

## REQUEST FOR PROPOSAL (RFP)

### RFP Proposal #20-014

#### NEW YORK STATE EDUCATION DEPARTMENT

##### **Title: Regional Bilingual Education Resource Network (RBERN)**

The New York State Education Department (NYSED) Office of Bilingual Education and World Languages (OBEWL) is seeking proposals to operate eight (8) **Regional Bilingual Education Resource Network (RBERN)** technical assistance support centers in the State, which will include seven (7) regional RBERN technical assistance support centers and one (1) Statewide Language RBERN. As a network, the RBERN will work in partnership with OBEWL staff to provide technical assistance and professional development to schools and districts in order to improve instructional practices and educational outcomes of students who are Multilingual Learners/English Language Learners (MLLs/ELLs).

Eligible bidders include Boards of Cooperative Educational Services (BOCES) and Institutions of Higher Education (IHEs). Bidders must be located in the RBERN region for which they are bidding. The Statewide Language RBERN may be located in any region of New York State (see Attachment A for a list of regions). Each RBERN regional technical assistance support center will be known as The NYSED (Region) RBERN at (Name of BOCES/IHE). The Statewide Language RBERN will be known as The NYSED Statewide Language RBERN at (Name of BOCES/IHE).

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

NYSED will award eight (8) contracts as a result of this RFP. Seven (7) contracts will be regional awards in the following Joint Management Team (JMT) regions of New York State (see Attachment A at the end of the RFP): West, Mid-West, Mid-State, Hudson Valley, Capital District, Long Island, and New York City. NYSED will award one (1) Statewide Language RBERN contract, which may be located in any region of New York State. Eligible bidders can only bid for one (1) region but may bid on both a regional award and the Statewide Language award but must submit separate proposals. Each contract resulting from this RFP will be for a term anticipated to begin on **July 1, 2020** and end on **June 30, 2025**.

Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprise (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.

**Components contained in RFP Proposal #20-014 are as follows:**

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

Questions regarding this RFP may be submitted to [RBERNRFP@nysed.gov](mailto:RBERNRFP@nysed.gov) by December 5, 2019. Questions should be identified as Program, Fiscal, or M/WBE. A Questions and Answers Summary will be posted no later than December 19, 2019 at:

<http://www.p12.nysed.gov/compcontracts/compcontracts.html>. The following are the designated contacts for this procurement:

**Program Matters**

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The following documents must be submitted in separately sealed envelopes, as detailed in the Submission section of the RFP, and be received at NYSED no later than **January 16, 2020 by 3:00 PM**:

1. Submission Documents labeled **Submission Documents – RFP #20-014 – Do Not Open**
2. Technical Proposal labeled **Technical Proposal – RFP #20-014 – Do Not Open**
3. Cost Proposal labeled **Cost Proposal – RFP #20-014 – Do Not Open**
4. M/WBE Documents labeled **M/WBE Documents – RFP #20-014 – Do Not Open**
5. CD or flash drive containing the technical, cost, submission, and M/WBE proposals submitted using Microsoft Word. Place in a separate envelope labeled **CD or flash drive – RFP #20-014 – Do Not Open**.

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Thomas McBride, RFP #20-014  
Contract Administration Unit  
89 Washington Avenue, Room 501W EB  
Albany, NY 12234

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

**Each proposal should be clearly labeled with the name of the region and type of RBERN (Regional RBERN or Statewide Language RBERN). Bidders seeking both a Regional RBERN and the Statewide Language RBERN must submit separate proposals. For labeling purposes, please refer to the Services Areas table under the RBERN Service Regions section of this RFP for a list.**

## 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.

### **Mandatory Requirements**

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

1. The Technical Assistance Center (TAC) Certification Form (found in the Submission Documents attached separately) must be signed and submitted with the proposal.
2. Bidders for each RBERN must be located in the region of the State they will serve through this project. (Bidders for the Statewide Language RBERN may be located in any region of the State.) Eligible bidders may only bid for one regional technical assistance support center but may bid on both a regional award and the statewide award.

### **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 10% for M/WBE participation, 5% for Minority-Owned Business Enterprises (“MBE”) participation and 5% 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**

New York State's strategy for raising standards involves all children, including Multilingual Learners/English Language Learners (MLLs/ELLs) in bilingual and English as a New Language (ENL) programs; their bilingual, monolingual, ENL and content area teachers; as well as district and school administrative staff; parents; our communities; Institutions of Higher Education (IHEs); and other non-profit community-based organizations. The success of MLLs/ELLs in meeting the higher standards will require changes in bilingual, ENL and other classroom practices; intensive and targeted professional development provided to teachers and administrators; and additional resources or redirection of those resources currently available. This also entails working in collaboration with other State-supported regional and statewide support networks, including those involved in school improvement, literacy, special education, etc. Success in building the capacity of the system to address the needs of MLLs/ELLs will require a concerted and focused effort at the federal, state, and local levels. While many of these collaborations are already in progress in promoting higher expectations for all MLLs/ELLs, still more remains to be done.

The New York State Commissioner's Regulations Part 154 (C.R. Part 154) and the federal *Every Student Succeeds Act (ESSA)* place major emphases on helping children who are MLLs/ELLs, including immigrant children and youth, to attain English proficiency and develop high levels of academic achievement in the same challenging State academic content and student academic achievement standards that all children are expected to meet. Both C.R. Part 154 and ESSA Title III Part A also emphasize teacher quality as a factor in improving student achievement.

The number of MLLs/ELLs in New York State schools continues to grow with an increasing number of districts reporting MLLs/ELLs each year. C.R. Part 154 defines English Language Learners (which is used interchangeably in New York State with Multilingual Learners) as those coming from homes where a language other than English is spoken, and who score below a state designated level of proficiency on the New York State Identification Test for English Language Learners (NYSITELL) and have not tested out of that status on the annual New York State English as a Second Language Achievement Test (NYSESLAT). For the 2017-18 school year, approximately 9% (243,323) of NYS enrolled students were identified as MLLs/ELLs. In total, these MLLs/ELLs represent some 200 languages, with nearly 90 percent represented in the top 10 languages and 84 percent represented in the top five languages. See table below.

**MLL/ELL Home Languages 2017-2018**

<b>LANGUAGE</b>	<b>NUMBER OF MLLs/ELLs in NYS</b>	<b>Percentage of Total MLLs/ELLs</b>
Spanish	171,943	64.91%
Chinese	23,702	8.95%
Arabic	14,925	5.63%
Bengali	7,341	2.77%
Russian	4,659	1.76%
Haitian Creole	4,463	1.68%
Urdu	4,307	1.63%
French	2,751	1.04%
Karen	1,961	0.74%
Uzbek	1,724	0.65%
<b>Top 10 Total:</b>	<b>237,776</b>	<b>89.76%</b>
<b>All Languages:</b>	<b>264,913</b>	<b>100.00%</b>

**Purpose**

The goal of the RBERN is to help each district and school create for MLLs/ELLs an educational environment that engages everyone in meaningful teaching and learning, respects diversity, provides opportunities for all children to achieve at the highest levels, and enables them to become proficient in the English language while capitalizing on their strengths in terms of their native language and heritage.

The RBERN network is also NYSED's main program initiative for the provision of professional development, in-service training, information dissemination, and technical assistance in areas related to MLL/ELL education for parents and service providers, focusing particularly on the following areas:

- Reducing dropout rates/increasing graduation rates
- Student Identification/Placement
- Leadership
- Coordination of Resources
- Quality Programs
- Quality Instruction
- Improving Educational Opportunities for MLLs/ELLs such as Career and Technical Education
- Assessment/School Planning
- Staff Qualifications
- Professional Development
- Parent and Family Involvement
- Support Services

The primary work of the RBERN technical assistance providers funded through this RFP will be to bring research-based practices in the areas identified above to New York State public schools and districts, including Charter schools, and nonpublic schools that have been identified by OBEWL as at risk of, or needing, assistance or intervention to improve results for MLLs/ELLs.

The RBERN technical assistance support centers will also be part of the State system and network for providing technical assistance and support to close the gap in MLLs'/ELLs' performance in identified districts and schools. Such technical assistance may take the form of videoconferencing, conference calls, listservs, e-mails, and professional development events that include staff as presenters, etc. The RBERNs will align their goals and activities to support NYSED in implementing:

- New York State Strategies for Raising Standards;
- Strategies to provide intensive English Language instruction to MLLs/ELLs;
- ESSA Title III: Language Instruction for MLLs/ELLs and Immigrant Children;
- Commissioner's Regulations Part 154
- The Blueprint for ELL/MLL Success
- Bilingual Progressions
- Culturally Responsive-Sustaining (CR-S) Framework
- MLLs/ELLs Parents Initiative

See the [Office of Bilingual Education and World Languages](#) (OBEWL) website for additional information.

### **Deliverables/Project Overview**

Bidders must devote their time and resources to each of the following two areas:

- A. Provide Technical Assistance and Professional Development on the implementation of the following:
- the [Blueprint for ELL/MLL Success](#);
  - Commissioner's Regulations (C.R.) Part 154 – Amended 2014
  - Title III Part A: Language Instruction for MLLs/ELLs and Immigrant Students of the ESSA;
  - PD/technical assistance on all topics related to quality instruction of MLLs/ELLs, including best practices for teaching and administration of bilingual and ENL programs, MLL/ELL assessment and accountability, the Bilingual Progressions, and statewide collaborations and regional activities to engage parents and communities of MLLs/ELLs in the education of their children;
  - Other required activities: Statewide collaborations and regional activities and projects, such as the Puerto Rican/Hispanic Youth Leadership Institute (PR/HYLI), research, supporting schools in awarding the New York State Seal of Biliteracy, Culturally Responsive-Sustaining Education Initiative, and other projects identified by the Commissioner to further the MLL/ELL students' agenda statewide.
- B. Work with targeted schools and districts either in small groups or individually with teachers, administrators, parents, and community members to develop and strengthen best educational and instructional practices for MLLs/ELLs.

Pursuant to the specific services detailed in the RBERN Activities and Functions section of this RFP, each RBERN will:

1. Collaborate with other regional State-funded networks, such as the members of the Office of Special Education Educational Partnership, to achieve the overarching goals of increasing student performance, reducing dropout rates, and increasing graduation rates.

2. Work in collaboration with the Office of Accountability/School Improvement Team at NYSED in implementing the required Differentiated Accountability interventions and plans. Assist districts and schools that have been identified as Comprehensive Support & Improvement (CSI) in completing the Diagnostic Tool for Schools and District Effectiveness (DTSDE) required by the NYS ESSA Waiver. Assist districts and schools that have been identified as Targeted Support & Improvement (TSI) based on their English Language Proficiency Indicator score or on the performance of MLLs/ELLs on the other accountability indicators in completing the MLL/ELL Program Quality Review and Reflective Protocol Toolkit.
3. Ensure that RBERN activities/interventions must be the result of data analysis and must be based in research, where available.
4. Establish a collaborative working relationship with staff at the BOCES, districts and schools (including charter and nonpublic schools), Institutions of Higher Education (IHEs), community-based organizations (CBOs), and communities in the region where they are required to provide services. (For the purposes of this RFP, the Statewide Language RBERN's region is all of NYS.)
5. Conduct an annual "Regional Planning Process" for the purpose of directing RBERN resources to those schools and districts identified by NYSED accountability identifications [Differentiated Accountability System - Improvement, Corrective Action and Restructuring schools; Persistently Lowest-Achieving (PLA) schools; Schools identified for Targeted Support and Improvement and/or Comprehensive Support and Improvement under ESSA, and others that may be implemented during the time of the contracts resulting from this RFP]. See the Regional Planning Process section below for more information.
6. Ensure that positions funded through these contracts are utilized to address State and regional school improvement needs identified in coordination with NYSED and that such resources are not directed locally for any other purposes.
7. Ensure that the resources from each RBERN are directed and made available to all schools and districts anywhere within their respective region, if determined necessary through the Regional Planning Process.
8. Ensure staff participation and support in required training, regional and statewide meetings, Comprehensive ELL Education Plan (CEEP) reviews, DTSDE reviews, coordinated monitoring visits, and workgroup activities or projects that may be required by NYSED OBEWL.
9. Require each of the Resource Specialists on staff to document and monitor the school improvement goals of identified schools in the region, targeted improvement activities, and assessment of progress towards improving student outcomes (e.g., regional improvement plan, quality improvement process plan, individual districts' improvement or corrective action plans, etc.).
10. RBERN Executive Directors are required to meet regularly with representatives from OBEWL. RBERN Directors are required to remotely attend one (1) meeting every month (by conference call and/or webinar) and also to attend in person four (4) two-day meetings in Albany each year (including the staff meetings described below). OBEWL will determine the dates and times for these meetings. Attendance and times for these meetings are mandatory and non-negotiable.
11. All RBERN staff (listed in the Minimum Staffing Guidelines section of this RFP), including the RBERN Executive Directors, are required to attend two (2) two-day network-wide meetings for training, information dissemination, and/or professional development in Albany. The meetings will be held annually in the fall and spring. OBEWL will determine the dates and times for these meetings. Attendance and times for these meetings are mandatory and non-negotiable.
12. All RBERN staff, including RBERN Executive Directors, are required to participate in up to five (5) days of regional school/district monitoring visits in collaboration with NYSED and OBEWL staff.

Attendance and participation in these collaborative monitoring visits are mandatory and non-negotiable.

13. RBERNs will update OBEWL on a regular basis on the professional learning opportunities and resources that they provide to districts and schools within their region in a format chosen by OBEWL.

### **Regional Planning Process**

Each RBERN will conduct an annual Regional Planning Process, which will determine specifically how the resources of the RBERNs will be deployed. This process should include OBEWL, District Superintendents, District ENL/Bilingual Coordinators, ENL/Bilingual Teachers, New York City Department of Education (NYCDOE) staff (for the RBERN in NYC), and/or NYSED technical assistance providers.

This regional planning process will include three primary components:

- *Survey.* Each RBERN will conduct an annual online survey among teachers, administrators, and other staff members in all of the districts in each RBERN service region. In addition to eliciting feedback based on "satisfaction" with technical assistance and support provided, the survey results will also serve to inform the Steering Committee process in identifying training and professional development needs of the region.
- *A Steering Committee process.* Steering committees will be established by each RBERN within the first year of the contract to identify regional training needs (e.g., training for participants from multiple school districts) on topics such as C.R. Part 154 requirements. The steering committee membership will include staff from the OBEWL, the Executive Director of the RBERN or designee, Resource Specialists, and representatives from schools and districts in the area of service. Throughout the contract period, the steering committee will assist in the identification of the training and professional development needs of the region and will develop a procedure for reviewing and approving requests for the services of the RBERN Resource Specialists.
- *A Regional Action Plan process.* RBERNs will develop regional action plans annually, and revise as necessary, to determine which schools and districts in the region will receive focused monitoring reviews and/or targeted technical assistance from the RBERN technical assistance support centers. (The Statewide RBERN will consult with the regional RBERNs to ensure that there will not be duplication of service). These determinations are made based on a review of the number of school districts needing professional development assistance or intervention, or who are at risk of such determinations, and other performance and compliance variables. The regional action plan will outline the work of the RBERN technical assistance support centers to address the needs of identified districts according to state and regional priorities and will indicate the level and type of intervention and support that will be provided to the identified districts.

Please see the RBERN Activities and Functions section below for additional information about activities associated with the regional planning process.

### **RBERN Evaluation**

Each RBERN will be evaluated by the vendor contracted by the Evaluation of Categorical Bilingual Education Programs RFP 19-018 through June 30, 2024. This Evaluation vendor will:

- 1) evaluate each RBERN to ensure that each meets the requirements and quality of the programs outlined in their approved contracts;
- 2) assess the impact of each RBERN in terms of their expected outcomes in meeting the needs of MLLs/ELLs in New York State; and
- 3) report progress and make suggestions/recommendations to improve the quality of the RBERNs.

The vendor selected to evaluate programs pursuant to RFP # 19-018 will address RBERNs' evaluation components, including the effectiveness and impact of the RBERNs on student performance and the evaluation of the quality of the program services in New York State. The Evaluation vendor will design and develop protocols to assess implementation and effectiveness of the RBERNs.

The evaluation of the design and implementation of each RBERN, using some common measures, is necessary to ensure that all MLLs/ELLs are provided with the required services to enable them to attain the New York State Next Generation Learning Standards in English Language Arts and Mathematics. NYSED is interested in learning about the breadth and depth of service delivery and customer satisfaction regarding these services. The Evaluation vendor will develop and implement sets of evaluation protocols (some to be used for all programs and some that are particular to the program being evaluated) that may be used to collect district/school, instructional program, support services, and student data.

In addition to the evaluation by the vendor described above, OBEWL staff will visit each RBERN annually to:

- Review action plans, proceedings from the Steering Committee, and annual survey results;
  - Evaluate staff on work to date;
  - Conduct targeted district/school visits;
  - Meet with area administrators and teachers, as needed;
- (The list above is not intended to be an exhaustive list, and the visit may include other activities related to the programs and services provided by the RBERN.)

To support the evaluation process, each RBERN will, at minimum:

- Have their annual Action Plans reviewed and approved by NYSED staff to ensure that the work of the RBERN is consistent with the requirements for the network;
- Have their RBERN budget reviewed and approved annually by NYSED to ensure that the work of the RBERN is consistent with the requirements for the network;
- Consult monthly with NYSED staff to update and evaluate plans;
- Participate in monthly NYSED scheduled network meetings by teleconference;
- Review with NYSED staff the professional development activities scheduled by the RBERN.

### **Roles of Regional RBERN**

The role of the regional RBERN is to support and enhance the implementation of C.R. Part 154, ESSA Title III Part A, and school improvement initiatives developed in partnership with NYSED and OBEWL staff. The Regional RBERN will provide technical assistance to districts and schools with MLLs/ELLs in its service region, consistent with the requirements in this RFP. The regional RBERN will collaborate

with other regional State-funded networks to conduct causal analyses of the State's low performing schools with MLLs/ELLs; it will design and implement appropriate interventions. These networks include, but are not limited to, members of the Office of Special Education Educational Partnership, other RBERN technical assistance support centers, Regional Adult Education Centers (RAEN), and other networks as appropriate. Each regional RBERN will participate in workgroups every other month, remotely, as established by OBEWL staff, including workgroups to develop, review, and revise resource guides or conduct research as directed.

The regional RBERN technical assistance support centers will support staff members according to the "Minimum Staffing Guidelines" section of the RFP. The Resource Specialists are to work specifically with school improvement initiatives in the RBERN centers' respective regions.

### **Roles of the Statewide Language RBERN**

The Statewide Language RBERN will provide technical assistance, disseminate information, and conduct professional development to support and strengthen the teaching and learning of languages across the State, including research-based instructional practices, curriculum and program design, program evaluation, and assessments. The Statewide Language RBERN employs current, research-based and/or research-validated teaching/learning practices and language acquisition theories and processes. It will also have staff on hand who are functionally literate in the top five (5) languages spoken in the State and who are familiar with the communities they serve. The Statewide Language RBERN will provide leadership and training to regional RBERN technical assistance support centers, schools, and districts. The Statewide Language RBERN will also create a telephone hotline to provide parents or guardians of MLLs/ELLs with information about their rights under federal and New York State law and NYSED Commissioner's regulations and to collect civil rights complaints regarding compliance with these laws and regulations. The Statewide Language RBERN will collect complaints from New York's diverse MLL/ELL population and will work with OBEWL to complement the OBEWL website by providing access to community members who do not have internet access or may not be literate. The hotline will be available in the top 10 languages spoken by New York MLLs/ELLs.

The Statewide Language RBERN will also collaborate with Consular Offices in developing and promoting opportunities for expansion of language programs and cultural understanding. It will also participate in workgroups as established by OBEWL staff, every other month, remotely, including workgroups to develop, review and revise Resource Guides or conduct research as directed. The Statewide Language RBERN must address the activities listed under the "Statewide Language RBERN Activities and Functions" section of this RFP. The Statewide Language RBERN may be located in any region of the State.

### **Minimum Staffing Guidelines**

The full-time Executive Director and full-time Resource Specialists should be employed by the vendor. Consultants should not be used to fulfill these full-time positions.

#### *Number and Qualifications of RBERN Staff*

Region	West, Mid-West, Mid-State, Capital	Hudson Valley	Long Island	NYC	Statewide Language RBRN
Full-time Executive Director	1 FTE	1 FTE	1 FTE	1 FTE	1 FTE
Full-time Resource Specialists	4 FTE	6 FTE	6 FTE	7 FTE	8 FTE
Part-time Resource Specialists (school improvement)	2*	2*	2*	2*	4*

\*This represents the number of individual staff members. The FTE may be determined by the bidder.

1. Qualifications/Duties of Executive Director. The Executive Director must hold a Master's degree or above, valid New York State certification as an administrator (S.A.S., S.D.A., S.B.L., and/or S.D.L.) or its equivalent and valid New York State certification as a teacher of MLLs/ELLs (teaching certificate in English to Speakers of Other Languages [ESOL], Grades K-12 or its equivalent, or one or more Bilingual Extension Certificates in different languages). He or she must have a minimum of five (5) years of experience in educational leadership, including bilingual and ENL education, and a minimum of three (3) years of teaching experience.

Working on a full-time 12-month schedule, the Executive Director will be designated to manage all aspects of the program and to serve as the primary regional liaison with staff at NYSED and other NYSED school improvement providers, as applicable, to identify and address regional issues/concerns and professional development needs.

2. Qualifications/Duties of Resource Specialists. Resource Specialists should hold a Master's degree or above and valid New York State certification as a teacher of MLLs/ELLs (teaching certificate in English to Speakers of Other Languages [ESOL], Grades K-12 or its equivalent, or one or more Bilingual Extension Certificates in different languages). They should have a minimum of five (5) years of teaching experience in bilingual education and/or ENL.

The Resource Specialists will provide specialized technical assistance, professional development, and school improvement work throughout the region, as identified through the Regional Planning Process.

## **RBERN Activities and Functions**

All activities proposed by the RBERN technical assistance support centers, including The Statewide Language RBERN, must be consistent with State and federal laws and regulations as well as NYSED policies and guidelines. For examples of activities undertaken by OBEWL, please refer to the [OBEWL website](#).

The regional RBERNs will collaborate, coordinate, and lead activities with the Statewide Language RBERN. Such collaboration may include workshops, conferences, videoconferencing, listservs, and professional development events that include staff as presenters.

**Note:** The vendor will be responsible for event coordination and associated costs, unless otherwise specified in this RFP. No cost space should be sought out to the greatest extent possible. Travel expenses must adhere to the established New York State travel rates. Maximum allowable rates can

be accessed at: <http://www.gsa.gov/portal/category/21287>. The Technical Assistance Center Guidelines, located in 5. Submission Documents, attached separately, must be followed regarding allowable expenses.

### Regional RBERN Activities and Functions

**Intervention strategies and activities provided by the Regional RBERNs to schools and districts with MLLs/ELLs will include, but are not limited to, the following initiatives (unless specifically stated, these activities will take place on an annual basis within the service region):**

<b>A - Technical Assistance and Professional Development</b>	
<b>FOCUS AREAS</b>	<b>ACTIVITIES</b>
<b>REGIONAL PLANNING PROCESS</b>	<ul style="list-style-type: none"> <li>- Conduct annual regional planning (needs analysis) to determine the demographics, academic performance, and the educational needs of MLLs/ELLs in the districts and schools of the RBERN designated region. This planning process includes the survey, steering committee, and action plan outlined below.</li> <li>- Survey. Each RBERN will conduct an annual online survey among teachers, administrators, and other staff members in all of the districts in each RBERN service region. In addition to eliciting feedback based on "satisfaction" with technical assistance and support provided, the survey results will also serve to inform the Steering Committee process in identifying training and professional development needs of the region.</li> <li>- A Steering Committee process. Steering committees will be established by each RBERN to identify regional training needs (e.g., training for participants from multiple school districts) on topics such as C.R. Part 154 requirements. The steering committee membership will include staff from the OBEWL, the Executive Director of the RBERN or designee, Resource Specialists, and representatives from schools and districts in the area of service. The steering committee will assist in the identification of the training and professional development needs of the region and will develop a procedure for reviewing and approving requests for the services of the RBERN Resource Specialists.</li> <li>- Each RBERN will submit an Action Plan to OBEWL that reflects the requirements of the RFP describing in detail the technical assistance service(s), professional development, resources and/or supports to be created/provided in support of MLLs/ELLs in the designated RBERN region. The plan should include a timeline and will be due <b>August 31</b> of each year for the length of the contract.</li> <li>- Each RBERN Action Plan should include a description of how the RBERN intends to support the implementation of OBEWL initiatives such as the NYS Seal of Biliteracy, the MLL/ELL Program Quality Review and Reflective Protocol Toolkit, the MLL/ELL Graduation Rate Improvement and Dropout Prevention Planning Tool, the Clinically-Rich Intensive Teacher institutes, Students with Interrupted/Inconsistent Formal Education (SIFE) Curriculum and identification tools, AIR Scaffolds, Math Translations, the Culturally Responsive-Sustaining (CR-S) Framework and Translations, the Blueprint for ELL/MLL Success, amendments to CR Part 154, and parent activities. (Please see the <a href="#">OBEWL website</a> for these materials)</li> <li>- Assist districts/schools in the analysis of current and projected enrollment of MLLs/ELLs to design and implement appropriate instructional models.</li> <li>- Conduct a meeting every two months during the school year with district MLL/ELL Directors and Coordinators in the service region to provide up to date information and to adjust the RBERN action plan according to the most current district MLL/ELL needs.</li> <li>- Conduct bi-annual (July and January) focus groups with principals and assistant principals in the region to identify regional training needs and best practices aligned to the Next Generation Learning Standards. The focus groups will be coordinated with OBEWL.</li> </ul>
<b>CR PART 154</b>	<ul style="list-style-type: none"> <li>- Create resources and PowerPoint presentations that can be used statewide around CR Part 154. All resources should be shared with OBEWL.</li> <li>- In coordination with OBEWL, conduct at least 5 workshops, meetings, and/or webinars per year for schools/districts in the RBERN region on the implementation of the State and federal policies, regulations, and accountability measures for the education of MLLs/ELLs under Education Law 3204, CR Part 154, and Title III Part A of the ESSA.</li> </ul>

	<ul style="list-style-type: none"> <li>- Conduct ongoing professional development to support the implementation of CR Part 154.</li> <li>- In coordination with OBEWL, all RBERN staff will conduct reviews of CR Part 154 Comprehensive ELL Education Plans (CEEPs) for the districts in their region. In the NYC region, the Language Allocation Policy Plans will also be reviewed. OBEWL staff will be responsible for final approvals of these reviews.</li> <li>- Promote and assist districts and schools in the development and implementation of sustainable Two-Way Bilingual Education and Transitional Bilingual Education programs in Pre-K to 12 grades.</li> <li>- Conduct specialized workshops for MLL/ELL subgroups (Newcomer, SIFE, Long Term ELLs, Former ELLs, ELLs who are also Students with Disabilities, Developing ELLs), for 75 participants each, in consultation with OBEWL and the members of the Office of Special Education Educational Partnerships.</li> </ul>
<p><b>TITLE III</b></p>	<ul style="list-style-type: none"> <li>- In coordination with the OBEWL, all RBERN staff will conduct reviews of the ESSA Title III Comprehensive Plans from districts in the service region. RBERNS will also provide follow-up technical assistance to districts, as needed, to ensure appropriate completion of their plans and data reporting. In NYC, the regional RBERN will collaborate with the Statewide Language RBERN to conduct the reviews and provide follow-up technical assistance.</li> <li>- Provide targeted technical assistance to districts and schools that are identified as needing Targeted Support and Improvement (TSI) and/or Comprehensive Support and Improvement (CSI) for MLLs/ELLs, including assisting with developing their improvement of Corrective Action Plans. In NYC, the regional RBERN will collaborate with the Statewide Language RBERN to provide the technical assistance.</li> <li>- Serve as lead or provide guidance to qualifying districts for creating and maintaining a Title III Consortium to support enhanced educational opportunities for MLLs/ELLs in districts with small numbers of MLLs/ELLs.</li> </ul>
<p><b>ON-SITE MONITORING REVIEW</b></p>	<ul style="list-style-type: none"> <li>- In collaboration with NYSED, each RBERN will participate in a minimum of 5 on-site, 3-day-long monitoring reviews for CR Part 154, Title III, and Schools identified as TSI/CSI</li> <li>- In addition to the reviews mentioned above, as part of the NYS ESSA Waiver, RBERNs will participate in 3-day-long on-site monitoring reviews every other week from October through May to assist the school improvement team in the Diagnostic Tool for School and District Effectiveness (DTSDE) initiative. This will be a minimum of 10 yearly reviews.</li> </ul>
<p><b>BILINGUAL PROGRESSIONS</b></p>	<ul style="list-style-type: none"> <li>- Assist districts and schools in the region implementing the Bilingual Progressions, resources and aligning curricula for MLLs/ELLs to the NYS Next Generation Learning Standards through at least two (2) professional development sessions each year. These professional development sessions can be done in person, through webinars, or in a manner that best meets the logistical needs of the districts and schools.</li> </ul>
<p><b>BLUEPRINT FOR ELL/MLL SUCCESS</b></p>	<ul style="list-style-type: none"> <li>- Identify research-based practices and resources in alignment with the Blueprint for ELL/MLL Success.</li> <li>- Under the leadership of OBEWL and in collaboration with other RBERNs, assist NYSED in facilitating an annual one-day New York State Bilingual/ENL Teacher Institute on the Blueprint for ELL/MLL Success for approximately 150-250 participants to provide current NYSED information and to address the most current statewide issues related to the education of MLLs/ELLs. The agenda will be developed collaboratively between the RBERNs and OBEWL. OBEWL will manage the logistics of this event.</li> <li>- In collaboration with OBEWL, each RBERN will conduct one Regional Parent/Guardian/Caregiver Institute every year in alignment with principle 5 of the Blueprint for ELL/MLL Success, for approximately 75-100 participants in collaboration with other service providers and professional organizations that focus on parents/guardians/caretakers' rights and responsibilities as partners in their children's education.</li> <li>- Provide guidance and strong support of Early Childhood initiatives by increasing outreach to parents of young bilingual learners and provide educational opportunities to parents of young children on emergent literacy development through an annual workshop and collaboration with NYSED Literacy Centers. These activities will be based on regional needs.</li> </ul>

<b>B – Other Required Regional Activities</b>	
<b>FOCUS AREAS</b>	<b>ACTIVITIES</b>
<b>OTHER</b>	<ul style="list-style-type: none"> <li>- The Puerto Rican/Hispanic Youth Leadership Institute (PR/HYLI): Under the leadership of NYSED and OBEWL, and in collaboration with the NYCDOE, the State Legislature, and a designated lead vendor/coordinator, each RBERN will conduct up to five (5) intensive one-day training sessions annually, in preparation for PR/HYLI for approximately 100 high school students in the NYC region and between 5 and 20 high school students in each other region. PR/HYLI aims to develop students' leadership and public speaking skills, and to increase their understanding of the State's legislative process and parliamentary procedures. High school seniors will also be provided additional training on writing a successful scholarship essay to apply for the Angelo Del Toro Scholarship Award or other awards identified by the PR/HYLI.</li> <li>- Provide a yearly one-day training to all districts in your region on the administration and scoring of the NYSESLAT.</li> <li>- Contribute educational resources, research articles, and news of interest to the <a href="#">OBEWL website</a>, which provides current information, documents, contact information, policy documents, etc. relevant to MLLs/ELLs in New York State.</li> <li>- Develop and maintain a local website that includes regional demographic information and information regarding activities offered by the RBERN. Ensure that all information is aligned to the OBEWL website.</li> <li>- In coordination with OBEWL support the implementation of the NYS Seal of Biliteracy initiative by assisting districts and schools in the development and execution of their proposed plan, along with other initiatives identified by NYSED OBEWL.</li> <li>- Provide information as needed to the Categorical Funds Evaluation vendor including data, contact information, on-site visits, etc. (see the Evaluation section of this RFP for more information)</li> <li>- Assist with the recruitment of interpreters for on-site, face-to-face interpretation and translators to assist with the translation of documents, materials, and assessments for MLL/ELL populations. Maintain an electronic directory of trained translators and interpreters in the different target languages to share with the service area as needed.</li> <li>- Gather data about the language instruction programs within the region and regarding the professional development provided by the Regional RBERN to the schools and districts in the region. This data will be collected using RFP Attachment B and submitted to NYSED OBEWL annually.</li> </ul>

**Statewide Language RBERN Activities and Functions**

**Intervention strategies and activities provided to schools and districts with MLLs/ELLs will include, but are not limited to, the following initiatives.** (Unless specifically stated, these activities will take place on an annual basis, statewide.)

<b>A - Technical Assistance and Professional Development</b>	
<b>FOCUS AREAS</b>	<b>ACTIVITIES</b>
<b>REGIONAL PLANNING PROCESS</b>	<ul style="list-style-type: none"> <li>- Submit an Action Plan that reflects the requirements of the RFP describing in detail the technical assistance service(s), professional development, resources, and/or supports to be created/provided in support of MLLs/ELLs. The plan should include a timeline and will be due <b>August 31</b> of each year for the length of the contract.</li> </ul>
<b>CR PART 154</b>	<ul style="list-style-type: none"> <li>- The Statewide Language RBERN will create and modify as necessary 3-5 supporting materials for the CR Part 154 guidance document. These materials should be created for each year of the contract in order to support MLL/ELL subgroups and the implementation of the Part 154 regulations.</li> <li>- In coordination with OBEWL, all RBERN staff will conduct reviews of CR Part 154 Comprehensive Plans of districts throughout the state.</li> <li>- Promote and assist districts and schools in the development and implementation of sustainable Two-Way Bilingual Education and Transitional Bilingual Education programs in Pre-K to grade 12.</li> </ul>
<b>CIVIL RIGHTS</b>	<ul style="list-style-type: none"> <li>- In collaboration with OBEWL, the Statewide Language RBERN will set up an MLL/ELL civil rights complaint telephone hotline available in the ten (10) languages most commonly spoken in the State (see chart in the Background section of RFP) and a translated complaint form in those languages that can be downloaded and submitted electronically on the Statewide Language RBERN website and requested by phone and submitted via mail, fax or personal delivery. Together, these methods will be the most effective way to collect and respond with appropriate guidance to civil rights complaints from MLLs/ELLs and their parents or persons in parental relation regarding rights guaranteed under CR Part 154. The telephone hotline is especially critical for community members who do not have internet access or may not be literate.</li> <li>- Telephone hotline: Incoming calls will go to a hotline number with a brief menu in each of these languages. During business hours of 9 AM to 4 PM from Monday through Friday, calls in the top five (5) languages spoken in the State and any other language for which the Statewide Language RBERN has internal language capacity will go to a live RBERN staff member. For times in which a live staff member is unavailable, including off hours, and for languages in which the RBERN does not have internal staff capacity, calls will roll into a mailbox with messages in the top ten (10) languages. Another mailbox in English will be available for calls in lower incidence languages beyond the top ten (10) languages spoken in the state. All messages will be checked weekly and translated as necessary.</li> <li>- All calls will be logged and responded to within 10 days of receipt. It is anticipated that most of the calls will be handled by the Statewide Language RBERN either by providing advice and technical assistance to the caller, or by trouble shooting with the district in question and responding to inform the caller about the resolution. Calls not relating to MLL/ELL issues pursuant to CR Part 154 will be referred to the appropriate division at NYSED or the district. Those calls pertaining to MLLs/ELLs that cannot be resolved by the RBERN will be referred to OBEWL, which will provide an answer to the RBERN to relay to the caller if appropriate. If direct intervention by OBEWL is merited, OBEWL will respond directly to the caller with interpretation provided by the RBERN or external interpretation/translation services when needed. All responses to callers will include interpretation or translation as needed, either via the RBERN's internal language capacity or via use of a certified interpreter or translator contracted by the vendor.</li> </ul>

	<ul style="list-style-type: none"> <li>- Web complaint form: In addition, to supplement the civil rights complaint hotline, the Statewide Language RBERN will create a 1-2-page civil rights complaint form for MLL/ELL parents or persons in parental relation regarding CR Part 154. The form will track MLL/ELL and parent civil rights provided by CR Part 154. It will be available in the top ten (10) languages spoken by New York’s MLLs/ELLs, downloadable via the RBERN website, and may also be requested via the telephone hotline if callers prefer to submit a written complaint. Once completed, the complaints may be uploaded as PDF or Microsoft Word documents via the RBERN website, or submitted by mail, fax, or personal delivery to the Statewide Language RBERN, with precautions taken to protect student privacy. Complaints will be translated into English by staff from the RBERN, and, if internal language capacity is unavailable, external translation will be secured by the vendor.</li> <li>- Within 10 days of submission of a written complaint, the RBERN must respond with a notice acknowledging the complaint, translated into the language in which the complaint was submitted. Also, within 30 days of a complaint’s receipt, the RBERN must respond to the complaint itself either verbally or in writing.</li> <li>- It is anticipated that most of the complaints will be handled by the RBERN either by providing advice and technical assistance to the person submitting the complaint, or by trouble shooting with the district in question and responding to inform the person submitting the complaint about the resolution. Complaints not relating to MLL/ELL issues pursuant to CR Part 154 will be referred to the appropriate division at NYSED. Those complaints relating to MLLs/ELLs that cannot be resolved by the RBERN will be referred to OBEWL which will provide an answer to the RBERN to relay to the person submitting the complaint if appropriate. If direct intervention by OBEWL is merited, OBEWL will respond directly to the complaint with interpretation provided by the RBERN. All responses to complaints will include interpretation or translation as needed, either via the RBERN’s internal language capacity or via use of a certified interpreter or translator.</li> <li>- The RBERN will keep a record of all calls, including the name of the caller, the phone number or e-mail address, the school or district involved, the nature of the call, and the outcome of the call. This record will be submitted regularly to OBEWL.</li> </ul>
<p><b>TITLE III</b></p>	<ul style="list-style-type: none"> <li>- Provide on-going technical assistance and 5 professional development opportunities in support of academic achievement of all MLLs/ELLs, Grades K-12, in all districts, charter schools, nonpublic schools, and other educational agencies on research-based practices, exemplary programs, and Federal regulations (i.e., Title III) through workshops, presentations, on-line or face-to-face professional learning communities (PLCs), webinars, and/or direct consultations with district and school personnel.</li> <li>- In coordination with OBEWL, the Statewide Language RBERN will assist the regional RBERN in NYC to conduct reviews of Comprehensive Plans (CEEPs) from districts in the NYC region, including Improvement and Corrective Action Plans. The Statewide Language RBERN will also collaborate with the regional NYC RBERN to provide follow-up technical assistance to districts in NYC, as needed, to ensure appropriate completion of their CEEP and data reports.</li> <li>- In collaboration with the NYC RBERN, the Statewide Language RBERN will provide targeted technical assistance to districts and schools in the NYC region that are identified for not meeting the needs of MLLs/ELLs, including assisting with developing their required plans.</li> </ul>

<p><b>BLUEPRINT FOR MLL/ELL SUCCESS</b></p>	<ul style="list-style-type: none"> <li>- Identify research-based practices and resources in alignment with the Blueprint for MLL/ELL Success.</li> <li>- Identify and disseminate information and provide lists of print materials, on-line resources, research, and multimedia materials in target languages for bilingual education and World Language programs from Grades Pre-K-12.</li> <li>- Disseminate current information, including funding opportunities, relevant to the education of MLLs/ELLs through email, listservs, letters, faxes, electronic newsletters, meetings, or special announcements, as appropriate, for the different target languages.</li> </ul>
<p><b>ON-SITE MONITORING REVIEW</b></p>	<ul style="list-style-type: none"> <li>- In collaboration with NYSED, the Statewide Language RBERN will participate in a minimum of 5 on-site, 3-day-long monitoring reviews for CR Part 154, Title III and TSI/CSI schools and districts.</li> <li>- In addition to the reviews mentioned above, as part of the NYS ESSA Waiver, RBERN will participate in bi-weekly, 3-day-long on-site monitoring reviews from October through May to assist the school improvement team in the Diagnostic Tool for School and District Effectiveness (DTSDE) initiative. This will be a minimum of 10 yearly reviews.</li> </ul>
<p><b>B – Other Required Statewide Activities</b></p>	
<p><b>FOCUS AREAS</b></p>	<p><b>ACTIVITIES</b></p>
<p><b>TRANSLATIONS</b></p>	<ul style="list-style-type: none"> <li>- All RBERNs will assist with the recruitment of interpreters for on-site, face-to-face interpretation and translators to assist with the translation of documents, materials, and assessments for MLL/ELL populations. Maintain an electronic directory of trained translators and interpreters in the different target languages to share with the service areas as needed.</li> <li>- Translate informational and educational materials for students and families, as requested by OBEWL, a minimum of 10 documents per year.</li> <li>- Create new language glossaries and update existing glossaries as requested by OBEWL, a minimum of 2 glossaries per year, and post on a website accessible to all.</li> <li>- Assist with translations of ancillary documents related to the Math standards</li> </ul>
<p><b>OTHER</b></p>	<ul style="list-style-type: none"> <li>- Work in collaboration with OBEWL and the different Language Associations in the State to support and expand the teaching and learning of languages, including Foreign Language in Elementary Schools (FLES) programs and Two-Way Bilingual Education programs.</li> <li>- In coordination with OBEWL staff, the Statewide Language RBERN will assist in the coordination of the Seal of Biliteracy project by organizing participating and supporting District/School participants as they implement their Seal of Biliteracy program.</li> <li>- The Statewide Language RBERN in collaboration with Regional RBERNs, district personnel, and community-based organizations will organize, oversee, and cover the cost of a one-day annual statewide MLL/ELL Parent event to provide parents with information on their rights, how to support their children, the New York State school system, programs and services under CR Part 154 and Title III, graduation requirements, and ELL assessments. The location of this event will be determined by the Statewide Language RBERN, in consultation with NYSED OBEWL.</li> </ul>

	<ul style="list-style-type: none"> <li>- Conduct a one-day statewide symposium designed to accommodate approximately 75-100 participants on the teaching and learning of languages through the implementation of Foreign Language in Elementary Schools (FLES) Programs and Bilingual Education Programs (Transitional and Two-Way), focusing on language acquisition and development as well as content learning in two languages through instructional strategies that promote student academic achievement/progress towards meeting the State's learning standards (including NLA). The location will be determined by the Statewide Language RBERN, in consultation with NYSED OBEWL.</li> </ul>
	<ul style="list-style-type: none"> <li>- Provide support and work with immigrant groups that provide literacy programs to parents of MLLs/ELLs.</li> </ul>
	<ul style="list-style-type: none"> <li>- The Statewide Language RBERN Executive Director will attend one (1) meeting every month (by conference call and/or webinar) and also attend in person four (4) two-day meetings in Albany each year (including the staff meetings described below). OBEWL will determine the dates and times for these meetings. Expenses for RBERN staff to attend these meetings are the responsibility of the RBERN.</li> </ul>
	<ul style="list-style-type: none"> <li>- The Statewide Language RBERN staff members will attend two (2) two-day-long NYSED organized RBERN All Staff Meetings to be held in Albany per year. Expenses for RBERN staff to attend these meetings are the responsibility of the RBERN.</li> </ul>
	<ul style="list-style-type: none"> <li>- Contribute to the <a href="#">OBEWL website</a> by creating for publication documents in alignment with CR Part 154 and the Blueprint for MLL/ELL Success.</li> <li>- Develop and maintain a website that includes information and activities relating to the Statewide Language RBERN. Ensure that all information is aligned to the OBEWL website.</li> <li>- Gather data about the language instruction programs throughout the state and regarding the professional development provided by the Statewide Language RBERN to the schools and districts in NYS. This data will be collected using RFP Attachment B and submitted to NYSED OBEWL annually.</li> </ul>

## Service Regions

NYSED will award eight (8) separate contracts from this RFP; one for each Joint Management Team (JMT) region of the State (seven total) and one for the Statewide Language RBERN technical assistance support center. The seven (7) regions are: West, Mid-West, Mid-State, Hudson Valley, Capital District, Long Island, and New York City. The Statewide Language RBERN may be located in any region within the State. The table below lists the seven (7) RBERN regions, and the number of awards for each service region. The RBERNs will serve MLLs/ELLs in districts and schools in multiple BOCES areas contained within these regions. Please see **Attachment A** for additional information regarding the regions.

Each proposal submitted in response to this RFP must be clearly labeled with the RBERN region and the type of RBERN for that proposal (**Regional RBERN or Statewide Language RBERN**).

### REGIONAL RBERN

RBERN Region	Number of Awards
1. West	1
2. Mid-West	1
3. Mid-State	1
4. Capital District	1
5. Hudson Valley	1
6. Long Island	1
7. New York City	1

### STATEWIDE LANGUAGE RBERN

Statewide Language RBERN	Number of Awards
All regions	1

## Confidentiality

While carrying out the services described in this RFP, the Regional and Statewide RBERNs will receive potentially confidential and/or sensitive information, including Personally Identifiable Information for students and their families. This information could come from various sources (e.g. parents, school personnel, students, community members, and others). The RBERNs, including any subcontractors, must take all precautions and necessary steps to maintain confidentiality. **Bidders should fill out #3 and #6 on the Appendix S-1 at the bottom of the RFP and return with their Technical Proposal.**

## Ownership

NYSED shall own all materials, processes, and products (software, code, documentation and other written materials) developed under the contracts that are awarded from this RFP. Materials prepared under this contract shall be in a form that will be ready for copyright in the name of the NYSED. Any subcontractor hired under the contracts that are awarded from this RFP is also bound by these terms.

## **NEW YORK STATE ENTERPRISE IT POLICY NYS-P08-005, Accessibility of Web-Based Information and Applications**

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 (see <http://www.cio.ny.gov/Policy/NYS-P08-005.pdf>) as determined by quality assurance testing. Such quality assurance testing will be conducted by the contractor, and the results of such testing must be satisfactory to NYSED before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

### **Payment and Reporting Requirements**

Each RBERN will be required to submit an annual Action Plan by August 31 of each year (except for Year 1. The Year 1 Action Plan will have been submitted with the proposal in response to this RFP and may be revised by the vendor by August 31, 2020, if requested by NYSED). The Action Plan will outline how the RBERN will accomplish its goals and objectives.

The annual Action Plan must include:

- The project goals to which resources and activities will be directed;
- Specific, measurable, and quantifiable objectives for the accomplishment of the goals for the first year, and broad objectives for the following years;
- The type and projected number of persons who will be served by each activity; and
- A timeline for the beginning and completion of each activity.

Key activities should reflect the following criteria:

- Generated by specific needs;
- Reflect State priorities for raising standards; and
- Evidence of success in linking or working in conjunction with local education agencies.

The Executive Director will be responsible for timely and accurate submission of all required reports.

Contingent upon the continued availability of funds from the State Legislature, the regional and Statewide RBERNs must also submit successive annual budgets.

In addition to the yearly narrative of how funds will be allocated by budget categories, each RBERN will submit a quarterly detailed expenditure summary on how funds are utilized by each RBERN to address the goals in meeting the educational needs of MLLs/ELLs in their respective regions. OBEWL reserves the right to request copies of purchase orders or any other supporting documentation. Payments will be made based on a timely submission of the quarterly reports with an accompanying voucher. Timely reporting means that these submissions are received within 30 days of the end of each quarter. Quarterly vouchers are submitted on NYSED Standard Vouchers.

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

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

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

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

## **Consultant Staff Changes**

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

## **Contract Period**

NYSED will award eight (8) contracts pursuant to this RFP. The contracts resulting from this RFP will be for a term anticipated to begin **July 1, 2020** and to end **June 30, 2025**.

## **Electronic Processing of Payments**

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

## **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

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

<sup>2</sup> Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to the NYSED M/WBE Program Unit by the deadline for submission of proposals for eligibility determination. NYSED will work with ESD to expedite the application, however, it is the responsibility of the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

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

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

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

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

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

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

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

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

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.

### **Project Submission**

**Each proposal should be clearly labeled with the name of the region and type of RBERN (Regional RBERN or Statewide Language RBERN). For labeling purposes, please refer to the Services Areas Table under the heading "RBERN Service Regions" as a guide.**

Applications must be paginated and signed as appropriate. Supplementary materials such as videotapes, publications, press clippings, testimonial letters, etc., will not be reviewed nor will they be returned to the bidder.

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

1. Submission Documents – Two (2) copies (one bearing an original signature)
2. Technical Proposal – Five (5) copies
3. Cost Proposal – Two (2) copies (one bearing an original signature)
4. M/WBE Documents – One (1) copy (one bearing an original signature)
5. Microsoft Word (CD or USB flash drive) – One (1) electronic version with the submission, technical, cost, and M/WBE proposals. Please place the CD or flash drive in a separate envelope.

The proposal must be received by **3:00 PM on January 16, 2020** 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 must specifically be so identified, and the basis for such confidentiality must be specifically set forth in the proposal.

## Technical Proposal

(70 Points)

The original plus 4 copies of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP #20-014-Technical Proposal-Do Not Open** and must include the following:

- Mandatory Requirements Certification Form **Signature Required**
- TAC Certification Form **Signature Required**
- Proposal Narrative. This section should include:

### 1. Program Management Plan (30 points)

Please describe:

- a) The program's organizational structure, governance, and lines of communication. Include an organizational chart (5 points);
- b) The vendor's background and experience in providing programs and services for MLL/ELL student populations, including documentation supporting this (5 points);
- c) The service region, including the number of MLLs/ELLs by district enrolled in the service region, a list of major languages and unique features or problems relative to the education of MLLs/ELLs in the service region (5 points);
- d) The vendor's capacity to successfully address and carry out the mission to serve MLLs/ELLs, to form required partnerships, and to effectively collaborate with other regional State-funded networks in the region (5 points);
- e) The project staffing and supervision plan, including the qualifications of the full-time Executive Director and each of the full- and part-time resource specialists. Please refer to the Minimum Staffing Guidelines section of the RFP for guidelines. (10 points)

### 2. Project Description (20 points)

Please describe, with a focus on either the Regional or Statewide deliverables described under the "RBERN Activities and Functions" heading:

- a) How the vendor will carry out all activities and functions in the Regional Planning Process Section (5 points);
- b) How the vendor will carry out all activities and functions in the CR Part 154, Title III, On-Site Monitoring Review sections (5 points);
- c) How the vendor will carry out all activities and functions in the Bilingual Progressions, the Blueprint for ELL/MLL Success and other required sections (5 points);
- d) How the vendor will collaborate with other regional State-funded networks in their service region to carry out the deliverables. (5 points)

### 3. Action Plan for Year 1 (20 points)

Please describe:

- a) How the vendor will implement the goals and objectives outlined in the Description of Services to be Performed section of the RFP (5 points);

- b) The schedule of implementation for the goals and objectives outlined in the Description of Services to be Performed section of the RFP (5 points);
- c) The benchmarks that the vendor will use to measure the success of each activity (5 points);
- d) The services to be provided by the vendor, as well as services provided by subcontract (5 points)

**Cost Proposal**

**(30 Points)**

The original plus one (1) copy of the completed Cost Proposal must be mailed in a separate envelope labeled **RFP #20-014-Cost Proposal-Do Not Open** and must include the following:

- 1.) First Year Detailed Budget (7/1/20-6/30/21)
- 2.) Five Year Summary **Signature Required**
- 3.) Subcontracting Form
- 4.) M/WBE Subcontracting/Supplier Form
- 5.) Budget Narrative

In the "Budget Narrative" section, bidders should include a complete description of how the RBERN will use the funding allocation to support closing the performance gap for MLLs/ELLs in targeted districts/schools as well as other necessary expenditures (e.g., administrative costs, equipment, travel and materials, etc.). It is expected that the greatest portion of the allocation will be directed to the provision of services to targeted schools and districts. Services must be at no cost or on a cost recovery basis to participants.

The budget narrative should describe any in-kind services that will be provided by the bidder.

**Budgets must be submitted using whole dollar figures.**

**The Financial Criteria portion of the RFP will be scored based upon the grand total of the five-year budget summary. The Budget Narrative is not scored.**

**M/WBE Documents**

The original plus one (1) copy of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #20-014- M/WBE Documents-Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

**Full Participation-No Request for Waiver**

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

**Signatures Required**

**Partial Participation-Partial Request for Waiver**

- 1. M/WBE Cover Letter
- 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

**Signatures Required**

6. **M/WBE 105** Contractor's Good Faith Efforts

**No Participation-Request for Complete Waiver**

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

**Signatures Required**

### 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 ink are included as required.

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

For the purposes of comparing bids, bids for a defined region will only be ranked and scored with other bids from that same region. Bids for the Statewide Language RBERN will only be ranked and scored with other statewide bids. NYSED will award one contract to the highest scoring bidder in each of the seven regions (West, Mid-West, Mid-State, Hudson Valley, Capital District, Long Island, and New York City) and one contract to the highest scoring statewide bid.

#### Technical Criteria

**(70 Points)**

Each proposal received by the deadline will be reviewed and rated on the quality and extent to which the bidder meets the following criteria:

- **Program Management Plan (30 points)**
- **Project Description (20 points)**
- **Action Plan (20 points)**

*(See point breakdown within each category in 2. Submission.)*

#### Financial Criteria

**(30 Points)**

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

- **Budget Narrative (0 points)** The budget narrative will be reviewed to determine that the proposed use of the funds is for the direct support of the program, and that the anticipated expenditures are both allowable and appropriate. The narrative will also be reviewed to determine the extent to which it specifically explains and relates proposed expenditures to specific activities to meet project goals.
- **NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, all bidders that meet the minimum technical score will be asked to provide a best and final offer. The Procurement Office will recalculate the financial score.**

## Method of Award

NYSED will be awarding eight (8) contracts as a result of this RFP, one in each of the seven (7) regions specified in the Service Regions section of this RFP, and one (1) statewide award. Bids for the seven (7) regional awards will only be ranked and scored with bids from the same region. Bids for the one (1) statewide award only will be ranked and scored with other statewide bids.

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

The contract issued pursuant to this proposal will be awarded to the vendor whose aggregate technical and cost score is the highest among all the proposals rated and ranked together.

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

## NYSED's Reservation of Rights

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

## **Post Selection Procedures**

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

## **Debriefing Procedures**

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

NYS Education Department  
Procurement Office  
89 Washington Avenue  
Room 501W EB  
Albany, NY 12234

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

## **Contract Award Protest Procedures**

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

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.

2. The protest must be filed within ten (10) business days of receipt of a debriefing letter. The protest letter must be filed with:

NYS Education Department  
Procurement Office  
89 Washington Avenue  
Room 501W EB  
Albany, NY 12234

3. The NYSED Procurement Office will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, Procurement Office, 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 the Procurement Office will advise OSC that a protest was filed.

4. The NYSED Procurement Office 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.ny.gov](mailto:ITServiceDesk@osc.ny.gov).

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 the following web link:

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

Designated Contacts for NYSED  
Program Office – **Laura Arpey**  
Contract Administration Unit – **Thomas McBride**  
M/WBE – **Brian Hackett**

## **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.

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 **WILL BE INCLUDED** in the contract that results from this RFP. Vendors who are unable to complete or abide by these assurances should not respond to this request.

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

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

M/WBE Documents – **(the forms below are included in 5.) Submission Documents)**

Please return the documents listed for the compliance method bidder has achieved:

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

**Signatures Required**

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

#### **Partial Participation-Partial Request for Waiver**

**Signature Required**

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

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

**Signature Required**

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

STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through John B. King, Jr., Commissioner of Education of the State of New York and Chief Executive Officer of the Board of Regents of the University of the State of New York, party of the first part, hereinafter referred to as the (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given

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

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

### III. Terminations

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

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

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

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

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

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

### IV. Indemnification

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

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

### V. Property

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

### VI. Safeguards for Services and Confidentiality

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

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

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

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

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 (2 NYCRR § 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 Part 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 clause. 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 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.**

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

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including,

but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the

Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

(October 2019)

## APPENDIX A-1

### Payment and Reporting

- A. In the event that Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.
- B. Variations in each budget category not exceeding ten percent (10%) of such category may be approved by the Commissioner of Education. Any such variations shall be reflected in the final expenditure report and filed in the Office of the State Comptroller. Variations in each budget category which do exceed ten percent (10%) of such category must be submitted to the Office of the State Comptroller for approval.
- C. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.

### Terminations

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

### Responsibility Provisions

#### A. General Responsibility Language

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

#### B. Suspension of Work (for Non-Responsibility)

The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

#### C. Termination (for Non-Responsibility)

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate SED officials or staff, the Contract may be terminated by the Commissioner of Education or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Education or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

## Property

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

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

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

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

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

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

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

## Safeguards for Services and Confidentiality

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

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

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

#### **Certifications**

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

#### **Notices**

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

#### **Miscellaneous**

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

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

The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B will be submitted each year the contract is in effect and will detail actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Form B will be filed no later than May 15<sup>th</sup> of each year. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

By mail: NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236  
Attn: Consultant Reporting

By fax: (518) 474-8030 or (518) 473-8808

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

By mail: NYS Education Department  
Contract Administration Unit  
Room 505 W EB  
Albany, NY 12234

By fax: (518) 408-1716

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

#### Iran Divestment Act

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before SED may approve a request for Assignment of Contract

During the term of the Contract, should SED receive information that a person is in violation of the above-referenced certification, SED will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then

SED shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

SED reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

Rev. 6/4/13

## 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:

- 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](mailto:CPO@mail.nysed.gov). The complaint

process is under development and will be established through regulations to be proposed by NYSED's Chief Privacy Officer, who has not yet been appointed.

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

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

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

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

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

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

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

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

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

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

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

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

Where there is a breach and unauthorized release of PII by a 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 may be utilized for the purposes of evaluating district needs, progress over time, and achievement of goals. “*

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

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

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

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

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

Contract expiration date: **June 30, 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.

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

Student Data

APPR Data

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

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

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

**ATTACHMENT A**  
**NYS JMT BOCES DISTRIBUTION**

Note:

On October 1, 2010 the JMT were divided into 9 teams. For the purposes of this RFP, instead of changing the JMT initial structures, we maintained the 6 ROS, 1 NYC Regional and 1 Statewide Language RBERN.

<b>JMT</b>	<b>BOCES CD</b>	<b>BOCES NAME</b>
1-West	0490	BOCES CATTAR-ALLEGANY-ERIE-WYOMING
1-West	1491	BOCES ERIE 1
1-West	1492	BOCES ERIE 2-CHAUTAUQUA-CATTARAUGUS
1-West	4590	BOCES ORLEANS-NIAGARA
2-Mid-West	2490	BOCES GENESEE VALLEY
2-Mid-West	2691	BOCES MONROE 1
2-Mid-West	2692	BOCES MONROE 2-ORLEANS
2-Mid-West	4390	BOCES ONTAR-SENEC-YATES-CAYUGA-WAYNE
3-Mid-State	0390	BOCES BROOME-DELAWARE-TIOGA
3-Mid-State	0590	BOCES CAYUGA-ONONDAGA
3-Mid-State	2290	BOCES JEFFER-LEWIS-HAMIL-HERK-ONEIDA
3-Mid-State	2590	BOCES MADISON-ONEIDA
3-Mid-State	4190	BOCES ONEIDA-HERKIMER-MADISON
3-Mid-State	4290	BOCES ONONDAGA-CORTLAND-MADISON
3-Mid-State	4690	BOCES OSWEGO
3-Mid-State	5590	BOCES SCHUYLER-STEUBEN-CHEMUNG-TIOGA-ALLEGANY (Greater Southern Tier)
3-Mid-State	6190	BOCES TOMPKINS-SENECA-TIOGA
4-Hudson Valley	1290	BOCES DELAW-CHENANGO-MADISON-OTSEGO
4-Hudson Valley	1390	BOCES DUTCHESS
4-Hudson Valley	1990	BOCES OTSEGO-DELAW-SCHOHARIE-GREENE (Otsego-North Catskills)
4-Hudson Valley	4490	BOCES ORANGE-ULSTER
4-Hudson Valley	4890	BOCES PUTNAM-NORTHERN WESTCHESTER
4-Hudson Valley	5090	BOCES ROCKLAND
4-Hudson Valley	5990	BOCES SULLIVAN
4-Hudson Valley	6290	BOCES ULSTER
4-Hudson Valley	6690	BOCES SOUTHERN WESTCHESTER
5-Capital	0190	BOCES ALBANY-SCHOH-SCHENECTADY-SARAT
5-Capital	0990	BOCES CLINTON-ESSEX-WARREN-WASHING

<b>JMT</b>	<b>BOCES CD</b>	<b>BOCES NAME</b>
5-Capital	1690	BOCES FRANKLIN-ESSEX-HAMILTON
5-Capital	2090	BOCES HAMILTON-FULTON-MONTGOMERY
5-Capital	2190	BOCES HERK-FULTON-HAMILTON-OTSEGO
5-Capital	4990	BOCES QUESTAR III (R-C-G)
5-Capital	5190	BOCES ST LAWRENCE-LEWIS
5-Capital	6490	BOCES WASHING-SARA-WAR-HAMLTN-ESSEX
6-Long Island	2890	BOCES NASSAU
6-Long Island	5891	BOCES EASTERN SUFFOLK (SUFFOLK I)
6-Long Island	5893	BOCES WESTERN SUFFOLK (SUFFOLK 3)
7-New York City	3090	BOCES NEW YORK CITY

**ATTACHMENT B**  
**CONSOLIDATED STATE PERFORMANCE REPORT (CSPR)**  
**USED Annual Report Information for Title III Funded Districts**  
**To be submitted by July 31 of each year (Only once a year)**  
**Page 1 of 2**  
**Year: \_\_\_\_\_**

**Section 1.6.1 - Language Instruction Educational Programs**

**1. Types of Programs** = Types of programs described in the subgrantee's Local Plan (as submitted to the State or as implemented).

(Indicate number of districts in your region that have these programs)

**2. Other Language** = Name of the language of instruction, other than English, used in the program.

(List languages by program)

Programs	Type of Program	Other Language
	Dual Language/Two-Way	
	Two-Way Immersion	
	Transitional Bilingual	
	Developmental Bilingual	
	Heritage Language	
	Sheltered English Instruction	
	Structured English Immersion	
	Specially Designed Academic Instruction Delivered In English (SDAIE)	
	Integrated ENL	
	Stand-alone ENL	
	No Response or Other (Explain In Comment Box Below)	

Comments (is any):

**CONSOLIDATED STATE PERFORMANCE REPORT (CSPR)**  
**USED Annual Report Information for Title III Funded Districts**  
**To be submitted by July 31 of each year (Only once a year)**  
**Page 2 of 2**  
**(Year: \_\_\_\_\_)**

**Section 1.6.6.2 - Professional Development (PD) Activities of Subgrantees Related to the Teaching and Learning of MLL/ELL Students**

- 1. Professional Development Topics** = Subgrantees activities for professional development topics required under Title III.
- 2. # Subgrantees** = Number of subgrantees who conducted each type of professional development activity. A sub-grantee may conduct more than one professional development activity.
- 3. Total Number of Participants** = Number of teachers, administrators and other personnel who participated in each type of the professional development (PD) activities reported.
- 4. Total** = Number of all participants in PD activities.

Type of Professional Development Activity	# Subgrantees	
Instructional strategies for MLLs/ELLs		
Understanding and implementation of assessment of MLLs/ELLs		
Understanding and implementation of ELP standards and academic content standards for MLLs/ELLs		
Alignment of the curriculum in language instruction educational programs to MLLs/ELLs standards		
Subject matter knowledge for teachers		
Other (Explain in comment box)		
Participant Information	# Subgrantees	# Participants
PD provided to content classroom teachers		
PD provided to MLLs/ELLs classroom teachers		
PD provided to principals		
PD provided to administrators other than principals		
PD provided to other school personnel/non-administrative		
PD provided to community based organization personnel		
Total		

Comments (if any):