Knowledge of views of disability and ability in the US and native country/culture
    9. Ability to talk *about* the native language and English:
      - a. to evaluate the dialectical appropriateness of translated tests,
      - b. to translate test items and activities into the native language while maintaining the core concepts,
      - c. to share information about the student's use of and proficiency in the native language, and
      - d. to describe the student's responses to tasks in terms of the content, concepts, and abilities being assessed.

B. Steps in educational interpreting:

1. Interpreter meets with professional(s) to discuss purpose of event/task for which interpretation is needed (e.g., evaluation/assessment, social history, review of evaluation results, development of recommendations for services or CPSE meeting, delivery of services).
2. Interpreter and professional(s) review pertinent background information and decide what additional information the interpreter may need to obtain from the student or family.
3. Interpreter and professional(s) discuss optimal methods for obtaining needed information during assessments, including the elicitation of language samples, provision of neutral statements of encouragement during assessments, and when it is appropriate to use non-verbal cues.
4. Interpreter reviews assessment materials for which there are standardized translations for dialectical appropriateness and the professional and interpreter discuss whether the translated version has been validated with the linguistic/cultural group to which the student belongs.
5. Materials that are not available in the native language of the student/family and need to be translated are reviewed by the professional and interpreter and translated beforehand. A reverse translation is completed by another interpreter and content/validity is checked by the professional and original interpreter. (Scores from non-standardized assessments may not be reported.)
6. After the event, the professional and interpreter meet to debrief.

C. Roles of the interpreter and the professional during interpretation:

1. The professional takes the lead during the event or observes and directs and redirects the work of the interpreter (e.g., during elicitation of language samples or assessment of social skills during play).
2. The interpreter uses previously agreed-upon translations or translates word for word. If the interpreter must substitute words and phrases with meanings that are similar, but not exactly the same as those used by the professional, the interpreter explains the differences in meaning.
3. The interpreter encourages both parties (professional and student or professional and parent) to maintain eye contact or otherwise establish and maintain rapport with each other throughout the interaction unless the professional has experience working with the interpreter and wants the interpreter to take the lead.
4. If the professional asks a question, makes a statement or gives a direction that is not culturally or linguistically appropriate, the interpreter explains this to the professional and the professional revises the request or tells the interpreter to proceed as previously directed.

V. The integration of bilingual programming throughout a school:

- A. Bilingual program models (additive versus subtractive, developmental, transitional, maintenance, and dual language), their objectives and characteristics;
  - B. Grouping/placement options based on the native language of students to provide opportunities for use of the native language and efficient use of bilingual paraprofessionals; and
  - C. Scheduling to provide additional time for
    - 1. planning (by monolingual and bilingual professionals and bilingual paraprofessionals),
    - 2. translation or development of original materials for instruction and to communicate with parents, and
    - 3. meetings with parents.
- b. no later than March 1, 2016 in year one and throughout the five-year contract period, set up a schedule of training sessions, on dates and times mutually agreed to by the contractor and preschool agencies, and distribute the schedule to 4410 preschools located in NYC at least one month before each set of training sessions begins. (NYSED's Office of Special Education will provide a list of 4410 preschools located in NYC.);
- c. furnish training space in NYC, at the bidder's own cost, that is accessible to public transportation. The training facilities need to provide an acceptable environment for training, including but not limited to adequate security, lighting, and seating;
- d. no later than April 1, 2016 and throughout the five-year contract period, provide 79 days of professional development (half-day, one-day and multiple-day workshops) to a minimum of 330 individuals annually, including: paraprofessionals (teaching assistants and teacher aides); teachers; administrators; related service personnel and members of multidisciplinary evaluation teams (speech therapists, school psychologists, occupational therapists, physical therapists, and social workers); and interpreter/translators employed by approved preschool. (Please refer to Table 1 for an overview of courses and participants. Bidders may offer some sessions to more than one constituency (e.g., paraprofessionals and interpreters). (A justification for combining groups that have different areas and levels of expertise must be provided.)
- e. convert all training materials and presentations from the format used under the current contract, #C010677, to a format prescribed by NYSED (see RFP Attachment B) and provide electronic and hard copies to NYSED by December 31, 2016; and
- f. develop instructors' manuals to accompany the training materials and presentations, in a format prescribed by NYSED using a template to be provided by NYSED (see sample template in RFP Attachment C), and provide electronic and hard copies to NYSED by December 31, 2016.

Bidders are expected to train a minimum of 330 individuals annually beginning April 1, 2016. For purposes of making a bid, the daily training rate should include facilities and technology needed for training, salaries/fees and travel costs for instructors, and all materials for the topics described under Deliverables for the **minimum** number of participants listed in Table 1. Training should provide participants with a basic level of knowledge on the topics listed in Table 1. The number of participants per course may vary from those specified in Table 1 as long as the minimum number of participants receives the training each year and the bidder provides a rationale for increasing or decreasing the number of participants per course. **Bidders will not be reimbursed for providing more than 79 full days of training per year.**

Any materials developed or adapted under this contract with NYSED are the exclusive property of NYSED and may not be used by the vendor or any subcontractor for any purpose other than what is defined in the contract. The vendor must be prepared to deliver these materials to NYSED in the format specified by NYSED at any point during the term of the contract. Please refer to "Safeguards for Services and Confidentiality" in the Appendix A-1, which is attached to this RFP and will be included in the subsequent contract.

**RFP #15-014**

Table 1

Overview of Courses and Participants

<b>Training Topic</b>	<b>Course for paraprofessionals</b>	<b>Course for teachers and related service providers</b>	<b>Course for members of evaluation teams</b>	<b>Course for administrators who are new to IABPs</b>	<b>Course for interpreters/translators</b>	
Bilingual and ENL methodology	2 days	4 days	1 day	.5 days	N/A	
Cultural and linguistic diversity	2 days	2 days	1 day	.5 days	N/A	
Effective professional/paraprofessional teams	1 day	1 day	N/A	N/A	N/A	
Working as or with an interpreter/translator	1 day	1 day	1 day	N/A	1 day	
Integration of bilingual programming throughout a preschool	N/A	N/A	N/A	1 day	N/A	
Total days of training per “course”	6	8	3	2	1	
Minimum times each course must be offered each year	5	5	1	2	2	
<b>Total number of training days</b>	<b>30</b>	<b>40</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>79</b>
<b>Minimum number of participants per course*</b>	<b>30</b>	<b>30</b>	<b>10</b>	<b>5</b>	<b>5</b>	
<b>Minimum number of participants per year</b>	<b>150</b>	<b>150</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>330</b>

\*Bidders must schedule sessions to maximize participation so that approved preschool programs can offer IABPs in a timely manner.

**DELIVERABLES (continued)**

**2. Coordination with the Office of Special Education's NYC Office of Special Education Quality Assurance (SEQA)**

The successful bidder will:

- a. Provide registration information to NYSED for inclusion in NYSED's Office of Special Education annual letter to section 4410 preschool programs outlining the requirements for IABPs;
- b. Provide a list of individuals who have completed the training required to offer an IABP and the preschool agencies at which they work to the NYSED Office of Special Education 30 days after each set of training sessions is offered; and
- c. Conduct an annual survey of section 4410 preschool programs in NYC to gather information on the number of IABPs each program offers, the languages other than English used in those IABPs and the names of professionals working for section 4410 preschool programs in NYC who hold bilingual extensions or TESOL certification and provide the data to the NYSED Program Manager in a format acceptable to NYSED.

NYSED's Office of Special Education will provide a list of 4410 preschools located in New York City.

**3. Referrals to Intensive Teacher Institute in Bilingual Special Education**

The Preschool Bilingual/ENL PDC will develop procedures to ensure that the paraprofessionals and professionals participating in the above training receive information on:

- a. tuition assistance provided by the [Intensive Teacher Institute in Bilingual Special Education](#) (ITI-BSE) and
- b. registered ITI-BSE programs leading to a bilingual extension or initial certification in Teaching English to Speakers of Other Languages (TESOL) or Teaching Students with Disabilities from Birth to Grade 2 (TSWD).

**Reporting Requirements**

1. The vendor will submit quarterly reports of the project's activities and results on a form provided by the Office of Special Education, due on April 30, July 31, October 31 and January 31 each year, which must include a report on each deliverable that includes:
  - a. a narrative briefly describing the activities towards objectives, adjustments in the work plan in terms of timelines, staffing and activities, and recommendations for improvement;
  - b. the number of participants receiving each type of training each quarter;
  - c. a schedule of courses offered during the quarter; and
  - d. the number of participants who received information about the ITI-BSE program.
2. Quarterly meetings will be held with NYSED to review performance. Such meetings may be conducted via phone or video conference.
3. The vendor will provide fiscal reports as required by the Office of Special Education.
4. The vendor will provide an evaluation report, due 30 days after the end of each contract year (i.e., January 31, 2017, 2018, 2019, 2020 and 2021), on the project's activities and progress in increasing the skills and knowledge of preschool service providers and in addressing shortages of

certified professionals with bilingual extensions or TESOL certification employed in section 4410 preschool special education programs in NYC, including:

- a. the number of participants receiving and completing each type of training each year,
- b. baseline data on the number of special education teachers and other professionals employed in section 4410 preschool special education programs who have bilingual extensions or TESOL certification and the number employed at the end of each year of the contract, and
- c. baseline data on the number of bilingual special education classes and IABPs offered in section 4410 preschool special education programs, to be provided by NYSED in Year 1 and by the winning bidder in subsequent years, and the number of such classes and IABPs at the end of each year of the contract.

All reports must be submitted in a timely manner.

### **Allowable Costs**

Bidders will be compensated based on a daily training rate for training classes actually delivered. The daily training rate should include costs necessary for start-up, updating and reformatting training materials, developing trainers' manuals, facilities and technology needed for training, salaries/fees and travel costs for instructors/administrators and all materials for the topics described under Deliverables.

Bidders are advised that funding for this procurement will not exceed \$100,000 annually.

### **Payment and Reporting**

The contractor will be required to submit quarterly and annual progress reports to NYSED. Quarterly payments will be made to the vendor upon review of reports of progress and when project outcomes are determined to be adequate. Failure to submit the required progress reports may result in the suspension of future payments. Vouchers requesting payment must be submitted on a quarterly basis.

### **Electronic Processing of Payments**

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

### **Prior Approval of Changes in Personnel**

Bidders must agree to seek prior written approval of changes of personnel for the Project Director position to ensure that such individuals meet the mandatory minimum requirements. The selection process must include written approval from an authorized representative of the Office of Special Education (e.g., the Office of Special Education project manager) by review of resume and credentials.

### **Contract Period**

The anticipated contract term is from January 1, 2016 to December 31, 2020, subject to approval of the Office of the Attorney General and the Office of the State Comptroller.

At the end of any contract term otherwise provided for herein, if a replacement contract has not yet been approved in accordance with State law, any contract awarded hereunder may be extended unilaterally by the State, upon notice to the contractor, at the same terms and conditions, including all contract pricing, for a period of one month. Additionally, this extension may be for a period of up to three months with the concurrence of the contractor. However, any extension will terminate immediately upon approval of the replacement contract except where a period for transition of contractors has been previously provided for.

### **Subcontracting Limit**

Subcontracting will be limited to thirty percent (30%) of the annual contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. NYSED reserves the right of approval of all subcontractors. In the event that it is determined that a subcontractor fails to meet with approval of NYSED for cause, NYSED retains the right to request that the subcontractor be replaced. If the vendor fails to assign an acceptable subcontractor, then NYSED reserves the right to disqualify the bidder from further consideration for this award.

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

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

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

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

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

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

The New York State Education Department (“NYSED”) has enacted its policies Equal Opportunity, Non-Discrimination and Affirmative Action and on Minority and Women-Owned Business Enterprise Procurements, consistent with the requirements as set forth under the provisions of Article 15-A (the “Article”) incorporated by reference, requiring Contracting Agencies to implement

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

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

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

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

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

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

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

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

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

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

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section<sup>2</sup>. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).
5. Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses<sup>3</sup>.
6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the Empire State Development (“ESD”) directory of certified businesses, which can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>. The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.
7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.
8. Contractor shall include the provisions set forth in paragraphs (6) and (7) above, in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.
9. Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs which effectuates the purpose of this section.
10. Contractor shall submit all necessary M/WBE documents and/or forms as described above as part of their proposal in response to NYSED procurement.
11. The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas which must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.
12. Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.
13. Contractor shall upon written notification from NYSED M/WBE Program Unit as to any deficiencies and required remedies thereof, the contractor, within the period of time specified, will

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<sup>2</sup> Notice – Contractors are provided with notice herein, NYSED may require a contractor to submit proof of an equal opportunity program after the proposal opening and prior to the award of any contract. In accordance with regulations set forth under Article 15-A §312.5, contractors and/or subcontractors will be required to submit compliance reports relating to the contractor’s and/or subcontractor’s program in effect as of the date the contract is executed.

<sup>3</sup> Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to the NYSED M/WBE Program Unit by the deadline for submission of proposals for eligibility determination. NYSED will work with ESD to expedite the application, however, it is the responsibility of the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

submit compliance reports documenting remedial actions taken and other information relating to the operation and implementation of the Utilization Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2.) Submission

### Documents to be submitted with this proposal

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

### Project Submission:

Submit each of the following documents in separately sealed envelope:

1. Submission Documents—Three (3) copies (one bearing an original signature), labeled **Submission Documents - RFP #15-014 Do Not Open**
2. Technical Proposal—Six (6) copies (one bearing an original signature), labeled **Technical Proposal - RFP #15-014 Do Not Open**
3. Cost Proposal—Three (3) copies (one bearing an original signature) labeled **Cost Proposal – RFP #15-014 Do Not Open**
4. M/WBE Documents—Three (3) copies (one bearing an original signature), labeled **M/WBE Documents—RFP #15-014 Do Not Open**
5. CD-ROM—One (1) electronic version containing the technical, cost, submission and M/WBE proposals submitted using Microsoft Word. Place in a separate envelope labeled **CD-ROM-RFP #15-014 Do Not Open**.

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Jessica Hartjen, RFP #15-014  
Contract Administration Unit  
89 Washington Avenue, Room 503W EB  
Albany, NY 12234

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

The proposal must be received by **October 20, 2015 by 3:00 PM** at NYSED in Albany, New York.

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

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

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

Any proprietary material considered confidential by the bidder should specifically be so identified, and the basis for such confidentiality should be specifically set forth in the proposal.

**This proposal will be scored based on a total possible score of 100 points (100%).**

### **Technical Proposal:**

**70 Points**

Bid proposals should be unbound, paginated, clearly labeled with tabs by individual sections and signed as appropriate. Incomplete proposals will not be considered. Supplementary materials such as videotapes, publications, and press clippings will not be reviewed nor will they be returned to the bidder.

Your Technical Proposal should include the following:

1. Mandatory Requirements Certification Form
2. Resumes of Project Personnel
3. Two letters of professional reference
4. Project Description, including sections titled Project Narrative, Work Plan and Agency Staffing Plan, Experience and Expertise, as described in Technical Criteria. **Work Plan must be prepared using provided format. (See Work Plan for Year One template, located in 5.) Submission Documents.)**

**Signature Required**

### **Cost Proposal:**

**30 Points**

The original plus two copies of the completed Cost Proposal should be mailed in a separate envelope labeled **RFP#15-014 Cost Proposal Do Not Open** and include the following:

1. Proposed Budgets for each Budget Year. Proposed budgets must not exceed \$100,000 annually.
2. Five Year Budget Summary
3. Subcontracting Form
4. M/WBE Subcontracting/Supplier Form
5. A budget justification in narrative form that explains in sufficient detail how the specific funds requested in the budget document will be used to implement the proposed activities (*No Points*).

**The financial criteria will be based on the 5-year budget total.**

### **M/WBE Documents**

The original plus two copies of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #15-014-M/WBE Documents-Do Not Open** and must include the following:

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

**Signature Required**

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

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

#### Criteria for Evaluating Bids

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

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

#### Minimum technical score

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

#### Technical Criteria

**(70 Points)**

The complete project description and supporting materials will be reviewed to determine the overall consistency of the proposal to the stated purpose of the RFP. The appropriateness of the qualifications of key personnel and the adequacy of the resources of the bidder will be reviewed to determine the bidder’s ability to implement the activities described in the bid. The project description must include an overall management plan that addresses responsibilities of key personnel, adequate resources and progress reporting.

The technical proposal must contain specific details outlining how the vendor proposes to meet project deliverables and activities. Each Technical Proposal submitted in response to this RFP should be unbound, paginated and clearly labeled with tabs by individual sections in the following order:

#### 1. Project Narrative (30 points)

Bidders will provide a project description that is consistent with the stated purpose and objectives of the RFP. The description should include all activities that will be conducted to ensure objectives, as specified in “DELIVERABLES,” are met. This section will be reviewed for completeness and scored as follows:

- a. The activities are reasonable and likely to result in the provision of 79 full days of training during the summer and the school year (as outlined in Table 1 in the Deliverables) on dates and times mutually agreed to by the contractor and preschool agencies, for a minimum of 330

individuals annually, including paraprofessionals, professionals, and interpreters/translators on the topics listed under Deliverables. (10 points)

- b. The bidder's plan to review and possibly update the course content and provide training on the topics identified under Deliverables is likely to result in an increase in the knowledge and competency of participants participating in the instructional courses and prepare them to work with preschoolers who are English language learners. A rationale is provided for the selection of specific subtopics for each set of participants and mixed groups. (10 points)
- c. The training space as described by the bidder is in NYC, is furnished at the bidder's own cost and is accessible to public transportation. The training facilities provide an acceptable environment for training, including but not limited to adequate security, lighting, and seating. (5 points);
- d. The procedures for a) coordinating activities with NYSED, including conducting the annual survey to gather data on IABPs and professionals working for section 4410 preschool programs in NYC who hold bilingual extensions or TESOL certification and providing lists of individuals who have completed the training provided by the project and b) providing the data to the NYSED Program Manager are described in detail. (3 points)
- e. The procedures described for sharing information about the ITI-BSE are likely to result in training participants applying to the ITI-BSE. (2 points)

## 2. Work Plan (15 points)

The work plan will result in the expected outcomes described in the Deliverables section of this RFP. The detailed work plan for year one:

- a. reflects a relationship between the project activities and deliverables, (4 points)
- b. includes a timeline that is reasonable and ensures the completion of the RFP deliverables in a timely manner, (4 points)
- c. includes methods of evaluation that measure progress in completing the deliverables (4 points) and
- d. includes strategies for mid-course correction. (3 points)

**Activities described in the Project Narrative must be listed in the Work Plan to obtain credit for this section. Work Plan must be prepared using provided format. (See Work Plan for Year One template, located in 5.) Submission Documents.)**

## 3. Agency Staffing Plan, Experience and Expertise (25 points)

This section contains:

- a. A description of the agency's and project director's experience in managing similar projects; (3 points)
- b. A description of the experience of the agency and project director working with preschool programs and preschool service providers; (3 points)
- c. A description of the organization which demonstrates its viability to complete the proposed activities; (3 points)
- d. A description of the agency's or instructors' experience in providing training on topics listed in the Deliverables section of the RFP (i.e. bilingual and ESL methodology, cultural and linguistic diversity, effective professional/paraprofessional teams, working as or with an interpreter/translator, and integration of bilingual programming throughout a school), including resumes of key personnel that demonstrate the appropriateness of their qualifications; (8 points)
- e. A staffing plan that describes the responsibilities of key personnel to achieve program objectives; (3 points)

- f. The amount of time that each person will commit to the project is described and is reasonable and adequate to complete the activities in a timely and effective manner; *(3 points)*
- g. Two letters of professional reference, which reflect a knowledge of and relationship to the applicant agency or project director, a description of experience in working with the applicant on similar project(s) and confirmation of the applicant's ability to manage this project. *(2 points)*

**Financial Criteria**

**(30 Points)**

**The Financial Criteria portion of this RFP will be scored based upon the grand total for the 5 year budget summary.**

Although a budget narrative is requested, no points will be given for this narrative.

The **financial portion** of the proposal represents 30 points of the overall score and will be awarded up to 30 points pursuant to a formula. This calculation will be computed by the Procurement Office upon completion of the technical scoring by the technical review panel.

- The submitted budget will be awarded points pursuant to a formula which awards the highest score of 30 points to the budget that reflects the lowest overall cost. The remaining budgets will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of 30 points.

NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, all bidders that meet the minimum technical score will be asked to provide a best and final offer. The Contract Administration Unit will recalculate the financial score.

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

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

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

**NYSED's Reservation of Rights**

NYSED reserves the right to: (1) reject any or all proposals received in response to the RFP; (2) withdraw the RFP at any time, at the agency's sole discretion; (3) make an award under the RFP in whole or in part; (4) disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP; (5) seek clarifications of proposals; (6) use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP; (7) prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available; (8) prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments; (9) change

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any of the scheduled dates; (10) waive any requirements that are not material; (11) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (12) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; (13) utilize any and all ideas submitted in the proposals received; (14) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening; (15) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; (16) to request best and final offers.

### **Post Selection Procedures**

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

### **Debriefing Procedures**

All unsuccessful bidders may request a debriefing within five (5) business days of receiving notice from 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:

NYS Education Department  
Contract Administration Unit  
89 Washington Avenue  
Room 503W 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**

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

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

NYS Education Department  
Contract Administration Unit  
89 Washington Avenue  
Room 503W EB  
Albany, NY 12234

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

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

### **Vendor Responsibility**

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

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

NYSED recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact NYSED or the Office of the State Comptroller's Help Desk for a copy of the paper form.

### **Subcontractors:**

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

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

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

## **PROCUREMENT LOBBYING LAW**

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

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

Designated Contacts for NYSED  
Program Office – **Alexia Thompson**  
Contract Administration Unit – **Jessica Hartjen**  
M/WBE – **Joan Ramsey**

## **Consultant Disclosure Legislation**

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

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

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

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

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

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

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

For more information, please visit OSC Guide to Financial Operations. <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

### Public Officer's Law Section 73

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

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

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

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

(ii) officers and employees of statewide elected officials;

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

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

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

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

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

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

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

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

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

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

## **PROOF OF COVERAGE REQUIREMENTS**

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

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

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

To comply with coverage provisions of the WCL, the Workers' Compensation Board requires that a business seeking to enter into a State contract submit appropriate proof of coverage to the State

contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate workers' compensation insurance coverage:

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

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

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

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

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at: <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>. Alternatively, questions relating to either workers' compensation or disability benefits coverage should be directed to the NYS Workers' Compensation Board, Bureau of Compliance at (518) 486-6307.

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

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

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

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addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

The selected bidder must file a properly completed Form ST-220-CA (with OSC as the Contracting Agency within 48 hours of notification of selection for award) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance's website, available through this link: [www.tax.ny.gov/pdf/publications/sales/pub223.pdf](http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf). Forms are available through these links:

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

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

4.) Assurances

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

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

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

M/WBE Documents – (the forms below are included in 5.) Submission Documents)  
Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver

Signatures Required

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

Partial Participation-Partial Request for Waiver

Signature Required

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

No Participation-Request for Complete Waiver

Signature Required

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

STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through MaryEllen Elia, Commissioner of Education of the State of New York, party of the first part, hereinafter referred to as the (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to

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exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

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

### III. Terminations

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

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

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

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

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

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

### IV. Indemnification

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

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

### V. Property

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

### VI. Safeguards for Services and Confidentiality

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

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

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

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

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

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

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

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

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known

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

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

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section

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

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include

the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable.

Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414

email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

(January 2014)

## APPENDIX A-1

### Payment and Reporting

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

### Terminations

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

### Responsibility Provisions

- A. **General Responsibility Language**  
The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. **Suspension of Work (for Non-Responsibility)**  
The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- C. **Termination (for Non-Responsibility)**  
Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate SED officials or staff, the Contract may be terminated by the Commissioner of Education or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Education or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

### Property

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

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

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

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

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

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

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

#### Safeguards for Services and Confidentiality

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

proposal will acknowledge the support provided by the State of New York.

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

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

#### **Certifications**

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

#### **Notices**

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

#### **Miscellaneous**

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

- B. If required by the Office of State Comptroller (“OSC”) Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.

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

By mail: NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236  
Attn: Consultant Reporting  
By fax: (518) 474-8030 or (518) 473-8808

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

By mail: NYS Education Department  
Contract Administration Unit  
Room 501 W EB  
Albany, NY 12234

- C. Consultant Staff Changes. If this is a contract for consulting services, Contractor will maintain continuity of the consultant team staff throughout the course of the contract. All changes in staff will be subject to STATE approval. The replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate.

Rev. June 2014

## ATTACHMENT A - REFERENCES

### References

- Asher, J. J. (1969). The total physical response approach to second language learning. *The Modern Language Journal*, 53 (1), 3-7.
- Cummins, J. (1981). *Bilingualism and language minority children*. Toronto, Ontario: Ontario Institute for Studies in Education.
- Cummins, J. (2000). Putting language proficiency in its place: Responding to critiques of the conversational/academic language distinction. In J. Cenoz & U. Jessner (eds.), *English in Europe: The Acquisition of a Third Language*. Clevedon: Multilingual Matters.
- Espinosa, L.M. (2010). Classroom teaching and instruction “best practices” for young English language learners. In Eugene E. García and Ellen C. Frede (Eds.), *Young English Language Learners*. New York, London: Teachers College Press (pp.143-164).
- Fradd, S. H. & Wilen, D. K. (1990). Using interpreters and translators to meet the needs of handicapped language minority students and their families. *Program Information Guide No. 4*. Washington, DC: National Clearinghouse for Bilingual Education.
- Hanson, M. J., Gutierrez, S., Morgan, M., Brennan, E. L., & Zercher, C. (1997). Language, culture, and disability: Interacting influences on preschool education. *Topics in Early Childhood Special Education*, 17, 307-336.
- Krashen, S. (1985). *The input hypothesis: Issues and implications*. London: Longman.
- Krashen, S. & Terrell, T. (1983). *The natural approach: Language acquisition in the classroom*. Oxford: Pergamon.
- Lanauze, M. & Snow, C. (1989). The relationship between first- and second-language writing skills. *Linguistics and Education*, 1, 323-339.
- Wong Fillmore, L. (1991). When learning a second language means losing the first. *Early Childhood Research Quarterly*, 6, 323-346.

**ATTACHMENT B**  
**Instructions for Developing NYSED-Approved Training Materials**  
**RFP #15-014**  
**July 2015**

These directions are to be applied to each and every vetted training module in development.

Please be aware of COPYRIGHT issues at all times. If you choose to use copyrighted material(s), you must submit a signed letter from the copyright holder stating their permission for their material to be used in NYSED trainings, whether conducted by you, a subsequent contractor, or NYSED.

**Power Point**

- Arial font
- All slides should be numbered
- No cartoons. Clip art pictures are permitted.
- Prepare according to accessibility standards as outlined at <http://www.virtual508.com/bp-powerpoint.html>
- You may use color on your slides; but it should be an easily readable color. Try printing your slides out in black and white. Can you read the text?
- Try not to use whole slide pictures with text over the picture. It makes it hard to read the text.
- Test all websites to ensure they work.
- Bullets: Use same type of bullet throughout slides, unless there is specific information to be conveyed by a certain type of bullet (e.g., “√” for a checklist).
  - Make sure that all bullets align
  - Make sure that subsequent bullets line up with first letter of text in previous line
    - As demonstrated here
  - Do not use a bullet for the first part of a sentence that contains a bulleted list.

<b>Correct</b>	<b>Incorrect</b>
<u>WHAT'S IN AN IEP?</u> An IEP has several sections, including: <ul style="list-style-type: none"> <li>▪ Present Levels of Performance</li> <li>▪ Student Needs Relating to Special Factors</li> <li>▪ Annual Goals, Objectives</li> </ul>	<u>WHAT'S IN AN IEP?</u> <ul style="list-style-type: none"> <li>▪ An IEP has several sections, including:               <ul style="list-style-type: none"> <li>○ Present Levels of Performance</li> <li>○ Student Needs Relating to Special Factors</li> <li>○ Annual Goals, Objectives</li> </ul> </li> </ul>
<u>WHAT'S IN AN IEP?</u> <ul style="list-style-type: none"> <li>▪ Present Levels of Performance</li> <li>▪ Student Needs Relating to Special Factors</li> <li>▪ Annual Goals, Objectives</li> </ul>	<u>WHAT'S IN AN IEP?</u> <ul style="list-style-type: none"> <li>▪ An IEP has several sections, including:               <ul style="list-style-type: none"> <li>▪ Present Levels of Performance</li> <li>▪ Student Needs Relating to Special Factors</li> <li>▪ Annual Goals, Objectives</li> </ul> </li> </ul>

- Make sure that pictures or text do not cover up page numbers.

**Trainer's Manual**

- Arial font
- Font size 12
- All text must be justified

## Instructions for Developing NYSED-Approved Training Materials

- If the program says it IS justified but visually it doesn't appear to line up, please click on the PARAGRAPH button (backwards "P") to check your paragraph marks. You will likely find that you've accidentally hit "ENTER" or "RETURN" at the end of each line, which is why it doesn't LOOK justified.
- Header/Footer must be changed as indicated (title of training).
- Test all hyperlinks to ensure they work.
- Make sure that slide titles match exactly between the PPT and the trainer's manual.
- Update title page to reflect date of submission/resubmission or final approval.
- Page numbers should be used, but page 1 does not start until after TITLE and ACKNOWLEDGMENTS pages. This is set up in the template.
- Make sure that the acknowledgements page is changed according to your group composition.
- Bullets: Use same type of bullet throughout manual, unless there is specific information to be conveyed by a certain type of bullet (e.g., "√" for a checklist).
  - Make sure that all bullets align
  - Make sure that subsequent bullets line up with first letter of text in previous line
    - As I'm demonstrating here

### Handouts

- Arial font
- Font, size 12
- All text must be justified
- Test all websites to ensure they work
- Bullets: use same type of bullet in all handouts, unless there is specific information to be conveyed by a certain type of bullet (e.g., "√" for a checklist).
  - Make sure that all bullets align
  - Make sure that subsequent bullets line up with first letter of text in previous line
    - As I'm demonstrating here
- Each training module must include the Follow up plan/TO DO list as a handout. Remember to change the title and add any specific information you want participants to do after they leave your training.

### Submission

- All materials must be submitted when you send your training package to the Office of Special Education. That means, no review will occur until the trainer's manual, PPT and all handouts are submitted.
- Please send them all at once (rather than as you finish them).
- **YOU MUST:** *number* and *save* your files in the order you want them to appear in the binder (manual is always #1, PPT is always #2) and use simple file names. This helps others who must make handouts from electronic copies.

#### Examples of GOOD file numbering and simple naming:

- 1 TrainerManual\_Literacy\_010715
- 2 PowerPoint\_Literacy\_010715
- 3 ToDoList\_Literacy\_010715
- 4 Self-DWorksheet\_010715
- 5 CITELearningStyles\_010715
- 6 AIR-StudentForm\_010715
- 7 etc...

## Instructions for Developing NYSED-Approved Training Materials

**Please note – This is how you should save the files on your computer. Do not simply send a list of the file names this way, while the files themselves are named something entirely different.**

Examples of PROBLEMATIC file names with no numbering:

- Trainer manual 7-13-14\_v2\_IEP Development
- Classifications sheet\_updated 3-2-01
- Handout1amendmentsFeb01

### **Revisions and Resubmissions**

- Please review each page of the training package comments as they are sent back to you.
- It is important that you make EVERY CHANGE as indicated.
- If you would like to suggest that a change NOT be made, please submit a separate justification.
- Hand in all materials again – even if there wasn't a change – including handouts.

### **Office of Special Education Punctuation, Capitalization and other Written Conventions**

- Please spell out all acronyms the first time you use them... in EACH and EVERY document.
- IEP stands for individualized education program (NOT individual education plan).
- Something is **IN** the IEP, not **ON** the IEP. The IEP is not a piece of paper; it is a program.
- Please do not use the acronym OSE... just call us the Office of Special Education. (Note, for a more formal reference, use NYSED Office of Special Education.)
- There should be two spaces between sentences and after a colon.
- Use a comma to precede a phrase that begins "..., such as..." or "..., including..."
- Do not put comma before "and" prior to last item in a list of three or more items.
- "That" vs. "Which:" Both that and which are regularly used to introduce "restrictive clauses" – clauses that are essential to the description of the word to which they refer ("The book that [which] you ordered is in."). Only which is used to introduce "nonrestrictive clauses" – clauses that are not essential to the meaning of the preceding word ("The door, which was painted pink, opened onto the garden.").
- Punctuation/capitalization in bulleted lists: Each item on the list is usually capitalized if the items are independent of the words that introduce them. However, style varies on this point, and use of a lowercase style for such items is also fairly common. The items do not end with periods unless at least one of the items is a complete sentence, in which case a period follows each item. Items that are dependent on the words that introduce them (in other words complete a sentence) begin with a lowercase letter and carry the same punctuation marks that they would if they were a run-on series in a sentence.

Examples –

A. Required skills include the following:

- Shorthand
- Typing
- Transcription

B. To type a three-column table, follow this procedure:

- Clear tab stops.
- Remove margin stops.
- Determine precise center of the page. Set a tab stop at center.

C. The vendor of your system should:

- instruct you in the care and maintenance of your system;
- offer regularly scheduled maintenance to ensure that the system is clean, with lubrication and replacement parts as necessary; and

## Instructions for Developing NYSED-Approved Training Materials

- respond promptly to service calls.
- Hyphenate compound adjectives: Hyphenate between words combined to form a unit immediately preceding the word modified (i.e., two words used as one to modify a noun): long-range program; law-abiding citizen; English-speaking nations; parentally-placed student (but not a student who is parentally placed).
  - If unsure, try each word individually with the noun to see if it makes sense (the program is neither a “long program” nor a “range program;” you need both words together – long-range program).
- Prefixes: Type most words having the prefix “non” and “pre” as one word: nonaddicting; nondisabled; prejudge; pretest.
- Write out “percent” (not %).
- Don’t use the symbol for “section;” always spell it out.
  - Always use the full reference: “section \_\_\_ of the Regulations of the Commissioner of Education.”
  - Unless it begins a sentence, the “s” in “section” is not capitalized.
- Please be careful of overuse of capitalization. For example, you do not need capital letters on “present levels of performance” or “annual goals” or “committee on special education.”
- When referring to State laws and regulations, always capitalize the “S” in State.
- Unless it begins a sentence, NYSED does not capitalize the “f” in federal.
- Do not use an apostrophe when indicating plural forms in an acronym (e.g., it should be “MPSGs” not “MPSG’s,” “IEPs” not “IEP’s”).
- Every time you use “e.g.” or “i.e.” you should include the periods AND a comma at the end: “e.g.,” or “i.e.,”
- Never use the acronym, “SWD;” always spell out “students with disabilities.”
- Punctuation goes inside quotation marks: “Correct,” vs. “Incorrect”. Question marks can be outside of quotation marks.



**ATTACHMENT C  
RFP # 15-014**

**TITLE**

# **Trainer's Manual**

Month Year *(This should be the date you printed/sent this draft or the date the manual was approved by NYSED.)*

The University of the State of New York  
State Education Department  
Office of Special Education  
Albany, NY12234



## TITLE

### ACKNOWLEDGEMENTS

This training was developed for use by the Bilingual Special Education Specialists of the Regional Special Education Technical Assistance Support Centers (RSE-TASC) network to \_\_\_.

The goals of this training are to:

- 1.
- 2.
- 3.
- 4.

**The New York State Education Department (NYSED) Office of Special Education gratefully acknowledges the following individuals for the valuable contributions they made in the design and development of this training:**

Names, titles

Month Year

## Module Name or Name of Training

### Key Points:

- 1.
- 2.
- 3.
- 4.

### Materials:

1. PowerPoint presentation
2. Markers and chart paper
3. Live Internet link for website demonstrations
4. ??

### Handouts:

- List all handouts IN ORDER –
1. Agenda
  2. PowerPoint handout
  3. To Do List/Follow-up Plan
  4. ??
  5. References

### Resource Documents:

1. Part 200 Regulations of the Commissioner of Education
2. ??

\*Note, agenda and training schedule handout to be developed by trainer, per the training plan established for their region

Time: xx hours

### Directions:

**Slide 1: Title Slide**  
Title of Training

**Slide 2: “Do Now” Activity**  
Distribute “Do Now” activity on top of training materials. As participants arrive, point out that it should be completed while they are waiting to begin. As the room begins to fill, display slide 2. Periodically announce that they should be doing the “Do Now.”

**Slide 3: Introductions**  
Display slide 3 (updated with the trainer’s information before the training date). Introduce trainer(s). Have participants introduce themselves at their tables.

- Slide 4: Agenda and Materials**  
Set tone/protocol for the session.
- Informal atmosphere
  - Breaks and lunch
  - Questions at any point

**Go over **your** training agenda** (both agenda for the day and for any additional dates, depending on the schedule you have established for your region). Include a review of the sections of the training.

**Point out materials** in folder, binder and to be distributed. Indicate that participants will only receive the materials for the training sections that they participate in.

Have participants take out **Follow-up Plan for [TITLE OF TRAINING] handout**. Explain that they should use this as a tool to develop an action plan of tasks they need/want to do when they return to their district. They can record items as we go through each training section. Point out that they should think about and note any resources or support they may need in order to accomplish each item and a target date for completion.

- Slide 5: Title of Slide:**  
Trainer Notes

- Slide 6: Title of Slide:**  
Trainer Notes

*[Insert more slides/notes as necessary]*

*To insert more rows within the table for additional slides, go to the final box and keep pressing TAB. Or, under TABLE TOOLS/LAYOUT, click on INSERT BELOW.*

- Final Slide What's Going on Your "To Do" List?**  
Direct participants to refer to their "Follow-up Plan for [Title of Training]" handout. Provide a few minutes for participants to note items on the form.