

**REQUEST FOR PROPOSAL (RFP)  
RFP #19-003**

**NEW YORK STATE EDUCATION DEPARTMENT**

**Title: Rescoring Audit - Grades 3-8 English Language Arts (ELA) and Mathematics Tests**

The New York State Education Department (NYSED) Office of State Assessment is seeking proposals for a vendor to conduct a rescoring audit on a sample of constructed-responses from English Language Arts (ELA) and Mathematics Tests in Grades 3 through 8 administered to students on computer. During the term of this contract, a rescoring audit will be conducted once for each school year; 2018-19, 2019-20, 2020-21, 2021-22, and 2022-23. For each audit, a written technical report summarizing statewide results must be submitted to NYSED. Local scoring reports on the results of the audit must be sent to each computer-based scoring consortium leader that was included in the audit.

The eligible applicants are for-profit or not-for-profit entities, including any testing companies and/or consultant and/or educational organizations with demonstrated capacity for scoring student computer-entered responses to open-ended questions on large-scale assessments in English language arts and mathematics.

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.

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

NYSED will award one contract pursuant to this RFP with a term of five years, anticipated to begin March 1, 2019 and to end February 29, 2024.

Service Area: **Statewide**

**Components contained in RFP Proposal #19-003 are as follows:**

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

Questions regarding the request must be submitted by E-mail to [AssessmentRFP@nysed.gov](mailto:AssessmentRFP@nysed.gov) no later than the close of business September 24, 2018. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to [NYSED's Competitive Procurement Contract webpage](#) no later than October 3, 2018.

The following are the designated contacts for this procurement:

<b><u>Program Matters</u></b> Carolyn Trombe Email Address: <a href="mailto:AssessmentRFP@nysed.gov">AssessmentRFP@nysed.gov</a>	<b><u>Fiscal Matters</u></b> Jessica Hartjen Email Address: <a href="mailto:AssessmentRFP@nysed.gov">AssessmentRFP@nysed.gov</a>	<b><u>M/WBE Matters</u></b> Joan Ramsey Email Address: <a href="mailto:AssessmentRFP@nysed.gov">AssessmentRFP@nysed.gov</a>
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The following documents must be submitted in separate, sealed envelopes, as detailed in the Submission section of the RFP, and be received at NYSED no later than **October 26, 2018 by 3:00 PM:**

1. Submission Documents labeled **Submission Documents - RFP #19-003 Do Not Open**
2. Technical Proposal labeled **Technical Proposal - RFP #19-003 Do Not Open**
3. Cost Proposal labeled **Cost Proposal – RFP #19-003 Do Not Open**
4. M/WBE Documents labeled **M/WBE Documents—RFP #19-003 Do Not Open**
5. CD-ROM containing the technical, cost, submission and M/WBE proposals submitted, using Microsoft Office. Place in a separate envelope labeled **CD-ROM-RFP#19-003 Do Not Open.**

The mailing address for all of the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Jessica Hartjen, RFP#19-003  
Contract Administration Unit  
89 Washington Avenue, Room 501W EB  
Albany, NY 12234

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

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## 1.) Description of Services to be Performed

### Work Statement and Specifications

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

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

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

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

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

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

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

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not limited to: advertisements in minority centered publications; solicitation of vendors found in the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing NYSED’s Certification of Good Faith Efforts (Form M/WBE 105). See the M/WBE Submission Documents for detailed examples of and required forms to document good faith efforts.

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

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

**REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS**

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

**REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS**

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

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

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

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

**Background and Purpose of Audit**

The ELA and Mathematics assessments consist of both multiple-choice and constructed-response items and are administered to approximately one million students in grades 3–8 annually. Student responses to the constructed-response questions are scored regionally, districtwide, locally, or by a private contractor using scoring materials provided by NYSED. All scoring for computer-based tests is

completed by a local scoring consortium comprised of teachers from a minimum of 3 schools or by one of approximately five private contractors that contract directly with school districts to provide this service.

After each test administration, the Department conducts an independent annual rescoring audit of student responses to the constructed-response questions, in order to monitor the reliability of scoring and ensure that the same rigorous standards intended by NYSED are being employed across the State.

A sample of schools and districts are selected for the rescoring audit that represent New York State's student population demographically and geographically. The 2018 audit was based on a stratified random sample of schools from each grade level and each content area. The sample included both schools that tested on paper as well as on computer.

As New York state transitions from paper-based testing (PBT) to computer-based testing (CBT), beginning with the school year 2018–19, only schools testing on computer are to be selected for the scoring audit. For those selected schools, electronic student responses will be transferred from the NYSED 3-8 testing contractor to the audit contractor. No schools testing on paper will be selected for the audit. Following the completion of the rescoring, the audit contractor will prepare and submit audit score reports for each scoring consortium, analyze the results of the audit, and prepare and submit a statewide technical report to NYSED.

### **Deliverables and/or Project Description**

#### **Work Plan**

In its proposal, each bidder should include a comprehensive five-year detailed work plan. The work plan should describe how the activities required in the RFP will be conducted. A detailed timeline for each year of the contract, consistent with the [Timeline for Required Services](#), provided in this RFP, must be included in the work plan.

**Timeline for Required Services:**

<b>For all tests to be rescored, the contractor must:</b>	<b>Timeframe for activity:</b>
Submit an updated annual <a href="#">work plan</a>	Within four weeks of contract approval and within four weeks of the start of each contract year
Determine the process to be used to conduct the rescoring audit of the CBT sample of student constructed-response items and submit to NYSED for approval	Within four weeks of contract approval
Select a statewide, representative sample of schools testing via computer, in collaboration with NYSED. (Except in Year 1, when the sample of schools will be selected by NYSED)	Two months prior to test administration
Select and train Raters (Scorers)	Within three months of the receipt of student responses from NYSED's Grades 3-8 ELA and Mathematics test development contractor
Conduct the rescoring audit	Within three months of the receipt of student responses from NYSED's Grades 3-8 ELA and Mathematics test development contractor
Submit to NYSED electronic data files containing the local score and the audit rescore for each item and for each student	Within four months of the receipt of student responses from NYSED's Grades 3-8 ELA and Mathematics test development contractor
Prepare and send, either electronically or by traceable mail, a summary report of the rescoring results to each computer-based scoring consortium leader participating in the audit	Within four months of the receipt of student responses from NYSED's Grades 3-8 ELA and Mathematics test development contractor
Prepare a draft technical report of the rescoring and an audit report for each scoring consortium for NYSED's review	Within five months of the receipt of student responses from NYSED's Grades 3-8 ELA and Mathematics test development contractor
Submit one electronic, final technical report of the rescoring audit to NYSED	Within two weeks of receiving NYSED approval of draft report

**Items to be Rescored**

The contractor will be responsible for rescoring constructed-response items from ELA and Mathematics Tests in Grades 3-8, entered by students on computer. For ELA, each test will contain approximately seven short-response items (worth two points) and one extended-response item (worth four points). For Mathematics, each test will contain approximately six short-response items (worth two points) and one extended-response item (worth three points). The exact numbers and types of items on each test, as well as the scoring guidelines to be used when scoring, may vary throughout the contract period. Examples of the type of items to be rescored, as well as the scoring materials to be used, may be accessed on past tests questions, scoring rubrics, exemplar responses, and other information about the ELA and Mathematics tests on [NYSED's web site](#).

## **Audit Rescoring Process**

In its proposal, each bidder should describe its process for recruiting and training qualified raters and the process to be used to conduct the audit rescoring of the CBT sample of student constructed-response items for the Grades 3-8 ELA and Mathematics tests. The contractor must include information on where the rescoring will occur, the staffing arrangements at the scoring site(s), and how CBT student responses will be presented. Procedures for quality assurance, maintaining consistency in scoring and providing for the security of information and materials during the rescoring process must be detailed.

## **Selection of ELA and Mathematics Audit Samples**

Except in Year 1, the contractor will select a statewide representative sample of schools testing via computer, in collaboration with NYSED, two months prior to test administration. For the 2018-19 school year, the sample must include approximately 5,000 students per grade and content area. For the 2019-20 school year, the sample must include approximately 7,500 students per grade and content area. For the 2020-21, 2021-22, and 2022-23 school years, the sample must include approximately 10,000 students per grade and content area.

NYSED will provide the contractor with the most recent school enrollment, examination requests, and with related school demographic data for selection of sample schools and data collection. When possible, each sample should include at least one school from each of the big five city school districts (Buffalo, Rochester, Syracuse, New York City, and Yonkers). In Year 1 of the audit, NYSED will select the samples of schools for the audit contractor. In subsequent years, the audit contractor will be responsible for the selection of the samples.

## **Selection and Training of Raters (Scorers) and Quality-Control Procedures**

Within three months of the receipt of student responses from NYSED's 3-8 ELA and Mathematics test development contractor, the audit contractor is responsible for hiring and training raters and for conducting the rescoring audit. The contractor's [work plan](#) must describe how qualified raters will be recruited and selected for hiring, how the raters will be trained, and what quality-control procedures the bidder will take to ensure that the raters meet quality standards during training and scoring. The contractor should use the same scoring training materials used to train New York State teachers. NYSED will provide the contractor with the training materials and scoring rubrics on the first day of the test administration period. Raters hired by the contractor should have at least a bachelor's degree AND a minimum of 15 college credits in the subject area of the test being rescored or teacher certification from any state to teach the subject area of the test being rescored. For raters rescoring elementary-level tests (Grades 3-6), teacher certification in elementary education may be substituted for up to 6 of the required college credits in the subject area.

## **Receiving, Storing, and Securely Processing Student Responses**

The audit contractor must have the capacity to receive, store, and securely process images of computer-based student responses from NYSED's 3-8 test contractor for rescoring. The contractor's [work plan](#) must provide the logistical details of how the contractor will receive the images for selected student computer-based constructed-responses from NYSED's 3-8 ELA and Mathematics test development contractor and prepare all computer-based student responses for rescoring. The [work plan](#) must demonstrate the contractor's capacity to handle the volume of student data involved in this

project, must address issues of confidentiality, organization, and timeliness involved and detail the measures to be taken to store and purge student responses and data.

The audit contractor must conduct the rescoring audit within three months from receipt of the images from NYSED's 3-8 ELA and Mathematics test development contractor. Following each test administration, the audit contractor must coordinate with NYSED's 3-8 ELA and Mathematics test development contractor and have the capacity for the secure electronic transfer of student constructed-responses.

Within four months of the receipt of student responses, the contractor must submit to NYSED electronic data files containing the local score and the audit rescore for each student and item.

The contractor must store student responses for a period of one year from the date of administration. After a period of one year from the completion of the rescoring, all student responses and identifying information should be purged from the contractor's servers/storage. The contractor's security plan must include the procedure for purging all student responses and identifying information from the contractor's servers/storage.

### **Computer-Based Scoring Consortium Audit Reports**

The contractor must prepare and send a summary report of the rescoring results to each computer-based scoring consortium leader participating in the audit for each grade/subject for which responses in the audit sample selected were scored by that consortia. The audit summary reports may be sent to the scoring consortia leaders either electronically or by the traceable mail and must be sent within four months of the receipt of student responses from NYSED's 3-8 ELA and Mathematics test development contractor. In 2019, there are likely to be about 100 scoring consortium leaders participating in the audit. This number is likely to grow each year to about 250 by 2023. The audit vendor will be developing 12 report templates each year; one each for ELA and Mathematics Tests in Grades 3 through 8. The format of the report must be user-friendly. Contact information for the scoring consortia leaders will be provided to the scoring audit vendor by NYSED.

Prior to sending reports to each scoring consortium leader, the contractor must provide NYSED with a secure electronic file folder containing all consortium reports and the data file used to produce the reports, allowing for at least 15 days for NYSED's review.

The reports must include:

- the number of student responses scored by the scoring consortium that were scored through the auditing process
- the score point range for each question
- percentage of agreement between the local scores and the audit scores, and
- the scoring consortium's average raw scores for each question based on local scoring and audit scoring

See [Attachment 4: Sample Scoring Consortium Audit Report](#).

The contractor must be responsible for responding to questions from any consortium leader regarding the scoring consortium audit report for at least six weeks after the reports are received by the scoring consortium leaders. A contact telephone number and e-mail address must be provided for such questions by the contractor to the scoring consortia. The contractor's contact information will be part of the letter sent to scoring consortium leaders accompanying the rescore audit reports.

## Audit Data Analysis: Technical Report

Within four months of receipt of student responses from NYSED's 3-8 ELA and Mathematics test development contractor, the audit contractor must provide NYSED with statewide electronic rescore data files containing the local scoring consortium audit reports as well as the scores and the audit rescoring for each item and each student, linked by unique State student ID. NYSED will provide the contractor with local score files at approximately the same time that the audit contractor is receiving the student responses from NYSED's test development contractor.

A statewide technical report must be submitted to NYSED, summarizing the audit results for each exam rescored. The contractor's [work plan](#) should include a plan that allows for collaboration with, and review by, NYSED at each stage. The draft technical report must be received by NYSED no later than five months after the contractor's receipt of student responses from the 3-8 ELA and Mathematics test development contractor. One final electronic copy of the technical report of the rescoring audit must be submitted to NYSED within two weeks of receiving NYSED's approval of the draft report. The technical report should include at minimum, the following multiple analyses to assess the reliability of the scoring:

- item means
- intra-class correlation
- weighted kappa
- score difference distributions
- total score statistics

[Attachment 3: Table of Contents for Each Technical Report for Rescoring](#) illustrates a suggested outline for the technical report.

## Security of Test Materials

The contractor's [work plan](#) must include a security plan for this contract, in accordance with the protocols set forth in this RFP and [Attachment 1: Security Guidelines for the New York State Assessment Program](#), in 6). of this RFP, [Appendix R: Data Security and Privacy Plan Provisions](#), and [Appendix S: Parents' Bill of Rights for Data Privacy and Security](#). The security plan must specifically address where the activities described in this RFP will occur and how test materials and student data will remain secure at all times when receiving, storing, and processing student responses.

The contractor must have the organizational ability to receive and transmit data files and other information electronically via a secure, password protected portal (SFTP). The contractor must use encrypted files and design, host, and maintain an SFTP site as a means of file transfer. Access to the NYS test information on this site must be limited to the contractor and NYSED, unless further sharing with other parties is authorized in writing by NYSED. Any other electronic transfer via e-mail, Internet, or facsimile (FAX) of any secure test materials is not permitted, unless authorized by NYSED to do so on a case-by-case basis. The plan must include how any secure data will be purged at the end of the contract term and must also include a data disaster recovery plan.

All contractor's staff and subcontractor's staff having access to secure or confidential information, including, but not limited to, test questions and scoring materials, shall sign a Non-Disclosure Agreement (see [Attachment 2: Non-Disclosure Agreement](#), in **6.) Attachments** of this RFP) prior to the

initiation of work under this contract and in accordance with [Attachment 1: Security Guidelines for the New York State Assessment Program](#).

### **Organizational Capacity**

The contractor must demonstrate an organizational and staffing capacity that is commensurate with the project's scope of work for scoring large-scale assessments throughout the duration of the contract. The contractor's [work plan](#) must include a short narrative description of the contractor's organization, including organizational charts illustrating how project staffing and organizational arrangements are commensurate with the project's scope. The organizational charts must include the titles of all proposed key staff.

The [work plan](#) must include a detailed staffing plan that includes the names, qualifications, and responsibilities, of all key staff members. For each key staff member associated with this project, the staffing plan should include a resume describing the individual's background and experience, as well as the individual's ability and experience in conducting the proposed activities.

The staffing plan should provide a clear understanding that there is a sufficient number of people with the requisite skills assigned to the project and that the people working on the project have the necessary skills and experience to complete the project work as described in the RFP.

The staffing plan should include any subcontractor(s), a description of the services provided by the subcontractor(s), their location, and the percentage of work they are to perform.

The contractor must promptly notify NYSED of changes in key staffing or subcontractor(s) assigned to this contract.

### **Project Manager and Responsibilities**

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

It is preferred that the Project Manager possess the following:

- a minimum of a bachelor's degree
- Project management certification through the Project Management Institute (PMI) as a Project Management Professional (PMP), or other recognized project management certification
- at least three years' experience managing large-scale assessment projects from conception through completion
- demonstrated knowledge of educational testing procedures
- strong organizational, managerial, and communication skills

The project manager's responsibilities will include, but will not be limited to:

- Travel to Albany to meet with NYSED staff at the start of the contract period. An introductory meeting of one full day, or as otherwise mutually agreed upon, shall be held in Albany within thirty days of final contract approval. After that initial introductory meeting, the contractor will be expected to travel to Albany at least one time per year for an in-person meeting throughout the duration of the contract.
- Coordinate and participate in bi-weekly conference calls, quarterly virtual meetings, and annual in-person meetings.
- Provide NYSED with the minutes of all meetings and conference calls, for NYSED's review and approval.
- Communicate via e-mail with NYSED staff assigned to this project, to discuss the status of the work on the contract and any issues related thereto, on an as-needed basis.
- Develop and submit an annual project plan and/or schedule to NYSED for review and sign-off. The purpose of the plan is to provide NYSED with an overall analysis of the methods that the contractor will utilize to perform all aspects of the contract within the required timeframe.
- Submit monthly status reports to NYSED that include: a detailed list of all work and activities completed, in progress, and upcoming; corresponding dates on all phases of the development and implementation and progress made in accordance with the detailed project plans and contractual requirements; a list of all information needed from NYSED to proceed with work; and external dependencies, if any, that may affect the schedule, and the degree to which it would affect the schedule.
- Submit all deliverables and other work products to NYSED in the manner designated by NYSED for review and approval. Materials must be submitted in accordance with the timeline specified in this RFP and according to a mutually agreed-upon timeline.
- Maintain accurate, up-to-date information on the status of all contractor and subcontractor(s) work on the project and communicating such to NYSED in a timely manner.
- Notify the NYSED Director of State Assessment, or his/her designee, via telephone and in writing, of any problem or potential problem that arises regarding the quality, timeliness, or any other issue and of the contractor's proposed solution. The issue and solution shall also be included in subsequent reports.
- The project manager must cooperate fully with designated NYSED staff in the performance of all activities. The contractor must notify NYSED promptly, if there is a need to replace the designated project manager. Such replacement is subject to approval by NYSED.

### **NYSED Authority and Approval**

NYSED shall have approval authority over all aspects of the 3-8 ELA and Mathematics audit programs, including, but not limited to, the following:

- All materials, products, and services produced by the contractor. This includes, but is not limited to, all brochures, guides, student information labels, manuals, and any and all other materials produced for this project.

- All development plans and timelines, scoring, and reporting.
- All schedules, including, but not limited to, training schedules, implementation schedules, and scoring/reporting schedules.
- All reports, including, but not limited to, technical reports and score reports.
- Any changes pertaining to the program manager, key staff, or subcontractor(s), on and after award of the contract and commencement of work, and for the duration of the contract.

## **Monitoring and Evaluation**

NYSED will monitor and evaluate the progress of the contractor in meeting the contractual requirements, through bi-weekly conference calls, monthly status reports, and quarterly status meetings coordinated by the project manager. The evaluation will emphasize the contractor's ability to meet timelines and supply deliverables in a timely manner. The contractor must retain and update records and accounts monthly and must be able to prepare and submit statistical, narrative, and/or financial and program reports and summaries related to this contract, as requested by NYSED.

## **Ownership Provisions**

NYSED is the sole owner of outputs resulting from the work proposed in this RFP. The contractor shall be prepared to deliver all or part of the items to NYSED, as requested, at any point during the duration of this contract. Materials can be used by the contractor or other parties only with the express written permission of NYSED.

All such outputs are to be turned over to NYSED in print and electronic form, as specified by NYSED.

## **Cooperation with Other Contractors**

NYSED currently has, or may develop, contracts for certain test-related activities that are associated with the Grades 3–8 ELA and Mathematics Tests. These services include scoring students' responses to constructed-response questions. In the event that any of these contracts are held or awarded to other vendors, the vendor awarded the contract from this RFP must cooperate fully and in a timely manner with those vendor(s) providing other services associated with these examinations.

## **Staff Changes**

The contractor must maintain continuity of staff throughout the course of the contract. All changes in staff will be subject to NYSED approval. The replacement staff with comparable or superior skills will be provided at the same rate.

## **Contract Completion Requirements**

Upon completion or termination of the contract awarded as a result of this RFP, the contractor will use its best efforts to assist NYSED in completing an efficient transition to NYSED and/or any successive contractor. This shall include, but not be limited to, assisting NYSED in developing and implementing a feasible transition plan in advance of the anticipated expiration, cancellation, or termination of the contract.

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

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

## **Payments and Reports**

The contractor will be required to submit quarterly status reports and annual progress reports, as outlined in the [Project Manager](#) section of this RFP. Payment will be made to the contractor once the quarterly reports are reviewed and the project deliverables are determined to be accurate in accordance with properly submitted invoices. Invoices should be submitted for payment on a quarterly basis and must include dates of services and an itemized list of activities and costs consistent with the approved schedule of deliverables contained in the executed contract. Payment(s) to subcontractor(s) should be indicated on the invoice and should list the subcontractor(s) name, payment amount, and nature of services provided. Invoices with incomplete information will be returned to the contractor. Invoices should reflect only the deliverables that have been completed and submitted to NYSED. Payments will be made upon 100% completion of each deliverable and approval by NYSED.

## **Requirements of Education Law Section 2-d**

The Contractor agrees to comply with Family Educational Rights and Privacy Act (FERPA) and New York State Education Law § 2-d. The New York State Data Security and Privacy Plan (Appendix R), the Parents Bill of Rights (Appendix S) and the Attachment to the Parents' Bill of Rights for Contracts Involving Certain Personally Identifiable Information (Appendix S-1) are included in [4.\) Assurances](#) of this RFP, the terms of which are incorporated herein by reference, and which shall also be part of the Contract.

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

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

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

## **Subcontracting Limit**

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

For contractors using subcontractors, a Vendor Responsibility Questionnaire and a NYSED vendor responsibility review are required when:

- 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 contractor 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.

## **Contract Period**

NYSED will award one contract pursuant to this RFP. The contract resulting from this RFP will have a term of five years, anticipated to begin March 1, 2019 and to end February 29, 2024.

## **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 [Office of the New York State Comptroller](#).

## **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>1</sup>. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).

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

6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the [Empire State Development \(“ESD”\) directory of certified businesses](#). The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.

7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.

8. Contractor shall include the provisions set forth in paragraphs (6) and (7) above, in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.

9. Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs which effectuates the purpose of this section.

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 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

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

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

requesting a partial or total waiver (M/WBE 101) of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements, together with an explanation of the efforts undertaken by the contractor to obtain the required M/WBE participation.

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

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

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

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

II. Whether there has been written notification to appropriate certified M/WBEs that appear in the [Empire State Development website](#).

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

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 the [New York State Contract System website](#).

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

## 2.) Submission

### Documents to be submitted with this proposal

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

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

### Project Submission

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

1. Submission Documents—Two (2) copies (one bearing an original signature)
2. Technical Proposal—Six (6) copies (one bearing an original signature)
3. Cost Proposal—Three (3) copies (one bearing an original signature)
4. M/WBE Documents—Two (2) copies (one bearing an original signature)
5. Microsoft Office (CD format)—One (1) electronic version with the submission, technical, cost, and M/WBE proposals. Please place the CD-ROM in a separate envelope.

The proposal must be received by **October 26, 2018, by 3:00 PM** at NYSED in Albany, New York.

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

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

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

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

## Technical Proposal

### Technical Proposal

(70 Points)

The original plus five (5) copies of the completed Technical Proposal must be submitted in a separate envelope labeled **RFP #19-003-Technical Proposal-Do Not Open** and should include the following:

- A project workplan detailing and addressing how tasks will be organized and managed to provide the project deliverables, as described below;
- A project staffing plan, detailing what and how resources will be utilized to provide the project deliverables, as described below;
- Resumes for all key staff, and;
- A minimum of three current professional letters of reference.

#### A. Appropriateness of Work Plan

(Maximum 10 Points)

The proposal should include a five-year detailed work plan that describes as clearly, specifically, and completely as possible how the bidder intends to implement the project and manage the work requirements of the RFP as described in the Deliverables and/or Project Description. The work plan should be aligned with a detailed timeline for each year of the contract and be consistent with the Timeline for Required Services provided in this RFP.

The plan should present a hierarchical subdivision of the project's work activities into work areas or work packages, and should outline, in detail, who among the key staff members will perform each activity, and where this will occur. The plan should include the percent of total time for each key staff member, including that of any subcontractor staff, to be allocated to the project.

#### B. Audit Rescoring Processes

(Maximum 25 Points)

The proposal should describe the processes that the bidder will use for recruiting and training qualified raters and the processes to be used to conduct the audit rescoring of the CBT sample of student constructed-responses for the Grades 3-8 ELA and Mathematics tests. The proposal should include information on where the rescoring will occur, the staffing arrangements at the scoring site(s), and how computer-based student responses will be presented to raters. Procedures for quality assurance, maintaining consistency in scoring, and providing for the security and confidentiality of information and materials during the scoring process should be detailed.

##### B-1. Selection of ELA and Mathematics Audit Samples

(5 Points)

The proposal should describe the bidder's plans for selecting an appropriate statewide ELA and Mathematics audit sample (after Year 1) ensuring that the sample is representative of New York State's student population testing via computer. For the 2019-20 school year, the sample must include approximately 7,500 students per grade and content area. For the 2020-21, 2021-22, and 2022-23 school years, the sample must include approximately 10,000 students per grade and content area.

##### B-2. Selection, Training, and Quality-Control of Raters (Scorers)

(10 Points)

The technical proposal should describe how the bidder will recruit and select qualified raters for hiring, how the raters will be trained, and what quality-control procedures the bidder will take to ensure that the raters meet quality standards during training and rescoring. Raters hired by the bidder should have

at least a bachelor's degree AND a minimum of 15 college credits in the subject area of the test being rescored or teacher certification from any state to teach the subject area of the test being rescored. For raters rescoring elementary-level tests (Grades 3-6), teacher certification in elementary, special or ENL (English as a New Language) education may be substituted for up to six of the required college credits in the subject area.

**B-3. Receiving, Storing and Securely Processing Student Responses (10 Points)**

The technical proposal should provide the logistical details of the bidder's ability to receive images for all student computer-based constructed-responses from NYSED's 3-8 ELA and Mathematics test development contractor and prepare all computer-based student responses for rescoring. The proposal should demonstrate the bidder's capacity to handle the volume of student data involved in this project, and the capacity for the secure electronic transfer of student constructed responses. The proposal should describe the bidder's capacity to receive, store, and securely process images of computer-based student responses from NYSED's 3-8 ELA and Mathematics test development contractor for rescoring.

**C: Reports (Maximum 10 Points)**

**C-1: Reports for Computer-Based Scoring Consortium (5 Points)**

The technical proposal should provide details of the bidder's ability to prepare and send (within four months of the receipt of student responses from NYSED's 3-8 ELA and Mathematics test development contractor) a scoring consortium audit report of the local rescoring results to each computer-based scoring consortium leader that was included in the audit. The report should include:

- the number of student responses scored by each scoring consortium that were scored through the auditing process
- the score point range for each question
- percentages of exact and adjacent agreement between the local scores and the audit scores, and
- each scoring consortium's mean raw scores for each question based on local scoring and audit scoring

**C-2: Audit Data Analysis: Technical Report (5 Points)**

The technical proposal should provide details of the bidder's ability to prepare and send to NYSED (within five months of the receipt of student responses from NYSED's 3-8 ELA and Mathematics test development contractor) a statewide electronic technical report of the rescoring audit and what data files the report will contain. The data files should include local scoring consortium scores and the rescores for each item and each student, linked by unique State student ID. See the [Data Analysis: Technical Report](#) section of this RFP for contract requirements.

The technical proposal should also detail the formats of the scoring consortium audit reports as well as statewide technical report summarizing the audit results for each exam rescored and should include a plan that allows for collaboration with, and review by, NYSED at each stage. The technical report should include at minimum, the following multiple analyses to assess the reliability of the scoring:

- item mean difference and standard deviations;
- inter-rater agreement;

- intra-class correlation;
- weighted kappa;
- total score correlation;
- scoring model disaggregation; and
- absolute difference analysis by consortium.

[Attachment 3: Table of Contents for Each Technical Report for Rescoring](#) illustrates a suggested outline for the Technical Report.

**D: [Appropriateness of Security Measures](#)**

**(Maximum 10 Points)**

The technical proposal should describe the bidder's software and hardware capabilities and the organization's ability to receive and transmit data files and other information electronically via a secure, password protected portal (SFTP).

The technical proposal should include a security plan that describes procedures for handling secure tests and student data, in accordance with the protocols set forth in this RFP and [Attachment 1: Security Guidelines for the New York State Assessment Program](#), in [6.\) Attachments](#) of this RFP, [Appendix R: Data Security and Privacy Plan Provisions](#), and [Appendix S: Parents' Bill of Rights for Data Privacy and Security](#). The security plan should specifically address confidentiality, where the activities described in this RFP will occur and how test materials and student data will remain secure at all times when receiving, storing, and processing student responses.

The proposal should describe how the bidder will use encrypted files and design, host, and maintain a secure file transfer protocol (SFTP) site as a means of file transfer. The plan should include how any secure data will be purged at the end of the contract term and should also include a data disaster recovery plan.

**E. [Organizational Capacity](#)**

**(Maximum 15 Points)**

The proposal should provide detailed and sufficient information describing the quality of the bidder's experience and how project staffing and organizational arrangements are commensurate with the project's scope of work as described in [1.\) Description of Services to be Performed](#).

**E-1: Staffing Plan and Organizational Arrangements**

**(5 Points)**

The proposal should include a short narrative description of the bidder's organization, including organizational charts illustrating how project staffing and organizational arrangements are commensurate with the project's scope. The organizational diagram should include the titles of all proposed key staff.

The proposal should include a detailed staffing plan that includes the names, qualifications, and responsibilities, of key staff members. For each key staff member associated with this project, the staffing plan should include a resume describing the individual's background and experience, as well as the individual's ability and experience in conducting the proposed activities.

The staffing plan should provide a clear demonstration that there is a sufficient number of people of the requisite skills assigned to the project to complete the project work as described in this RFP.

The staffing plan should include any subcontractors proposed for this RFP, a description of the services provided by the subcontractor(s), their location, and the percentage of work performed by the subcontractor('s).

**E-2: Quality of Bidder's Experience**

**(5 Points)**

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

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

**E-3: [Project Manager](#)**

**(5 Points)**

The staffing plan should include the name of a project manager who will be the central point of contact with NYSED for the duration of this contract. Proposals should include the project manager's current resume that outlines experience and expertise that are congruent with all aspects of the project manager's responsibilities and skills listed in the [Project Manager and Responsibilities](#) section of this RFP.

The staffing plan should demonstrate that the individual identified as a project manager has sufficient authority and experience across departments within the organization, in order to ensure that the work outlined in the contract has the necessary priority to be completed with the highest quality and on time.

It is preferred that the project manager possess the following:

- a minimum of a bachelor's degree;
- a project management certification through the Project Management Institute (PMI) as a Project Management Professional (PMP), or other recognized program management certification (evidence of the certification should be included).

The project manager should have at least three years' experience managing large-scale assessment projects from conception through completion, following industry-recognized project-management methodology.

**Cost Proposal**

**Cost Proposal**

**(30 Points)**

## RFP #19-003

The original plus two (2) copies of the completed Cost Proposal must be mailed in a separate envelope labeled **RFP #19-003-Cost Proposal-Do Not Open** and must include the following:

- 1.) Bid Form Cost Proposal
- 2.) Five (5) Year Budget Summary, **Signature Required**
- 3.) Subcontracting Form
- 4.) M/WBE Purchases Form

Budgets must be submitted using whole dollar numbers.

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

### **M/WBE Documents**

The original plus one (1) copy of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #19-003-M/WBE Documents-Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

#### **Full Participation-No Request for Waiver**

1. M/WBE Cover Letter, **Signatures Required**
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**

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

#### **No Participation-Request for Complete Waiver**

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

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

An evaluation committee will complete a review of all proposals submitted. The committee will review each proposal based upon the submitted proposal and the requirements of the RFP only. Bidders should not assume that committee review members will be familiar with the current program or have any previous experience with the bidder. Appropriate description should be included to inform review committee members about the bidder’s qualifications and capacity to perform all required deliverables.

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.

#### Technical Criteria

#### Technical Criteria (70 Points)

Technical Score Evaluation	Points
A. Appropriateness of Work Plan	10
B. Audit Rescoring Processes	25
C. Reports	10
D. Appropriateness of Security Measures	10
E. Organizational Capacity	15
<b>Technical Evaluation Total Points</b>	<b>70</b>

#### Financial Criteria

#### Financial Criteria (30 Points)

Cost Evaluation	Points
Five (5) Year Budget Summary	30

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

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

### Method of Award

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

The contract issued pursuant to this proposal will be awarded to the contractor 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 contractor 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 contractor in that group of highest aggregate scores whose budget component reflects the lowest overall cost.

### NYSED's Reservation of Rights

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

### **Post Selection Procedures**

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

### **Debriefing Procedures**

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

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

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

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

### **Contract Award Protest Procedures**

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

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

NYS Education Department

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

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

### **Vendor Responsibility**

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

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

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

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

### **Subcontractors**

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

- the subcontractor is known at the time of the contract award;

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

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

### **Procurement Lobbying Law**

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

Designated Contacts for NYSED  
Program Office – **Carolyn Trombe**  
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](#) is available on OSC’s website.

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

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

Form B is available on OSC's website.

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

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

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

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

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

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

(ii) officers and employees of statewide elected officials;

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

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

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

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

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

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

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

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

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

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

### **PROOF OF COVERAGE REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.) Assurances

The State of New York Agreement, Appendix A – Standard Clause for all New York State Contracts, and Appendix A-1 – Agency-Specific Clauses, Appendix R - Data Security and Privacy Plan Provisions, Appendix S - Parents’ Bill of Rights for Data Privacy and Security, and Appendix S-1 - Attachment to Parents’ Bill of Rights for Contracts Involving Disclosure of Certain Personally Identifiable Information **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. Iran Divestment Act Certification
7. Sexual Harassment Policy 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 exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given

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

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

### III. Terminations

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

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

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

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

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

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

### IV. Indemnification

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

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

### V. Property

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

### VI. Safeguards for Services and Confidentiality

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

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

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

## Appendix A : STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

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

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

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

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and

document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

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

Development for a current list of jurisdictions subject to this provision.

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

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

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

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

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

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any

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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)

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

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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. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents, web-based information and applications are accessible to persons with disabilities. All delivered documentation and

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applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before documents and applications will be considered a qualified deliverable under the contract or procurement.

- C. 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.
- D. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- E. 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.
- F. 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.
- G. No fees shall be charged by the Contractor for training provided under this agreement.
- H. Partisan Political Activity and Lobbying. 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.
- I. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- J. 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

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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

By fax: Attn: Consultant Reporting  
(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 503 W EB  
Albany, NY 12234

By fax: (518) 408-1716

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

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

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

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9. Appendix S – Parents’ Bill of Rights for Data Privacy and Security (where applicable)
10. Appendix S-1 - Attachment to Parents’ Bill of Rights (where applicable)
11. Appendix D - Program Work Plan

Revised 6/12/17

## APPENDIX R: DATA SECURITY AND PRIVACY PLAN PROVISIONS

1. The individually identifiable data provided to or stored by the Contractor pursuant to this agreement (the "Data") are sensitive, requiring appropriate levels of security to prevent unauthorized disclosure or modification. The Contractor shall take all reasonable measures to protect the confidentiality of the Data as required by federal and state laws and regulations applicable to the Contractor. These may include but are not limited to the New York State Social Services Law, Personal Privacy Protection Law and Education Law §2-d; the federal Social Security Act and Family Educational Rights and Privacy Act; internet security laws; and any regulations promulgated thereunder.

2. The Contractor has full and final responsibility for the security of the Data. The Contractor agrees to implement reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of the Data. Such security measures may be reviewed by the State, both through an informal audit of policies and procedures and/or through inspection of security methods used within the Contractor's infrastructure, storage, and other physical security. The Contractor should review its implementation and maintenance of its security review periodically to protect the data in strict compliance with statutory and regulatory requirements.

3. The Contractor's security measures must also include:

a. Provision that access to the Data is restricted solely to staff who need such access to carry out the responsibilities of the Contractor under this agreement, and that such staff will not release such Data to any unauthorized party;

b. All confidential Data are stored on computer and storage facilities maintained within Contractor's computer networks, behind appropriate firewalls;

c. Access to computer applications and Data are managed through appropriate userID/password procedures;

d. Contractor's computer network storing the Data is scanned for inappropriate access through an intrusion detection system. NYSED has the right to perform a site visit to review the vendor's security practices if NYSED feels it is necessary;

e. That Contractor has a disaster recovery plan that is acceptable to the State;

f. Satisfactory redundant and uninterruptible power and fiber infrastructure provisions; and

g. A copy of the Contractor's security review evidencing compliance with these requirements must be submitted to NYSED for review and approval within 6 months of the signing of the contract or before the first certification test is performed, whichever occurs first.

4. The Data must be returned to NYSED upon termination or expiration of this Agreement, or at such point that the Data are no longer needed for the purpose referenced in this Agreement, or, at the sole discretion of NYSED, securely destroyed. All hard copies of personally identifiable Data in the possession of the Contractor must be securely destroyed, and all electronic Data must be purged from the network in a manner that does not permit retrieval of the data. The contractor is specifically prohibited from commingling any data from outside sources into the Data received from NYSED, except as specifically authorized by NYSED.

5. If personally identifiable data of students, teachers or building principals will be disclosed to the Contractor by NYSED for purposes of the Contractor providing services to NYSED, the Contractor must comply with the following requirements of Education Law §2-d (Chapter 56, Subpart L of the Laws of 2014) and any implementing regulations:

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- a. Any officers or employees of the third-party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access;
- b. limits internal access to education records to those individuals that are determined to have legitimate educational interests;
- c. not use the education records for any other purposes than those explicitly authorized in its contract;
- d. except for authorized representatives of the third-party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:
  - (i) without the prior written consent of the parent or eligible student; or
  - (ii) unless required by statute or court order and the party provides a notice of the disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
- e. maintains reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody; and
- f. uses encryption technology consistent with Education Law §2-d and any implementing regulations.

6. If requested by NYSED to make any disclosure of aggregated data using the Data provided to or stored by the Contractor, Contractor must ensure that the disclosed aggregated data cannot reasonably be used to identify a particular individual. Aggregated data will be considered identifiable if the disclosure has less than five (5) data elements per cell or the data elements per cell comprise 100% of the subject population.

7. Contractor agrees that all Data shall remain at all times the property of the State and may not be used for any purpose other than the purpose outlined in this Agreement without the express written permission of NYSED. The Contractor has no ownership of or licensing rights to the Data except as provided in this Agreement, and Contractor specifically agrees that it will not sell, give or otherwise transfer the Data to any third party without NYSED's express prior approval.

8. The Contractor must ensure that these confidentiality and security provisions apply to any subcontractor engaged by the Contractor for the work under this agreement. The Contractor shall take full responsibility for the acts and omissions of its subcontractors, and the use of subcontractors shall not impair the rights of NYSED against the Contractor in accordance with this Agreement.

9. Hardware, software and services acquired by the Contractor under this Agreement may not be used for other activities beyond those described in the scope of the contract unless authorized in advance by NYSED.

10. Security of Location - Server room will remain a restricted access, locked room with access via security cards. The list of staff with access to the server room will continue to be reviewed quarterly against the number of times each staff actually gained access to the server room.

11. Breach Notification.

a. Contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement with an educational agency shall be required to notify such educational agency of any breach of security resulting in an unauthorized release of such data in accordance with Education Law §2-d and any implementing regulations. Upon such notification, the educational agency shall take appropriate action in accordance with Education Law §2-d and any implementing regulations.

b. In the event that the State is required, pursuant to Education Law §2-d(6)(b), to notify one or more parent, eligible student, teacher or principal of an unauthorized release of student data by the Contractor or its assignee, the Contractor shall promptly reimburse the State for the full cost of such notification.

c. Contractor acknowledges that it may be subject to penalties under Education Law §§2-d (6) and 2-d(7) for unauthorized disclosure of personally identifiable student, teacher or principal data.

d. Contractor agrees that it will cooperate and promptly comply with any inquiries from the State based upon the State's receipt of a complaint or other information indicating that an improper or unauthorized disclosure of personally identifiable information may have occurred. Contractor will permit on-site examination and inspection and will provide at its own cost necessary documentation or testimony of any employee, representative or assignee of Contractor relating to the alleged improper disclosure of data.

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

*New York State Personal Privacy Laws (PPPL)*: 21 NYCRR Chapter XXV and 19 NYCRR Part 81  
*SED-specific PPPL regulations*: 8 NYCRR Part 187

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

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

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

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

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

Parents’ rights under FERPA include:

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The student’s name;
- (b) The name of the student’s parent or other family members;
- (c) The address of the student or student’s family;
- (d) A personal identifier, such as the student’s social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student’s date of birth, place of birth, and Mother’s Maiden Name<sup>3</sup>;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

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

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

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

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

- (A) A student’s PII cannot be sold or released by the educational agency for any commercial or marketing purposes.

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

- PII may be used for purposes of a contract that provides payment to a vendor for providing services to an educational agency as permitted by law.
  - However, sale of PII to a third party solely for commercial purposes or receipt of payment by an educational agency, or disclosure of PII that is not related to a service being provided to the educational agency, is strictly prohibited.
- (B) Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by an educational agency.
- This right of inspection is consistent with the requirements of FERPA. In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student's educational record.
  - NYSED will develop policies for annual notification by educational agencies to parents regarding the right to request student data. Such policies will specify a reasonable time for the educational agency to comply with such requests.
  - The policies will also require security measures when providing student data to parents, to ensure that only authorized individuals receive such data. A parent may be asked for information or verifications reasonably necessary to ensure that he or she is in fact the student's parent and is authorized to receive such information pursuant to law.
- (C) State and federal laws protect the confidentiality of PII, and safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.

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

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

Washington Avenue, Albany NY 12234, email to CPO@mail.nysed.gov. The complaint process is under development and will be established through regulations to be proposed by NYSED's Chief Privacy Officer, who has not yet been appointed.

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

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

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

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

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

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

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

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

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

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

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

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

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

any student data, or teacher or principal APPR data, from an educational agency for a fixed period up to five years.

**8. Data Security and Privacy Standards**

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

**9. No Private Right of Action**

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

**APPENDIX S-1**  
**Attachment to Parents' Bill of Rights**  
**For Contracts Involving Disclosure of Certain Personally Identifiable Information**

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

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

Disclosure of Student Data       Disclosure of APPR Data

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

*Student Data will be provided to the Contractor for the purpose of conducting a scoring audit.*

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

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

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

***In the event the Contractor engages a Subcontractor or otherwise shares Student Data or APPR Data with any other entity, Contractor acknowledges and agrees that before any such data is shared with a Contractor or another entity, such party must agree in writing to be bound by the confidentiality and data protection provisions set forth in this Contract including, but not limited to, the "Data Security and Privacy Plan" set forth in Appendix R. Upon termination of the agreement between the Contractor and a Subcontractor or other entity, Contractor acknowledges and agrees that it is responsible for ensuring that all Student Data or APPR Data shared by the Contractor must be returned to Contractor or otherwise destroyed as provided in Paragraph 4 of the "Data Security and Privacy Plan" set forth in Appendix R.***

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

Contract expiration date: **February 24, 2024**

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

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

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

Student Data

APPR Data

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

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

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

## 6.) Attachments

### Attachment 1: Security Guidelines for the New York State Assessment Program

1. Staff of NYSED and of contractors working with the Office of State Assessment who are responsible for transporting, receiving, or handling secure test materials or confidential data, distributing such materials to consultants, work groups, and committees, and/or coordinating and overseeing related activities with consultants must be provided appropriate guidance to convey the importance of maintaining the security of materials.
2. Secure test materials and data must either be under the direct physical control of authorized NYSED personnel or their designated consultants or contractor personnel or in a secure storage area, which is inaccessible to other than authorized staff, always. Materials may never be left at a vacant desk, in an unattended conference room, or in an unattended hotel conference room.
3. Contractors must discuss with their NYSED contact person and receive prior approval of arrangements for delivery and storage of secure materials to locations other than NYSED or the contractor's place of business.
4. Contractors must plan for the secure destruction of any secure materials used during the contract process of which they wish to dispose.
5. The contractor's security procedures will include shipment of all tests in NYSED's locked boxes. The locked containers will be provided to the contractor by NYSED. When shipping of all non-secure test materials, the contractor must use a carrier with ground-tracking capability, to test centers and to NYSED, whenever shipment of printed materials is necessary. The contractor may not utilize electronic transfer to ship individual student information or any secure test materials, unless as authorized by NYSED on a case-by-case basis. Electronic transfer includes transfer via e-mail, Internet, or facsimile (FAX).
6. Secure materials may never be emailed or faxed. If there appears to be a compelling reason to do so, prior approval must be obtained in writing from the NYSED Office of State Assessment.
7. The contractor will host and maintain a secure file transfer protocol (SFTP) site as a means of file transfer. Access to the New York State test information on the site must be limited to the contractor and NYSED unless further sharing with other parties is authorized in writing by NYSED.
8. Photocopying of secure or confidential material must be undertaken with care. Paper jams may result in paper containing secure or confidential materials being lodged in the copier and later discovered by another user. Extreme caution must be used. The contractor's plan for photocopying must be approved by NYSED.
9. The contractor will require all staff and consultants who review secure materials, including but not limited to secure test questions, scoring materials, and related materials that reference secure test questions, or confidential data, must sign a Non-Disclosure Agreement (NDA) to be provided by NYSED. The contractor must retain the signed forms for at least one year beyond the end date of the contract, and promptly submit the signed forms to NYSED upon request.

Attachment 2: Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT
New York State Education Department
Office of State Assessment

Name: \_\_\_\_\_
Title: \_\_\_\_\_
Organization: \_\_\_\_\_
Examination Title(s): \_\_\_\_\_
Type of work to be performed: \_\_\_\_\_
Date(s) of work to be performed: \_\_\_\_\_

The purpose of all New York State assessments is to provide a fair and equitable assessment system that reliably measures the State learning standards. The expert opinions of consultants, educational organizations, and test development companies are vital to guiding our continuing efforts to develop fair, valid, and reliable State assessments that measure what each student knows and can do. Because you will have access to secure and/or confidential materials as part of your participation in the test development process, you also have the responsibility to assist the Office of State Assessment (OSA) in ensuring the security and confidentiality of these materials. Therefore, by signing this agreement, you agree to abide by the following security restrictions and ownership provisions. Please retain a copy of this non-disclosure agreement for your records.

Secure and Confidential Information

I acknowledge that information provided by OSA or developed by me or my organization related to the work described above includes secure and confidential information that is the property of the New York State Education Department ("Department"). I acknowledge that such secure and confidential information includes many items, including but not limited to the following information types:

- a) all oral or written information in draft or final form relating to the development, review and/or scoring of a New York State Assessment, including operational tests, field tests, and pretests;
b) all test items or test forms, whether in draft or final form, prior to public release by the Department;
c) all test data and statistical analyses, whether provided to me by OSA or developed by me or my organization, prior to public release by the Department;
d) any reports, prior to public release by the Department;
e) the results of any analyses or studies, whether provided to me by OSA or developed by me or my organization, prior to public release by the Department;
f) any individual student data or information; and
g) any other confidential information that has not been made available to the general public by the Department.

\*\*\*\*\*

By signing this agreement, I agree to maintain and honor the security of test materials, test data, and confidential student information and to abide by the following security restrictions:

- 1) I agree not to disclose any secure or confidential materials, including test questions, test data, individual student information, or technical reports, whether in draft or final form, to anyone other than OSA staff or other person(s) participating in the work described above, unless specifically authorized to do so by OSA. I also agree not to disclose such materials to any Department staff other than OSA staff without the prior permission of OSA.

- 2) If I am responsible for supervising other staff or subcontractors, I agree to limit the access and use of secure and confidential materials to only those individuals who have a legitimate need to access such materials in order to perform the work described above.
- 3) I agree to provide appropriate training, guidance, and oversight to any staff or subcontractors under my supervision who may work with secure or confidential materials in order to maintain the security of such materials.
- 4) I agree to follow all guidelines and instructions provided by OSA regarding the transfer of the secure and confidential materials in my possession. Such transfer may include secure electronic transfer using encrypted files, shipment of materials using a carrier with ground tracking capabilities, and/or the use of locked boxes when shipping. At no time will I transfer or store any secure and confidential materials in a location other a secure area within my organization's facility without the authorization of OSA.
- 5) Upon completion of the work described above, I agree to securely store, destroy, or return all secure and confidential materials provided to or prepared by me, including all copies thereof and all notes prepared by me, in accordance with the instructions given to me by OSA.
- 6) I understand that secure and confidential materials are not to be copied or duplicated in any way, shared with or discussed with anyone other than OSA staff or other person(s) participating in the work described above, unless specifically authorized to do so by OSA.
- 7) I agree to immediately report to OSA if I learn of or suspect any potential misuse of secure and confidential information.

**Ownership and Return of Secure Test Materials and Test Data**

All secure test materials and test data are the property of the Department, including all materials prepared by me in the course of my participation in the work described above. All such materials prepared by me are being commissioned by the Department and shall be works made for hire as defined by the United States Copyright Law. In the event that such materials prepared by me are deemed not to be works made for hire, I hereby assign to the Department any and all right, title and interest I may have, including but not limited to any copyright, in the work commissioned by the Department.

I, \_\_\_\_\_, have read the non-disclosure agreement above and agree to abide by the security restrictions and ownership provisions described herein.

Please Print:      Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: (\_\_\_\_\_) \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Attachment 3: Sample Table of Contents for Each Technical Report for Rescoring**

- I. Purpose and Scope of Audit
  - Purpose
  - Scope
- II. Selection of School Sample and Test Booklets
  - Audit Samples
  - ELA Samples and Participation
  - Mathematics Samples and Participation
- III. Selection and Training of Raters
  - Description of How the Raters Were Selected
  - Training of Raters
  - Quality-Control Procedures
- IV. Audit Procedures
  - Description of the Audit Procedures
- V. Data Analysis
  - Item Means
  - Intra-Class Correlation
  - Weighted Kappa
  - Score Difference Distributions
  - Total Score Statistics
- VI. Results
  - Item Means Results for ELA
  - Mean Results for Mathematics
  - Percentage Agreement Results for ELA
  - Percentage Agreement Results for Mathematics
  - Intra-Class Correlation Results for ELA
  - Intra-Class Correlation Results for Mathematics
  - Weighted Kappa Results for ELA
  - Weighted Kappa Results for Mathematics
  - Score Difference Distributions Results for ELA
  - Score Difference Distributions Results for Mathematics
  - Total Score Results for ELA
  - Total Score Results for Mathematics
- VII. Additional Analyses
- VIII. Summary

Attachment 4: Sample Scoring Consortium Audit Report



Scoring Consortium Code: XXXXXXXXXXXXX

Scoring Consortium Name: Sample Scoring Consortium A

Grade: 3

New York State Grades 3-8 Testing Program  
 English Language Arts Audit Report  
 Administration Date: May 20XX

Question #	N Count	Score Points	Percentages (%) of Agreement between Audit and Local Scores (Local Score Minus Audit Score)									Consortium Mean Raw Score	
			Non-Adjacent* (-4)	Non-Adjacent* (-3)	Non-Adjacent* (-2)	Adjacent** (-1)	Exact Agreement*** (0)	Adjacent** (+1)	Non-Adjacent* (+2)	Non-Adjacent* (+3)	Non-Adjacent* (+4)	Local Score	Audit Score
41	72	0 - 2	NA	NA	0.0	5.6	93.1	1.4	0.0	NA	NA	1.8	1.8
42	72	0 - 2	NA	NA	0.0	4.2	91.7	2.8	1.4	NA	NA	1.9	1.9
43	72	0 - 2	NA	NA	0.0	5.6	79.2	15.3	0.0	NA	NA	1.7	1.6
47	72	0 - 2	NA	NA	0.0	0.0	100.0	0.0	0.0	NA	NA	2.0	2.0
48	72	0 - 2	NA	NA	0.0	1.4	97.2	1.4	0.0	NA	NA	1.9	1.9
49	72	0 - 2	NA	NA	0.0	5.6	91.7	2.8	0.0	NA	NA	1.9	1.9
50	72	0 - 2	NA	NA	0.0	9.7	86.1	2.8	1.4	NA	NA	1.6	1.6
51	72	0 - 4	0	0	1.4	22.2	58.3	18.1	0.0	0	0	2.0	2.1

**Notes:**

**N Count:** Number of student responses scored by your scoring consortium that were scored through the auditing process

**Score Points:** Score range of each question

**\*\*\*Exact Agreement:** Percentage of exact score match between local scores and audit scores

**\*\*Adjacent:** Percentage of local scores differed from audit scores by one point. -1 means local scores are one point lower than audit scores; +1 means local scores are one point higher than audit scores.

**\*Non-Adjacent:** Percentage of local scores differed from audit scores by two or more points. -2, -3, and -4 means local scores are two, three, or four points lower than the audit scores. +2, +3, and +4 means local scores are two, three, or four points higher than audit scores.

**Consortium Mean Raw Score:** These two columns report your scoring consortium's mean raw scores for each question based on local scoring and audit scoring respectively.