

**REQUEST FOR PROPOSAL (RFP)  
RFP 21-010**

**NEW YORK STATE EDUCATION DEPARTMENT**

**Title: Scaling and Scale Maintenance, Standard Setting, and Reliability/Validity Analyses  
of the New York State Regents Examinations and  
Elementary/Intermediate-level Science Testing Programs**

The New York State Education Department (NYSED) Office of State Assessment is seeking proposals to conduct three psychometric components: (1) scaling and scale maintenance (2) post-operational score collection and standard setting; and, (3) analyses to provide evidence regarding reliability and validity for selected High School Regents Examinations in English Language Arts, Mathematics, Science, and Social Studies, and the elementary and intermediate-level Science tests. The successful bidder will provide psychometric services and prepare technical documentation for the 2021-22, 2022-23, 2023-24, 2024-25, and 2025-26 school years.

The services described in this RFP include three components. COMPONENT 1 includes all deliverables relating to scaling and scale maintenance. COMPONENT 2 includes all deliverables relating to score collection and setting the performance standards. COMPONENT 3 includes all deliverables relating to conducting data analyses and special studies that are required to provide evidence regarding the reliability, validity, scaling, and equating for the operational results of the examinations as well as preparing annual technical reports for each examination administered in the preceding school year using operational test data provided by NYSED. Bidders must bid on all components of this RFP.

The contractor will perform scaling and scale maintenance using data resulting from all field test administrations taking place in the 2020-21, 2021-22, 2022-23, 2023-24, and 2024-25 school years. Nearly all the field testing is expected to take place in the spring (May and June). Occasionally, a very limited amount of field testing will take place in the fall (October and November). The contractor will also produce a scoring table and conversion chart for each administration of the annual elementary and intermediate-level Science tests and for each of the three administrations per year (January, June, and August) of the operational Regents Examinations in English Language Arts (ELA), Mathematics, Science, and Social Studies. The contractor is required to provide documentation on the methodology, procedures and results for scaling, scale maintenance and the establishment of new operational baseline scales. It is anticipated that under the terms of this contract, up to 15 operational Regents Examinations and the elementary and intermediate-level Science tests will require the establishment of new operational baseline scales.

It is anticipated that the standard setting component of the scope of work will require that the contractor conduct post-operational score collection during the June 2023, June 2024, June 2025, and possibly June 2022 and June 2026 test administration periods and conduct standard setting meetings to set performance standards. It is anticipated that the contractor will conduct up to 15 standard settings across all five years of the contract, and that the contractor may conduct up to five standard setting meetings in one June administration period. At the discretion of NYSED, some of these activities may be cancelled or postponed. The contractor will be paid based on the actual volume of work performed. The contractor is also required to provide a technical report for each standard setting performed.

Beginning in the fall of 2021, the contractor will be required to prepare annual technical reports covering the three operational administrations that took place in the prior school year for each Regents

Examination title and covering the one operational administration that took place during the prior school year for the elementary-<sup>1</sup> and intermediate-level Science tests. For example, the Regents Examination technical reports being prepared by the contractor in fall 2021 will cover the Regents Examinations administered in August 2020, January 2021, and June 2021. The technical reports will be based on operational test data provided to the contractor by NYSED. The contractor will be required to conduct data analyses to provide evidence regarding reliability, validity, scaling, and equating, as well as summary statistics for the operational results of each Regents Examination title including, but not limited to, those listed in this RFP and for the elementary- and intermediate-level Science tests administered during the 2020–21, 2021–22, 2022–23, 2023-24, and 2024-25 school years.

See number 1. in the [Mandatory Requirements](#) section, for a description of the eligible applicants.

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

The contract resulting from this RFP will be for a single award with a term of five years and is anticipated to begin on October 1, 2021 and end on September 30, 2026. Bidders should refer to the [Mandatory Requirements](#) section of this RFP and to the Schedule of Deliverables (separate document) when preparing their proposals. Bidders must adhere to all Mandatory Requirements and perform all required deliverables.

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

**Service Area:** Statewide

**Mandatory Requirements:** See [Mandatory Requirements](#) section of the RFP.

**Components contained in RFP Proposal #21-010 are as follows:**

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

Questions regarding the request must be submitted by E-mail to [AssessmentRFP@nysed.gov](mailto:AssessmentRFP@nysed.gov) no later than the close of business **11/3/2020**. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to <http://www.p12.nysed.gov/compcontracts/compcontracts.html> no later than **11/17/2020**. The following are the designated contacts for this procurement:

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<sup>1</sup> In the 2021-22 school year only, there will not be an administration of the elementary-level Science test.

<b><u>Program Matters</u></b>	<b><u>Fiscal Matters</u></b>	<b><u>M/WBE Matters</u></b>
McKenzie Johnson	Bethany Bennett	Brian Hackett
Email Address: <a href="mailto:AssessmentRFP@nysed.gov">AssessmentRFP@nysed.gov</a>		

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 **December 8, 2020 by 3:00 PM:**

1. Submission Documents labeled **Submission Documents - RFP #21-010 Do Not Open**
2. Technical Proposal labeled **Technical Proposal - RFP #21-010 Do Not Open**
3. Cost Proposal labeled **Cost Proposal – RFP #21-010 Do Not Open**
4. M/WBE Documents labeled **M/WBE Documents—RFP #21-010 Do Not Open**
5. CD-ROM or Flash Drive containing the technical/cost proposal, M/WBE and Submission Documents labeled **CD-ROM/Flash Drive-RFP#21-010 Do Not Open.**

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Bethany Bennett, RFP#21-010  
Contract Administration Unit  
89 Washington Avenue, Room 501W EB  
Albany, NY 12234

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

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## 1.) DESCRIPTION OF SERVICES TO BE PERFORMED

### Work Statement and Specifications

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

### Mandatory Requirements

The eligible bidder must agree to the Mandatory Requirements found below and must submit the Mandatory Requirements Certification Form located in Section 5.) Submission Documents (separate document) signed by an authorized person. **If the bidder's proposal fails to meet any of these mandatory requirements or include the signed Mandatory Requirements Certification Form, it will be disqualified.**

1. Bidders must bid on all three psychometric components: (1) scaling and scale maintenance; (2) post-operational score collection and standard setting; and (3) analyses to provide evidence regarding reliability and validity for selected High School Regents Examinations in English Language Arts, Mathematics, Science, and Social Studies, and the elementary- and intermediate-level Science tests, as described in this RFP, for all years listed.
2. Bidders must provide a full staffing plan with FTEs specified for this project that, at a minimum, must include and maintain one full-time program manager who:
  - a) is a full-time employee of the entity
  - b) has a bachelor's degree or above
  - c) has a minimum of three years experience managing large-scale assessment projects

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

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

Bidders should submit subcontracting/supplier forms that meet or exceed NYSED's participation goals for this procurement. All subcontracting/supplier forms must be submitted with the bid proposal. In addition, bidders must complete and submit M/WBE 100: Utilization Plan, M/WBE 102:

Notice of Intent to Participate, and EEO 100: Staffing Plan. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#).

To assist bidders with achieving full compliance of the 30% participation goals, please see the separate attachment RFP 21-010 MWBE Directory Workbook. This Workbook contains separate listings of possible M/WBE services that may apply specifically to this RFP.

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 the 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**

In the period 2014 to 2017, the Board of Regents adopted new New York State Learning Standards. For more information on the standards, see: [K-12 Social Studies Framework](#), [Science Learning Standards](#), and [New York State Next Generation English Language Arts and Mathematics Learning Standards](#).

In June 2019, a new Regents Examination was administered for the first time in Global History and Geography II. A new Regents Examination in United States History and Government (Framework) will be administered for the first time in June 2021. Eight new Regents Examinations in Mathematics, Science, and English and two new State Examinations in elementary- and intermediate-level Science, measuring the recently adopted New York State Learning Standards will follow suit in the 2022-23, 2023-24, and 2024-25 school years.

The anticipated timeline for the implementation of the New York State Learning Standards for Regents Examinations, as well as the phase out of the existing examinations in these subjects, is listed in [Chart 1: Anticipated Timeline for Implementation of Assessments Measuring the New NYS Learning Standards and Phase-Out of Existing Assessments](#), in this RFP. Additional information concerning these timelines can be found at: [Next Generation Learning Standards Roadmap and Implementation Timeline](#), and [New York State P-12 Science Standards Development, Adoption, and Implementation](#).

In New York State, operational tests are developed based on psychometric analysis of field-test items. The operational baseline scale for new examinations is determined by using operational data collected after the first administration of the exams. Linking will put the pre-calibrated field-test banks and the operational test on the same scale. Subsequently, the field-test statistics from the banks are used to construct raw-score-to-scale-score (pre-equating) conversion tables that determine each student's final score. This approach to test construction is based on psychometrically defensible assumptions about the correlation between field-test performance by groups of similar students and their actual performance on operational exams. The use of this model allows the State to release the operational

scale score conversion charts at the time of test administration and results in the timely issuance of final examination scores to students in New York State's standards-based system, in which passing select examinations is required for graduation.

**Chart 1: Anticipated Timeline for Implementation of Assessments Measuring the New NYS Learning Standards and Phase-Out of Existing Assessments**

Exam	2021-22 School Year		2022-23 School Year			2023-24 School Year			2024-25 School Year			2025-26 School Year			2026-27 SY
Grade 5 Elementary-level Science					First Admin* Spring 2023			Spring 2024			Spring 2025			Spring 2026	
Grade 8 Intermediate-level Science		Last Admin Spring 2022													
Grade 8 - intermediate-level Science (P-12)					First Admin* Spring 2023			Spring 2024			Spring 2025			Spring 2026	
Algebra I	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	Last Admin June 2024							
Algebra I (Next Gen)					First Admin* June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	June 2026	August 2026
Physical Setting/ Earth Science	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	Last Admin June 2025				
Earth and Space Sciences								First Admin* June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	June 2026	August 2026
Living Environment	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	Last Admin June 2025				
Life Science: Biology								First Admin* June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	June 2026	August 2026
Geometry	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	Last Admin June 2025				
Geometry (Next Gen)								First Admin* June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	June 2026	August 2026

\*The contractor will be conducting a standard setting in conjunction with this first administration of this new exam.

Chart 1 continued

Exam	2021-22 School Year		2022-23 School Year			2023-24 School Year			2024-25 School Year			2025-26 School Year			2026-27 SY
Physical Setting/ Chemistry	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	<i>Last Admin June 2026</i>	
Physical Setting: Chemistry (P-12)											<i>First Admin* June 2025</i>	August 2025	January 2026	June 2026	August 2026
Physical Setting/ Physics	January 2022	June 2022		January 2023	June 2023		January 2024	June 2024		January 2025	June 2025		January 2026	<i>Last Admin June 2026</i>	
Physical Setting: Physics (P-12)											<i>First Admin* June 2025</i>		January 2026	June 2026	
Algebra II	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	<i>Last Admin June 2026</i>	
Algebra II (Next Gen)											<i>First Admin* June 2025</i>	August 2025	January 2026	June 2026	August 2026
English Language Arts	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	<i>Last Admin June 2026</i>	
English Language Arts (Next Gen)											<i>First Admin* June 2025</i>	August 2025	January 2026	June 2026	August 2026
Global History and Geography II	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	June 2026	August 2026
United States History and Government (New Framework)	January 2022	June 2022	August 2022	January 2023	June 2023	August 2023	January 2024	June 2024	August 2024	January 2025	June 2025	August 2025	January 2026	June 2026	August 2026

\*The contractor will be conducting a standard setting in conjunction with this first administration of this new exam.

## Deliverables and/or Project Description

### Overview of Required Services

This RFP includes three components. COMPONENT 1 includes scaling and scale maintenance. COMPONENT 2 includes score collection and setting performance standards. COMPONENT 3 includes data analyses that are required to provide evidence regarding the reliability, validity, scaling, and equating for the operational results of the examinations, as well as preparing annual technical reports for each examination administered in the preceding year, using operational test data provided by NYSED.

The contractor will be required, once each year of the contract, to scale and equate all field tests for the Regents Examinations and the elementary- and intermediate-level Science tests administered in the preceding school year and produce a technical report on this process. The production of scoring tables and conversion charts for all examinations will be required annually for one administration each of the elementary- and intermediate-level Science operational examinations and three administrations each school year of the Regents operational examinations. (Regents Examinations in Physical Setting/Physics are ordinarily administered only twice per year, whereas all others are administered three times per year.)

To continue the implementation of the New York State Learning Standards into the Regents Examination program and the elementary and intermediate-level Science tests, the contractor will be required to recommend appropriate performance standards to NYSED using research-based methodologies in accordance with the Standards for Educational and Psychological Testing (2014). A standard setting will be performed using operational test data from an operational score collection of a representative sampling of 10,000 students taking the examination, conducted by the contractor immediately after the administration of the exam. In order to allow timely issuance of final student grades, standard settings must be completed immediately after each new test is administered.

The contract resulting from this RFP will require the contractor to perform data analysis and develop annual operational exam technical reports for each examination listed in this RFP, as well as for others in the areas of ELA, Mathematics, Science and Social Studies should they be administered during the period of the resulting contract. The data analyses and technical reports required by this RFP will provide evidence regarding the reliability, validity, and psychometric quality of the Regents Examinations and elementary- and intermediate-level Science tests. The contractor will be required to provide annual technical reports for each examination based on operational test data from the prior school year's administrations provided to the contractor by NYSED.

The contractor will advise NYSED on psychometric matters, including but not limited to, field test and operational form design, scaling and scale maintenance, and setting performance standards.

**[Chart 2: Examination Titles and Timeline for Performing Required Services](#)** lists the examinations currently administered and under development with anticipated contract years during which the contractor is expected to conduct activities for each of these examination titles for each of the three components of this RFP.

**Chart 2: Examination Titles and Timeline for Performing Required Services**

Contract Year 1: October 1, 2021 – September 30, 2022

Contract Year 2: October 1, 2022 – September 30, 2023

Contract Year 3: October 1, 2023 – September 30, 2024

Contract Year 4: October 1, 2024 – September 30, 2025

Contract Year 5: October 1, 2025 – September 30, 2026

Examination Title	Scaling and Equating Contract Years (Component 1)					Anticipated Standard Setting (Component 2)	Reliability/Validity Analysis Contract Years (Component 3)				
	Yr1	Yr2	Yr3	Yr4	Yr5		Yr1	Yr2	Yr3	Yr4	Yr5
English Language Arts *	Yr1	Yr2	Yr3	Yr4	Yr5		Yr1	Yr2	Yr3	Yr4	Yr5
English Language Arts (Next Gen) **			Yr3	Yr4	Yr5	June 2025			Yr3	Yr4	Yr5
Algebra I *	Yr1	Yr2	Yr3				Yr1	Yr2	Yr3	Yr4	
Algebra I (Next Gen) **	Yr1	Yr2	Yr3	Yr4	Yr5	June 2023	Yr1	Yr2	Yr3	Yr4	Yr5
Geometry *	Yr1	Yr2	Yr3	Yr4			Yr1	Yr2	Yr3	Yr4	Yr5
Geometry (Next Gen) **		Yr2	Yr3	Yr4	Yr5	June 2024				Yr4	Yr5
Algebra II*	Yr1	Yr2	Yr3	Yr4	Yr5		Yr1	Yr2	Yr3	Yr4	Yr5
Algebra II (Next Gen) **			Yr3	Yr4	Yr5	June 2025					Yr5
Living Environment *	Yr1	Yr2	Yr3	Yr4			Yr1	Yr2	Yr3	Yr4	Yr5
Life Science: Biology **		Yr2	Yr3	Yr4	Yr5	June 2024		Yr2	Yr3	Yr4	Yr5
Physical Setting/ Earth Science *	Yr1	Yr2	Yr3	Yr4			Yr1	Yr2	Yr3	Yr4	Yr5
Earth and Space Sciences **		Yr2	Yr3	Yr4	Yr5	June 2024		Yr2	Yr3	Yr4	Yr5
Physical Setting/ Chemistry *	Yr1	Yr2	Yr3	Yr4	Yr5		Yr1	Yr2	Yr3	Yr4	Yr5
Physical Setting: Chemistry (P-12) **			Yr3	Yr4	Yr5	June 2025				Yr4	Yr5
Physical Setting/Physics*	Yr1	Yr2	Yr3	Yr4	Yr5		Yr1	Yr2	Yr3	Yr4	Yr5
Physical Setting: Physics (P-12) **			Yr3	Yr4	Yr5	June 2025				Yr4	Yr5
Grade 5 Elementary-level Science **	Yr1	Yr2	Yr3	Yr4	Yr5	June 2023	Yr1	Yr2	Yr3	Yr4	Yr5
Grade 8 Intermediate- level Science *	Yr1						Yr1	Yr2			
Grade 8 Intermediate- level Science (P-12) **	Yr1	Yr2	Yr3	Yr4	Yr5	June 2023	Yr1	Yr2	Yr3	Yr4	Yr5
Global History and Geography II	Yr1	Yr2	Yr3	Yr4	Yr5		Yr1	Yr2	Yr3	Yr4	Yr5
United States History and Government *	Yr1						Yr1				
United States History and Government (New Framework)	Yr1	Yr2	Yr3	Yr4	Yr5		Yr1	Yr2	Yr3	Yr4	Yr5

\* These examinations will be phased out during the contract period. They will require scaling through their last administrations, but equating of the field test data may not be required for the final one or two years that the exam is offered.

\*\* These examinations will be phased in during the contract period and will require standard setting and the establishment of a new scale immediately following their first administration.

## COMPONENT 1: SCALING AND SCALE MAINTENANCE

Scaling and scale maintenance will be required for all annual field test and operational test administrations for all Regents Examinations and elementary- and intermediate-level Science Tests for the 2021-22, 2022-23, 2023-24, 2024-25, and 2025-26 school years. The examinations currently required or anticipated to be required during the contract term are specified in [Chart 2](#), but actual examination titles and number of exams may change during the contract term. It is anticipated that the Regents Examinations in English Language Arts, Algebra I, Geometry, Algebra II, Living Environment, Physical Setting/Earth Science, Physical Setting/Chemistry, Physical Setting/Physics, intermediate-level Science (Grade 8), and United States History and Government will be phased out during the contract period but will require scaling through the last operational test administration. Equating of field test data may not be required for the final one to two years that those examinations will be offered.

### Establishing New Scales

When new operational examinations are introduced, new operational baseline scales will need to be established. It is anticipated that under the terms of this contract the following exams will require a new baseline scale: English Language Arts (Next Gen); Algebra I (Next Gen); Geometry (Next Gen); Algebra II (Next Gen); Life Sciences: Biology; Earth and Space Sciences; Physical Setting: Chemistry (P-12); Physical Setting: Physics (P-12); Grade 5 elementary-level Science, and Grade 8 intermediate-level Science. The operational baseline scale for new examinations are determined using operational data collected after the first administration of the exam. The contractor will be responsible for a data collection of student test takers as described in Component 2. Contractors must recommend for NYSED approval a data collection methodology, and a methodology for establishing the operational baseline scale and for placing the field test item parameter estimates from the annual stand-alone field testing onto the operational base scale. A technical report documenting all analyses and results will be required.

### Scale Maintenance

Scale maintenance involves the scaling of the operational exams and the equating of the field-test forms. The scaled item parameter estimates are used for form construction and the production of the raw-to-scale conversion chart that is made available concurrently with the operational administration. A field-test form equating plan must be created that maximizes flexibility of the operational form development and must link all field-test forms to each other and to the operational base scale. The contractor will be responsible for providing raw score to theta (ability scale) to scale score tables for each examination within one week of NYSED's request, and a final raw-to-scale conversion chart for each examination to the format of NYSED's specifications.

### Field Tests

The contractor must use an Item Response Theory (IRT) methodology for the scaling, equating and data analyses of the field tests and for producing the scoring table (raw score to theta to scale score) and conversion chart of each operational examination.

The contractor must create a field-test form equating plan that links all field-test forms to each other and to the operational base scale. Due to operational constraints, the entire field testing for the Regents Examination program is stand-alone. Field test data will be provided to the contractor by the Office of State Assessment (OSA) Research Unit most often in October for those field tests administered in the spring. Technical reports must be provided documenting statistical analysis for each field test administration for all examinations described in the RFP. Each analysis must include but not be limited

to: classical item statistics, inter-rater agreement, reliability analysis, IRT statistics, and Field Test scaling and equating. Data will be due back to NYSED according to a mutually agreed upon schedule based on the timelines shown below. All files must be transmitted in a secure manner. The contractor must provide the results of the analyses in technical reports. For each field test administration, the contractor must:

1. prepare field-test data files for calibration; merging multiple-choice and constructed-response item data files, provide both classical and Item Response Theory (IRT) statistics
  - a. deliverable: item statistics in both bank (Excel) and label (MS Word) formats that include basic item statistics (e.g., p-values, point bi-serials) and Rasch item difficulty, as well as item fit evaluation statistics
  - b. timeline: within 2 weeks upon NYSED's request
2. scale and equate the field-test forms based on IRT, develop the scaling and equating design and place all items on a common scale
  - a. deliverable: merged data files, un-equated WINSTEPS output files, equated WINSTEPS output files, mean ability, equating constants, and equated item parameters for each field-test form
  - b. timeline: within 2 weeks upon NYSED's request
3. prepare complete, final data file, as specified by NYSED
  - a. deliverable: clean, score, and merge data files for each field-test form and data layout files
  - b. timeline: deliver upon the completion of the scaling and equating works
4. prepare an annual technical report that includes every examination field tested in the prior school year, as specified by NYSED (see outline for the [Sample Table of Contents for Field Test Technical Reports for Component 1](#)).
  - a. deliverable: annual technical report on the scaling and equating of field tests and statistics on each examination title
  - b. timeline: draft is to be submitted to NYSED within 4 weeks after completion of scaling and equating

**Chart 3: Examination Titles and Field Test Forms**

**Chart 3** lists the anticipated field test characteristics for examinations currently administered and examinations that NYSED is currently planning to introduce during the contract. These characteristics may be revised during the contract period should it be necessary. The contractor must create a field-test form equating plan that links all field-test forms to each other and to the operational base scale.

***Social Studies***

Examination	Anticipated Number of FT Forms*	Anticipated Number of Items per Form		Target # of Students Tested per Form	Month of Administration**
		Multiple-Choice Items	Constructed-Response Items		
Global History and Geography II	0-20	16-21 Multiple-Choice Items		1,000	May
	0-16	3-4 Constructed-Response Question Items		1,500	
	0-7	1 Enduring Issue Essay		1,500	
United States History and Government (New Framework)	0-26	20 Multiple-Choice Items		1,000	May
	0-16	1 Short Essay Item		1,500	
	0-5	7 Civic Literacy Essay Items		1,500	

\* Anticipated number of forms will differ year-to-year during the phasing in of new examinations and the phasing out of old examinations.

\*\*Occasionally, a very limited amount of field testing will take place in the fall.

***Mathematics***

Examination	Anticipated Number of FT Forms*	Anticipated Number of Items per Form		Target # of Students Tested per Form	Month of Administration**
		Multiple-Choice Items	Constructed-Response Items		
Algebra I	0-40	7	4	1,500	May
Algebra I (Next Gen)	0-40	7	4	1,500	May
Geometry	0-45	7	3	1,200	May
Geometry (Next Gen)	0-45	7	3	1,200	May
Algebra II	0-35	7	4	1,500	May
Algebra II (Next Gen)	0-35	7	4	1,500	May

\* Anticipated number of forms will differ year-to-year during the phasing in of new examinations and the phasing out of old examinations.

\*\*Occasionally, a limited amount of field testing will take place in the fall.

**English Language Arts (ELA)**

Examination	Anticipated Number of FT Forms*	Anticipated Number of Items per Form		Target # of Students Tested per Form	Month of Administration**
		Multiple-Choice Items	Constructed-Response Items		
English Language Arts	0-7	37 ELA Reading Items		1,500	May
	0-7	6 ELA Text-based Writing Items		1,500	
	0-7	19 ELA Text-based Analysis Items		1,500	
English Language Arts (Next Gen)	0-7	37 ELA Reading Items		1,500	May
	0-7	6 ELA Text-based Writing Items		1,500	
	0-7	19 ELA Text-based Analysis Items		1,500	

\* Anticipated number of forms will differ year-to-year during the phasing in of new examinations and the phasing out of old examinations.

\*\*Occasionally, a very limited amount of field testing will take place in the fall.

**Sciences**

Examination	Anticipated Number of FT Forms*	Anticipated Number of Items per Form		Target # of Students Tested per Form	Month of Administration**
		Multiple-Choice Items	Constructed-Response Items		
Living Environment	0-16	9-15	6-11	1,500	May
Life Science: Biology	0-16	9-15	6-11	1,500	May
Physical Setting/ Earth Science	0-25	10-17	4-11	1,500	May
Earth and Space Sciences	0-25	10-17	4-11	1,500	May
Physical Setting/ Chemistry	0-21	11-13	9-11	1,500	May
Physical Setting: Chemistry (P-12)	0-21	11-13	9-11	1,500	May
Physical Setting/ Physics	0-11	11-14	7-12	1,500	May
Physical Setting: Physics (P-12)	0-11	11-14	7-12	1,500	May

\* Anticipated number of forms will differ year-to-year during the phasing in of new examinations and the phasing out of old examinations.

\*\*Occasionally, a limited amount of field testing will take place in the fall.

**Sciences**

Examination	Anticipated Number of FT Forms*	Anticipated Number of Items per Form		Target # of Students Tested per Form	Month of Administration**
		Multiple-Choice Items	Constructed-Response Items		
Grade 5 Elementary-level Science	0-16	5-8	4-7	1,500	May
Grade 8 Intermediate-level Science	0-16	8-10	7-8	1,500	May

\* Anticipated number of forms will differ year-to-year during the phasing in of new examinations and the phasing out of old examinations.

\*\*Occasionally, a limited amount of field testing will take place in the fall.

**Field Test Technical Reports**

Scaling and scale maintenance are required once per year for all field test administrations. The contractor will be required to produce annual field test technical reports that cover all of the field testing conducted by NYSED in the prior school year for all exam titles listed in [Chart 3](#) of this RFP.

For the field test technical reports prepared by the contractor in Year 1 of the contract, NYSED will provide the contractor with the needed test data to conduct the analyses included in them. A draft of each field test technical report should be submitted to NYSED within four weeks of the completion of the scaling and equating of the field tests. Prior to submission to NYSED, the draft technical reports must be carefully proofread and edited by the contractor. The draft field test technical reports must then be reviewed and approved by NYSED. After approval of the draft report by NYSED, one electronic copy of the final technical report must be provided to the Office of State Assessment Research Unit. The final technical report should be submitted within two weeks of receiving final approval of the draft report by NYSED.

Because NYSED generally posts the final technical reports on its web site, all technical reports prepared by the contractor for NYSED must comply with New York State Education Department IT Policy NYSED-WEBACC-001, [Web Accessibility Policy](#).

## Sample Table of Contents for Field Test Technical Reports for Component 1

### Scaling and Scale Maintenance

#### I. Introduction

##### A. Purpose

#### II. Field Test Analysis

##### A. File Merging and Data Clean-Up

##### B. Classical Analysis

1. Item Difficulty
2. Item Discrimination
3. Test Reliability
4. Scoring Reliability
5. Inter-rater Agreement
6. Item Means and Standard Deviations
7. Intra-class Correlation
8. Weighted Kappa

##### C. Item Response Theory (IRT) Statistics

1. Item Calibration
2. Item Fit Evaluation

##### D. Item Flag for Operational Test Form Construction

#### III. Equating Procedure

##### A. Randomly Equivalent Group Equating Design

##### B. Common Item Equating Design

#### IV. References

#### V. Appendices

##### A. Classical Item Analysis

##### B. Test and Scoring Reliability

##### C. Inter-rater Consistency-Point Differences between First and Second Reads

##### D. Additional Measures of Inter-Rater Reliability and Agreement

##### E. Partial-Credit Model Item Analysis

##### F. Initial Mena Abilities and Equating Constants for Randomly Equivalent Group Equating Design

### Conversion Charts

Scoring tables (raw score to theta to scale score) and conversion charts (raw score to scale score) must be produced for each operational Regents Examination, beginning with the January 2022 administration, and for each Grade 5 elementary-level Science and Grade 8 intermediate-level Science

operational test, beginning with the Spring 2022 administration. All Regents Examinations with the exception of Physical Setting/Physics are usually administered three times annually (January, June and August), and the Grade 5 elementary-level Science and Grade 8 intermediate-level Science operational examinations are administered one time annually (usually in May or June).

Each operational test administration requires a standardized raw score to scale score conversion chart. All conversion charts must be formatted according to NYSED specifications. During the operational-test administration period, conversion charts are posted on NYSED's web site at: <http://www.nysedregents.org>. Conversion charts must be submitted to NYSED for approval at least six weeks prior to each operational-test administration. For each operational-test administration, the contractor must:

1. develop the operational baseline scale and create the raw score to theta (ability scale) to scale score tables for each operational examination
  - a. deliverable: operational-baseline scale and raw-score-to-theta-to-scale-score tables
  - b. timeline: within 1 week upon NYSED's request
2. prepare final raw-score-to-scale-score conversion chart for each examination formatted to NYSED specifications
  - a. deliverable: conversion charts for each examination
  - b. timeline: within 1 week upon NYSED's request

## **COMPONENT 2: STANDARD SETTING**

The standard setting component of the scope of work will require the contractor to conduct a post-operational score collection and standard setting for selected State examinations, including but not limited to those listed in [Chart 1](#) of this RFP. In order to obtain recommendations on performance standards, the score collection should result in a representative sample of 10,000 students for the administration period. The contractor will be responsible for all aspects of the score collection, including materials development, shipping, scoring of multiple-choice items, and reporting test results to NYSED and schools. For the standard setting, the contractor will handle all logistics and conduct the standard setting and all necessary analyses. Technical reports for standard setting must be produced documenting the standard setting process and development of Performance Level Descriptions (PLDs), detailing the overall recommendations of panelists and each phase of judgments in relation to the standard setting model. The contractor is required to advise NYSED on any psychometric/methodological matters relating to standard setting.

The process for standard setting will consist of the following elements:

- a. conduct an operational score collection to support standard setting
- b. hold standard setting meetings to set performance standards for a maximum of five examinations per contract year

- c. develop technical reports detailing the overall recommendations of panelists and the judgments of each subject area expert in each phase of judgment (as appropriate to the standard setting model), with sections on the development of PLDs and analysis.

## Score Collection

The contractor will be required to conduct a score collection of a representative sample of 10,000 students taking the operational examination. To achieve a final representative sample of 10,000 student papers, it is estimated that the contractor will need to select a target sample of 15,000 students. The contractor will work with NYSED to select schools that will be required to return all of their students' contractor-provided answer sheets for the examination. Data obtained from the score collection will be used for standard setting. There will be ten to twelve examinations that will require standard setting during the contract term, with a maximum of five examinations in any single contract year.

The contractor will be responsible for scoring multiple-choice items on all student papers collected by the contractor. Constructed responses will be scored locally, and the local scorers record the scores for these items on the contractor-provided answer sheets. The contractor must provide a mechanism for reporting results to the schools in a manner that carefully safeguards all personally identifiable information and is fully compliant with the Family Educational Rights and Privacy Act (FERPA) and New York State Education Law §2-d. (See [Appendix S: Parents' Bill of Rights for Data Privacy and Security](#) in section 4.) Assurances.)

The contractor is responsible for notifying all schools selected to be part of the score collection sample at least 90 days prior to the test administration date. The notification letter must be approved by NYSED before it is sent to schools.

For each exam requiring the determination of performance standards, the contractor will be responsible for designing operational test answer sheets to be used by schools in the score collection sample. Answer sheets must include a pre-printed school name and BEDS Code (a unique 12 digit identifying number assigned by NYSED to each school), and gridded fields, wherein schools will fill in student name, student identification number and date of birth. It may be possible for the schools' Regional Information Centers (RICs) to pre-populate these gridded fields for most of the selected schools' student participants. Sample answer sheets should be sent to NYSED for approval at least four months prior to the test administration.

Once the answer sheets have been approved by NYSED, the contractor is responsible for printing the number of answer sheets requested by schools included in the sample, based upon exam request data provided to the contractor by NYSED. In those cases in which NYSED has required the contractor to select a representative sample, it will be necessary for the contractor to print and distribute as many as 20,000 answer sheets to ensure a resultant sample of at least 10,000 students. Answer sheets must be shipped by the contractor directly to all participating schools three weeks prior to test administration. In addition to providing answer sheets, the contractor must provide participating schools with instructions for shipping materials to the contractor, boxes for schools to package and ship answer sheets, and pre-paid shipping labels.

In order to facilitate standard setting(s) within two weeks after the June test administration, the contractor will be required to coordinate the pickup of answer sheets within approximately two to three school days of the administration (the exams will most likely be administered on the first Monday, Tuesday, or Wednesday of the month of June). By Friday of the same week, schools will be required to have scores for the constructed-response items recorded on the answer sheets. In addition, the school must also prepare and package the answer sheets for pickup by 1:00 P.M. Friday. The

contractor will then need to receive, unpack, log-in, and scan all answer sheets in a compressed timeframe. The contractor will also be responsible for following up with the carrier and schools regarding any missing or damaged materials and submitting all tracking information and notices of missing or damaged material to NYSED.

As part of the score collection and scanning process, the contractor must:

1. verify data on operational-test answer sheets, create scanned data records, and clean up any missing or incorrect data
2. load operational test scan data into a database
3. provide the scored item level data and layout files that will be used for calibrating IRT item parameters and assembling materials for standard setting for NYSED's verification
4. provide all standard setting data for NYSED's verification
5. provide impact analyses after the standard setting activities
6. provide student background characteristics and raw score data with clean data layouts per NYSED's specifications once all materials are scanned
7. provide a final scale score file following the setting of cut scores at standard setting
8. provide all participating schools with secure access to their students' total raw scores for each part of the examination within two weeks of the test administration
9. provide all participating schools with secure access to their students' total raw scores for each part of the examination, scale scores, and performance levels on the same day that NYSED releases the official conversion chart

All used operational test answer sheets must be returned to schools within two weeks after data files are sent to NYSED. The contractor is responsible for the costs of returning answer sheets to the schools.

The contractor must provide an adequately staffed customer service hotline, from 8:00 a.m. – 5:00 p.m. Eastern Time, each business day to handle any questions or concerns from schools regarding the shipping process and/or the accessibility of their students' data. This hotline must be available as soon as answer sheets are sent to the schools and remain available until one week after the contractor has provided participating schools with secure access to their students' raw and scale score test results.

[Chart 4](#) lists the examinations that will be phased in during the contract period and NYSED's best estimates of the numbers of students who will be taking them during their initial administrations. These examinations will require standard setting and the establishment of a new scale immediately following their first administration.

**Chart 4: Estimated Numbers of Students Who Will Be Tested During the Initial June Administrations for Exams Being Phased In During the Contract Period**

<b>Examination Title</b>	<b>Estimated Number of Students to be Tested</b>
Algebra I (Next Gen) (Will be administered for the first time in June 2023)	160,000
Geometry (Next Gen) (Will be administered for the first time in June 2024)	110,000
Algebra II (Next Gen) (Will be administered for the first time in June 2025)	80,000
Grade 5 Elementary-level Science (Will be administered for the first time in June 2023)	185,000
Grade 8 Intermediate-level Science (P-12) (Will be administered for the first time in June 2023)	120,000
Earth and Space Sciences (Will be administered for the first time in June 2024)	100,000
Life Science: Biology (Will be administered for the first time in June 2024)	150,000
Physical Setting: Chemistry (P-12) (Will be administered for the first time in June 2025)	80,000
Physical Setting: Physics (P-12) (Will be administered for the first time in June 2025)	30,000
English Language Arts (Next Gen) (Will be administered for the first time in June 2025)	110,000

### **Standard Setting Meeting**

The contractor will be required to facilitate an evidence-based standard setting procedure and to hold standard setting meetings for setting performance standards on up to five examinations per spring administration period and a total of up to 15 during the contract period. Each standard setting meeting (two days in length) will be conducted in Albany or within 25 miles of Albany within two weeks after the examination is administered. For standard settings in June, the examinations most likely to be standard set are anticipated to be administered on the first Monday, Tuesday, and/or Wednesday of the month. The contractor will most likely need to run some of the standard setting meetings simultaneously.

The contractor will be responsible for arranging and paying for conference room space for the standard setting meetings. In addition, the contractor must provide all meeting facilitation and training for participants and develop and produce all materials necessary to conduct the meetings (including but not limited to: standard setting materials, prior impact data, handouts, PowerPoint presentations, sign in and sign out sheets, meeting agendas, panelist surveys, and non-disclosure agreements). The contractor must ensure that all materials are kept secure at all times, and the contractor must adhere to [Attachment 1: Security Guidelines for New York State Assessment Program](#), as well as [Appendix R: Data Security and Privacy Plan Provisions](#) and [Appendix S: Parents' Bill of Rights for Data Privacy and Security](#), both found in section 4.) Assurances.

Each standard setting meeting will include approximately 36 educator participants, predominately New York State teachers, with some higher education faculty and school administrators. NYSED will provide the contractor with names of teachers, faculty, and administrators for the contractor to contact in order to determine availability and willingness to participate in the standard setting. NYSED staff and select members of NYSED's Technical Advisory Committee (TAC) will also attend the meetings, primarily in

an observational role. The contractor is not responsible for covering any of the cost for travel of TAC or NYSED staff.

The contractor is also responsible for providing meals and reimbursement for travel expenses for all participants and lodging for those participants residing 50 or more miles from the meeting location of the standard setting. Travel expense reimbursement must be at the approved New York State rates that are in effect on the dates of the standard setting meeting. Current rates are available at: <http://www.gsa.gov>. The contractor must pay teacher and faculty participants an honorarium of \$200 per day of attendance. No honoraria will be paid to school administrators. The contractor will not provide any payment or travel reimbursement to NYSED staff or TAC members.

At this time, it is anticipated that the contractor will suggest an appropriate method, based on the examination design, for the initial standard setting for each examination. A final determination of the methodology to use for each standard setting will be determined collaboratively between the contractor and NYSED, but each standard setting meeting should include the following steps:

1. development of threshold PLDs
2. review of items and item- and test-level statistics
3. training on standard setting methodology
4. practice judgments with discussion
5. multiple rounds of judgments with discussion
6. discussion of impact data
7. all appropriate procedural validity documentation (e.g., surveys of panelists)
8. record and summarize the decisions of the committee

Immediately following the completion of the standard setting meeting, the contractor will be responsible for providing NYSED with impact analysis and developing the operational raw score to scale score table based on the operational calibrations and standard setting results. A technical brief documenting methodology and results of analyses is required for the establishment of the new scale when a new examination is first administered. The contractor is required to advise NYSED on any psychometric/methodological matters related to standard setting.

### **Standard Setting Technical Report**

A comprehensive technical report for each standard setting is required. The technical report should include detailed overall recommendations of panelists, the judgments of each subject area expert in each phase of judgment, as appropriate to the standard setting model, and sections on the development of PLDs and the analysis. See the example of a table of contents outline for the standard setting technical report below. The contractor must provide NYSED with all electronic data files within two weeks following the standard setting meeting. A draft of the technical report should be submitted to NYSED within six weeks of the completion of the standard setting. Prior to submission to NYSED, the draft report must be carefully proofread and edited. The draft technical report will then be reviewed and approved by NYSED. The final technical report should be submitted within two weeks of receiving final approval of the draft report by NYSED. Because NYSED generally posts the final technical reports on its web site, all technical reports prepared by the contractor for NYSED must comply with New York State Education Department IT Policy NYSED-WEBACC-001, [Web Accessibility Policy](#).

## Sample Table of Contents for Standard Setting – Component 2 Technical Reports

- I. Executive Summary
- II. Standard Setting Approach
- III. Panelists
- IV. Method
- V. Performance Level Descriptions
- VI. Standard Setting Materials
- VII. Standard Setting Methodology
- VIII. Cut Score Computation
- IX. Methodological Strengths
- X. Procedure
- XI. Results
- XII. Panelist Variability
- XIII. Evaluations
- XIV. Final Recommendation and Decision

## COMPONENT 3: RELIABILITY/VALIDITY ANALYSIS

The contractor will conduct analyses to provide evidence regarding reliability and validity, as well as summary statistics, for all examinations in this RFP. In addition, the contractor will examine the stability of student responses to the field-test items through comparison of banked and operational item parameters.

In addition to the operational technical report, NYSED requires an Excel workbook that contains item level data for each June exam administered: student n-count, percent blank, percentage of chosen choice (MC items), percentage at each score point (CR items), mean, point-biserial, and distractor point-biserial as well as item difficulty estimates from IRT calibrations.

NYSED also requires the contractor to provide a technical brief of comparison of raw score cuts and percentage of students in each performance level between pre-equating and post-equating models.

[Chart 1](#) of this RFP provides the anticipated timeline for implementation of assessments measuring the New NYS Learning Standards and phase-out of existing assessments. In accordance with this timeline English Language Arts, Algebra I, Geometry, Algebra II, Living Environment, Physical Setting/Earth Science, Physical Setting/Chemistry, Physical Setting/Physics, Grade 8 intermediate-level Science, and United States History and Government will all be phased out during the contract period and may not require analyses for all five school years. English Language Arts (Next Gen), Algebra I (Next Gen), Geometry (Next Gen), Algebra II (Next Gen), Life Sciences: Biology, Earth and Space Sciences, Physical Setting: Chemistry (P-12), Physical Setting: Physics (P-12), Grade 5 elementary-level

Science, and Grade 8 intermediate-level Science (P-12) will be phased in during the contract period and will require analyses annually, once they are first administered.

Regents Examination answer sheets developed by RICs and large-city scanning centers are scanned either by the school, the district, or the scanning center and the data is compiled into a statewide data file for each exam. Item-level data files for all three test administration periods will be provided to the contractor on approximately November 1 of each year.

A preliminary summary (e.g., descriptive statistics) must be provided to NYSED within one month of receiving the data file. A teleconference may be held with NYSED staff to discuss the results of the data analysis and resolve any concerns prior to the development of the final technical report.

### **Operational Test Technical Reports**

Reliability and validity analysis must be documented in technical reports. Annual technical reports must be developed and submitted for each examination administered in the preceding school year, using operational test data provided by NYSED.

Beginning in fall 2021, the contractor will be responsible for analyzing data and developing technical reports for each examination title administered in the preceding school year, using operational test data provided by NYSED. For example, the operational test technical reports developed in the fall 2021 will include data from the August 2020, January 2021, and June 2021 administrations, and the reports developed in fall 2022 will include data from the August 2021, January 2022, and June 2022 administrations. A technical report will be required for any exam title administered during at least one of the administration periods. It is anticipated that technical reports will be needed for approximately 12-20 examination titles for each school year.

Operational technical reports will contain operational-test form statistics and scoring tables (conversion charts), and include the methodology used to create the tables for the operational exams administered. A draft of each technical report should be submitted to NYSED within two months of receiving the data file. Prior to submission to NYSED of the final technical report, a draft report must be reviewed and approved by NYSED. The final technical report should be submitted within two weeks of receiving final approval of the draft report by NYSED. One electronic copy of the final technical report must be provided to the Office of State Assessment Research Unit. It will not be necessary for the contractor to provide NYSED with any printed copies of the final technical reports. Because NYSED generally posts the final technical reports on its web site, all technical reports prepared by the contractor for NYSED must comply with New York State Education Department IT Policy NYSED-WEBACC-001, [Web Accessibility Policy](#).

## Sample Table of Contents for Operational Test Technical Reports for Component 3

- I. Introduction
  - a. Introduction
  - b. Purposes of the Exam
  - c. Target Population
- II. Classical Item Statistics
  - a. Item Difficulty
  - b. Item Discrimination
  - c. Discrimination on Difficulty Scatter Plot
  - d. Observations and Interpretations
- III. IRT Calibrations, Equating, and Scaling
  - a. Description of the Rasch Model
  - b. Software and Estimation Algorithm
  - c. Characteristics of the Testing Population
  - d. Item Difficulty-Student Performance Maps
  - e. Checking Rasch Assumptions
    - i. Unidimensional
    - ii. Local Independence
    - iii. Item Fit
  - f. Scaling of Operational Test Forms
- IV. Reliability
  - a. Reliability Indices
    - i. Coefficient Alpha
  - b. Standard Error of Measurement
    - i. Traditional Standard Error of Measurement
    - ii. Traditional Standard Error of Measurement Confidence Intervals
    - iii. Conditional Standard Error of Measurement
    - iv. Conditional Standard Error of Measurement Confidence Intervals
    - v. Conditional Standard Error of Measurement Characteristics
    - vi. Results and Observations
  - c. Decision Consistency and Accuracy
  - d. Group Means
  - e. State Percentile Rankings
- V. Validity
  - a. Evidence Based on Test Content
    - i. Content Validity
    - ii. Item Development Process
    - iii. Item Review Process
  - b. Evidence Based on Response Processes
    - i. Administration and Scoring
    - ii. Statistical Analysis
  - c. Evidence Based on Internal Structure
    - i. Item Difficulty
    - ii. Item Discrimination
    - iii. Differential Item Functioning
    - iv. IRT Model Fit
    - v. Test Reliability
    - vi. Classification Consistency and Accuracy

- vii. Dimensionality
  - d. Evidence Based on Relations to Other Variables
  - e. Evidence Based on Testing Consequences
- VI. References
- VII. Appendices
  - a. Operational Test Maps
  - b. Raw-to-Theta-to-Scale Score Conversion Tables
  - c. Item Writing Guidelines
  - d. Tables and Figures for Each Administration

For a sample operational exam technical report please see:

<http://www.p12.nysed.gov/assessment/reports/2017/a1-17.pdf>

## **Alignment Studies**

In order to meet the Elementary and Secondary Education Act (ESSA) requirement that each state submit evidence regarding its assessments in English Language Arts, Mathematics and Science to the United States Department of Education for peer review, the contractor will arrange and provide for one-time alignment studies by an independent party with demonstrated expertise in high-quality, large-scale assessment, at the contractor's sole cost. These studies must review the test blueprints and the operational test forms for the new Grade 5 elementary-level Science and Grade 8 intermediate-level Science Tests and for revised Regents Examinations in Algebra I, Earth and Space Science, Life Science: Biology, and ELA. The studies must determine:

1. The extent to which the tests are aligned to the full range of New York State's relevant academic standards, and
2. The extent to which test items intended to require complex demonstration or applications of knowledge and skills relate to other measures that require similar levels of cognitive complexity in the content area.

A report from the independent-expert reviews is expected to be completed by September 30, following the administration and scoring of the first operational test administration for each of the above listed examination titles.

The contractor shall notify NYSED of any third-party reviewing field test items and/or operational items. Any such third party is subject to the review and approval of NYSED, and its staff must sign non-disclosure agreements.

## **Cognitive Lab Studies**

The contractor will conduct cognitive labs with NYS students to provide validation of test item types developed by NYSED for the new Grade 5 elementary-level Science and Grade 8 intermediate-level Science Tests and for the new Regents Examinations in Algebra I, Earth and Space Science, Biology, and ELA. A cognitive study will be conducted for the purpose of content validation and peer review only once for each of these examinations during the contract resulting from this RFP, at such time as specified by NYSED. Results of these labs must be documented to provide evidence that:

- a. Test items elicit the intended response processes appropriate for each grade level as represented in the NYS P-12 Next Generation Learning Standards;
- b. Test items require complex demonstrations or applications of knowledge and skills; and

- c. Ancillary constructs needed for success on the assessments do not provide inappropriate barriers to measuring the achievement of all students.

The contractor must develop a detailed plan for conducting the cognitive labs for NYSED approval. The plan must include information on the selection of a sample of items from each test title, the administration of the cognitive labs, and the analysis of student performance on the items. NYSED will provide assistance to the contractor in recruiting volunteers from schools expressing interest in this activity. The item types (i.e., multiple choice, short constructed response, and essays) selected for cognitive labs should be distributed proportionately to the operational test blueprint. The contractor will provide, for NYSED approval, the proposed number of items selected from each test and the number of students selected to participate in labs for each item.

## **GENERAL REQUIREMENTS FOR ALL COMPONENTS**

### **Program Management and Staffing**

The contractor must provide personnel with experience and expertise congruent with staff assignments for all aspects of the components outlined in the RFP. The contractor must ensure that staffing is commensurate with the project's scope of work throughout the duration of the contract and immediately notify NYSED of any changes in staffing, including any subcontractors. NYSED reserves the right to review and approve any proposed changes in key staffing and/or subcontractors.

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

The program manager must be a full-time employee of the contractor and have a minimum of a bachelor's degree; however, a master's degree or above is preferred. Project management certification through the Project Management Institute (PMI) as a Project Management Professional (PMP), or other recognized program management certification is preferred. The program manager should have at least three years' experience managing large-scale assessment projects from conception through completion following industry-recognized project management methodology. Previous experience in projects involving elementary-, intermediate-, and/or secondary-level testing is expected. The program manager is expected to have strong organizational and managerial skills and a demonstrated knowledge of testing procedures.

### **Program Manager Responsibilities**

The Program Manager will have the following responsibilities:

1. travel to Albany for an introductory meeting with NYSED staff within thirty days of final contract approval
2. meet with NYSED staff in Albany quarterly and/or as needed, after the initial introductory meeting
3. develop and submit an annual detailed project plan for review and approval by NYSED to provide an overall analysis of the methods the contractor will utilize to perform all aspects of the contract in the required timeframe
4. ensure that no work will be performed on the project until NYSED has approved the contractor's project plan

5. maintain accurate, up-to-date information on the current status of all contractor and subcontractor work on the project, and promptly communicate such information to NYSED
6. coordinate and participate in quarterly review meetings and weekly conference calls to discuss the project's status and any issues related thereto
7. provide meeting minutes to NYSED within one week following each quarterly review meeting
8. provide written statements on all important decisions made during weekly conference calls
9. submit all deliverables and other work products to NYSED in the manner designated by NYSED for review and approval prior to any release or distribution by the contractor
10. ensure that all materials are appropriately proofed for errors
11. submit materials to NYSED according to a mutually agreed upon timeline to allow for appropriate review
12. oversee the development and implementation of changes as necessary to ensure that the project remains within specified scope and is within time, cost, and quality objectives

### **Notification Procedures**

In the event that a problem or potential problem arises with regard to quality, timeliness, or any other issue with respect to deliverables and services at any time during the contract term, regardless of when the problem arises, the program manager must immediately notify the Director of State Assessment or his/her designee, via telephone and in writing, of the issue and the contractor's proposed solution and shall also include the issue and NYSED-approved solution on any subsequent report(s).

In the event a delay in performance occurs as a result of a force majeure event beyond the contract of the affected party, the affected party will contact the other party in writing as soon as the delay is known and provide a written contingency plan. The parties will use commercially reasonable efforts to overcome the difficulties and will resume work as soon as reasonably possible. The non-affected party acknowledges that the affected party will not be held liable for failure to perform any provision of the contract if such failure is caused by a force majeure event. Notwithstanding the foregoing, if the force majeure condition continues beyond thirty (30) days, the parties shall decide on an appropriate course of action that will permit fulfillment of the parties' objectives hereunder.

### **NYSED Approval**

NYSED shall have approval authority over all aspects of the work detailed in this RFP including, but not limited to, the following:

1. all material, products, and services produced by the contractor; all student information labels, answer sheet identifiers, written instructions for schools, Power Point presentations, conversion charts and all other printed materials produced for this project,
2. all development and operational plans for scaling and equating and standard setting,

3. all schedules, including training schedules, rollout schedules, implementation schedules and scoring/reporting schedules,
4. all reports, including technical reports and score reports,
5. any changes to key project staff, including the program manager, psychometricians, or research staff on and after award of the contract and commencement of work for the duration of the contract,
6. all activities proposed by the contractor, and
7. all communications and correspondence by the contractor with the media, the field, or entities other than NYSED, including with the districts, schools, and committee members.

Any changes to services or deliverables under this procurement must be in accordance with a written description clearly justifying the need for the change and identifying all rationales for the change (Change Order). The New York State Office of the State Comptroller is the only entity that has the authority to approve the modification of an agreement between NYSED and a contractor. No work that is not already contracted for should be started by the contractor prior to its official approval by NYSED and the Office of the State Comptroller.

### **Data Security, Data Privacy and Appropriate Use**

The contractor must comply with all data security, data privacy and appropriate use laws, regulations, policies and procedures required by the State of New York and NYSED, in accordance with the contract requirements of the Department. Such requirements include the [Attachment 1: Security Guidelines for New York State Assessment Programs](#), CPO2-2d Contractor's [Data Privacy and Security Plan](#) and CPO1 Supp-2d Supplemental Information for Contracts that Utilize Personally Identifiable Information. These security guidelines, which were developed by NYSED to set forth the management of secure testing materials and protection of personally identifiable information, should be reflected in the contractor's procedures.

Security of individual student data and test items, including the thorough retrieval and accounting for all secure test materials, is essential. The contractor must adhere to all of NYSED's security protocols regarding transmission and shipping of secure materials. This includes secure shipment of all physical materials using a carrier with ground tracking capability.

The contractor must use encrypted files and design, host, and maintain a secure file transfer protocol (FTP) site as a means of file transfer. Access to the NYS test information on this site must be limited to the contractor and NYSED unless further sharing with other parties is authorized in writing by NYSED. Any other electronic transfer via e-mail, Internet, or facsimile (FAX) of individual student information or any secure test materials is not permitted unless authorized by NYSED to do so on a case-by-case basis. When shipping secure materials, the contractor must use a delivery service with online ground tracking capabilities. All shipments between the contractor and NYSED or the contractor's subcontractors must be in locked boxes, which will be supplied by NYSED.

All confidential data must be stored on computer and storage facilities maintained within the United States using the strictest industry standards and state-of-the-art best practices, including appropriate firewalls and security measures.

All contractor staff and subcontractors having access to secure or confidential information, including but not limited to test questions, scoring materials, student data and personally identifiable information, shall sign a non-disclosure agreement provided by NYSED prior to receiving access to such materials. The contractor will maintain all signed agreements for the duration of the contract term and five years thereafter and will provide them to NYSED upon request.

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

The contractor agrees to comply with the Family Education Rights and Privacy Act (FERPA) and New York State Education Law § 2-d. The New York State Education Department (NYSED) is required to ensure that all contracts with a third-party contractor include a Data Security and Privacy Plan, pursuant to Education Law § 2-d and Section 121.6 of the Commissioner's Regulations. For every contract, the Contractor must complete the form or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework.

The NIST Cybersecurity Framework Version 1.1 is the standard for data security and privacy for NYSED, and its related policies. Third party contractors that do business with NYSED must submit a plan that outlines how the contractor will align with the NIST CSF and implement all (i) state, (ii) federal, and (iii) NYSED data security and privacy contract requirements, over the life of the contract.

Pursuant to Education Law §2-d and Section 121.3 of the Commissioner's Regulations, the New York State Education Department (NYSED) is required to post information to its website about its contracts with third-party contractors that will receive Personally Identifiable Information (PII).

The Appendix R – Data Privacy Agreement components CPO1-2d, CPO1Supp-2d, and CPO2-2d are posted separately with this RFP, the terms of which are incorporated herein by reference, and which shall also be part of the Contract.

**Bidders should use these templates to submit the required data security and privacy plan and return them with their proposal for review.**

### **Monitoring and Evaluation**

NYSED will monitor and evaluate the progress of the contractor in meeting contract specifications, through pre-arranged conference calls. This evaluation will emphasize the psychometric appropriateness of all aspects of the project and the contractor's ability to continue to meet timelines and supply deliverables.

The contractor will retain and update records and accounts on a monthly basis and must be able to prepare and submit statistical, narrative, and/or financial summaries related to this contract as requested by NYSED.

### **Contract Transition**

Upon completion or termination of the contract awarded as a result of this RFP, the contractor agrees to use its best efforts to assist NYSED in completing an efficient transition to any successive contractor and/or NYSED. This shall include but not be limited to assisting NYSED in developing and implementing a feasible transition plan and providing any information reasonably useful to and requested by NYSED in advance of the anticipated expiration, cancellation, or termination of the contract. The contractor agrees to cooperate fully with any successive contractor and NYSED and refrain from any activity that would interfere with the successful implementation of an efficient transition.

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

## **Ownership**

NYSED is the sole owner of materials produced and data collected under the contract, including but not limited to: item statistics, data files, scoring tables, conversion charts, standard setting presentations, and technical reports generated under this contract. All materials must be held strictly confidential and must not be copied, duplicated, or disseminated by any manner or discussed with anyone except as authorized by NYSED.

The contractor must be prepared to deliver these materials and data to NYSED at any point during the term of the contract, even if materials are only partially completed. All materials and data are to be turned over to NYSED, in the format specified by NYSED, on a yearly or more frequent basis, and prior to the final payment to be issued under the contract.

Materials can only be used by the contractor or other parties with written permission of NYSED. The contractor cannot use materials provided to it by NYSED or developed by the contractor specifically for NYSED for contract work in other states.

The contractor shall reproduce, use, display, and include copies of NYSED's trademarks, trade name, logos, copyrights and other intellectual property (collectively, the "Marks") on all copies of materials produced for NYSED. The contractor acknowledges that the Marks are owned solely and exclusively by NYSED, and nothing contained in the resulting contract gives the contractor any ownership right or interest in such Marks.

Notwithstanding the above, all preexisting processes, procedures, methodologies, software, intellectual property and other trade secrets or property owned by contractor, prior to this contract, and used in the performance of its obligations under this Agreement, including any revisions or modifications thereof, are and remain the sole property of the contractor.

## **Construction of Examination/Defense of Examination**

The contractor agrees to cooperate with NYSED with respect to any challenge to an examination and, if necessary, provide, at no expense to NYSED, experts, evidence, witness testimony or other documentation necessary, within reason, to refute a challenge to the validity, reliability or any other aspect of the development, administration, or scoring of the examination that pertains to the contractor's responsibilities under the terms of the contract resulting from this RFP for five (5) years from the date the activity occurred.

## **Quality Control**

NYSED has exacting standards for its assessment program and will impose stringent quality controls on the contract work that results from this RFP. NYSED requires the contractor who conducts contract work to agree to:

1. Work cooperatively with other contractors performing work for NYSED as requested by NYSED

2. Produce deliverables as appropriate and according to the work plan agreed upon with NYSED

## Payments and Reports

Upon completion and approval of deliverables, the contractor shall submit an invoice for payment for those deliverables. Payment for each deliverable will be made upon 100% satisfactory completion and approval by NYSED.

Payments to the contractor will only be made in accordance with properly submitted invoices. All invoices submitted for payment must include dates of services and an itemized list of activities and costs consistent with the approved **Schedule of Deliverables** contained in the executed contract. Invoices with incomplete information will be returned to the contractor.

Payments to subcontractors should be listed on invoices. Payment for subcontractors must list the subcontractor's name, payment amount, and nature of services provided separately on the invoice submitted.

## Accessibility of Web-Based Information and Application

The NYSED web accessibility policy applies to all internal or external web content and functionality whether developed by, maintained by, or offered by NYSED or through a third-party vendor or open source. This policy ensures that all people with disabilities have an equal opportunity to participate in our benefits, programs, and services through web content.

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

## 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 when:

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

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

If the 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 one contract pursuant to this RFP with a term of five years, anticipated to begin October 1, 2021 and to end September 30, 2026.

## **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.

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

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

The New York State Education Department (“NYSED”) has enacted its policies Equal Opportunity, Non-Discrimination and Affirmative Action and on Minority and Women-Owned Business Enterprise Procurements, consistent with the requirements as set forth under the provisions of Article 15-A (the “Article”) incorporated by reference, requiring Contracting Agencies to implement procedures to ensure that the “Contractor” (as defined under Article 15-A, §310.3 shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state contract, or a bidder in conjunction with the award of a state contract or a proposed party to a state contract, complies with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, in addition to providing Opportunities for Minority and Women-Owned Business Enterprises on all covered state contracts.

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

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

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

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

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

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

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

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

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

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section<sup>2</sup>. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).

5. Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses<sup>3</sup>.

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

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

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 that 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 that must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.

12. Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.

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

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

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

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

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

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

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

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

- 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 their 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 their 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). Online Certification can be found at the [New York State Contract System website](#).

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

## 2.) SUBMISSION

### Documents to be submitted with this proposal

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

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

### Project Submission

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

1. Submission Documents—Two (2) copies (one bearing an original signature)
2. Technical Proposal— Four (4) copies (one bearing an original signature)
3. Cost Proposal— Two (2) printed copies (one bearing an original signature)
4. M/WBE Documents—One (1) copy (bearing an original signature)
5. Microsoft Office (CD or Flash Drive format)—One (1) electronic version with the submission, technical, cost, and M/WBE proposals. Please place the CD-ROM or Flash Drive in a separate envelope. Please note: the cost proposal should be submitted in Excel format, using the template provided by NYSED.

The proposal must be received by **December 8, by 3:00 PM** at NYSED in Albany, New York.

Bidders must submit one technical proposal to include all the required services detailed in this RFP for Components 1, 2 and 3, and a cost proposal containing a budget for Years 1-5. COMPONENT 1 includes all deliverables relating to scaling and scale maintenance. COMPONENT 2 includes all deliverables relating to score collection and setting the performance standards through standard setting. COMPONENT 3 includes all deliverables relating to conducting data analyses that are required to provide evidence regarding the reliability, validity, scaling, and equating of the operational results of the examinations as well as preparing annual technical reports for each examination title administered in the preceding year using operational test data provided by NYSED.

Bidders must bid on all components for any examination selected by NYSED in the content areas of English, Mathematics, Science, and Social Studies, and the elementary- and intermediate-level Science tests.

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.

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The proposal must communicate an understanding of the deliverables of the RFP, describe how the components 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 that are to be determined only after the award of a contract. No optional deliverables to be provided only at an additional cost should be included and will not be considered in the evaluation of the technical proposal. Contractual terms, conditions, and assumptions are inappropriate for inclusion in the proposal.

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

**Technical Proposal**

**(70 Points)**

The proposal should provide enough detail, be feasible, and have flexibility built in with feedback mechanisms that will best enable the technical scorers to evaluate the appropriateness of the processes and objectives of the proposal.

Eight copies (one bearing an original signature) of the Technical Proposal should be organized in binders with tabs clearly labeling each section as detailed below, and must include the following:

- 1. Mandatory Requirements Certification Form** **Signature Required**
- 2. Work Plan:** In its proposal, each bidder should include a comprehensive five-year detailed work plan. The work plan should describe how the activities required in the RFP will be conducted. A detailed timeline for each year of the contract should be included in the work plan and be consistent with timelines for the required services as outlined in this RFP.
- 3.** Bidders should complete the CPO1Supp-2d and CPO2-2d forms and return them with their technical proposal.
- 4.** Project description as outlined below:

<b>Section 1 - COMPONENT 1 - Scaling and Scale Maintenance</b>	<b>Section 1 Total (15 Points)</b>
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Please refer to the RFP section “[COMPONENT 1: SCALING AND SCALE MAINTENANCE](#)” for a complete description of what will be required in the contract resulting from this RFP. For all examinations listed in this RFP, at a minimum, the proposal should describe and demonstrate the bidder’s experience, capabilities, methodology and plans relating to Sections 1a and 1b for Component 1 as follows:

1a: Establishing New Scales, Scale Maintenance, and Field-Test Forms Equating Plan	(10 points)
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The proposal should describe and demonstrate how the bidder will:

- establish operational baseline scales
- place field test item parameter estimates from the annual stand-alone field testing onto the operational baseline scales
- scale the operational exams and equate the field-test forms

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- produce raw-to-scale conversion charts
- create a field-test forms equating plan for each new test that links all field-test forms to each other and to the operational baseline scale
- link all field test forms to each other and to the operational baseline scales

1b: Technical Report for each Field Test Administration School Year	(5 points)
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The proposal should describe and demonstrate how the bidder will prepare annual technical reports that include all field tests administered by NYSED in the prior school year for each of the exam titles identified in Chart 3 of this RFP.

<b>Section 2 - COMPONENT 2 – Standard Setting</b>	<b>Section 2 Total (20 Points)</b>
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Please refer to the RFP section “[COMPONENT 2: STANDARD SETTING](#)” for a complete description of what will be required in the contract resulting from this RFP. For all examinations listed in this RFP, at a minimum, the proposal should describe and demonstrate the bidder’s experience, capabilities, methodology and plans relating to Sections 2a and 2b for Component 2 as follows:

2a: Operational Score Collection	(10 points)
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The proposal should describe and demonstrate how the bidder will:

- conduct a score collection of a representative sample of 10,000 students taking the operational examination
- design operational test answer sheets to be used by schools in the score collection sample
- print, ship, and collect the number of answer sheets requested by schools included in the sample
- score multiple-choice items on student papers
- report results to the schools in a manner that carefully safeguards all personally identifiable information and is fully compliant with the Family Educational Rights and Privacy Act (FERPA) and New York State Education Law §2-d
- provide an adequately staffed customer service hotline, from 8:00 A.M. – 5:00 P.M. Eastern Time, each business day
- conduct up to five score collections simultaneously per spring

2b: Standard Setting Meetings and Technical Reporting	(10 points)
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The proposal should describe and demonstrate how the bidder will:

- propose a standard setting methodology
- convene standard setting committees
- coordinate all needed logistical arrangements and provide training materials
- facilitate up to five standard setting meetings simultaneously per spring
- provide a comprehensive technical report for each standard setting

<b>Section 3 - COMPONENT 3 - Data Analysis and Technical Reports</b>	<b>Section 3 Total (20 Points)</b>
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Please refer to the RFP section “[COMPONENT 3: RELIABILITY/VALIDITY ANALYSIS](#)” for a complete description of what will be required in the contract resulting from this RFP. For all examinations listed in this RFP, at a minimum, the proposal should describe the bidder’s experience, capabilities, methodology and plans relating to Sections 3a, 3b, and 3c for Component 3 as follows:

3a: Reliability/Validity Analysis and Technical Reporting	(10 points)
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The proposal should describe and demonstrate how the bidder will:

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- conduct data analyses to provide evidence regarding the reliability and validity of all operational examinations in this RFP
- provide descriptive statistics in a preliminary summary for all operational examinations in this RFP
- develop operational technical reports for each examination administered in the preceding year
- provide an Excel workbook that contains at the item level per June exam administered: student n-count, percent blank, percentage of chosen choice (MC items), percentage at each score point (CR items), mean, point-biserial, and distractor point-biserial

3b: Alignment Studies	(5 points)
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The proposal should describe and demonstrate how the bidder will:

- arrange and provide for an independent party with demonstrated expertise in high-quality, large-scale assessment to conduct alignment studies following the first administration of those new exam titles identified in this RFP
- provide a report for each alignment study conducted

3c: Cognitive Lab Studies	(5 points)
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The proposal should describe and demonstrate how the bidder will:

- conduct cognitive labs with NYS students to provide validation of test item types developed by NYSED for the new Grade 5 elementary-level Science and Grade 8 intermediate-level Science Tests and for the new Regents Exams in Algebra I, Earth and Space Science, Biology, and ELA
- document results of these labs

<b>Section 4 – General Requirements for ALL COMPONENTS</b>	<b>Section 4 Total (15 Points)</b>
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Please refer to the RFP section “[Requirements for ALL COMPONENTS](#)” for a complete description of what will be required in the contract resulting from this RFP. For all examinations listed in this RFP, at a minimum, the proposal should describe the bidder’s experience, capabilities, methodology and plans relating to Sections 4a, 4b, and 4c for Section 4 as follows:

4a: Data Security, Data Privacy and Appropriate Use	(5 points)
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The proposal should describe and demonstrate how the bidder will:

- comply with the requirements in [Attachment 1: Security Guidelines for the New York State Assessment Program](#)
- comply with the requirements in CPO2-2d Contractor’s [Data Privacy and Security Plan](#)
- comply with the requirements in CPO1 Supp-2d Supplemental Information for Contracts that Utilize Personally Identifiable Information

4b: Program Management and Staffing	( 5 points)
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The proposal should describe how the bidder will provide:

- a staffing solution and organizational arrangement including an organization diagram, detailed descriptions of responsibilities, resumes, and time commitments for all proposed staff associated with performing the work, demonstrating that personnel experience and expertise are congruent with staff assignments for all aspects of the components outlined in the RFP
- enough detail to enable reviewers to evaluate the appropriateness of the proposed staffing, describing how different staff members and divisions will interact with one another, subcontractors, and NYSED staff

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- a program manager to be the central point of contact with NYSED for this contract, who has enough authority across departments within the organization to ensure that the work of the contract has the necessary priority to be completed with the highest quality and on time

4c: Qualifications and Letters of Reference	(5 points)
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The proposal should demonstrate how the bidder meets the requirements for experience and has the capacity to provide the volume of work for the services required in the RFP.

The proposal should include a minimum of three current professional letters of reference to substantiate these qualifications. "Current" shall mean relevant within the past three years. NYSED offices and staff may not be used as references. Each reference should include the name, title, organization, address, telephone number, and e-mail address. The dates of service and a brief summary of the services provided should be included for each reference. The bidder should ensure that contact information is current and accurate.

### Cost Proposal

**(30 Points)**

The original plus one (1) copy of the completed Cost Proposal must be mailed in a separate envelope labeled **RFP #21-010-Cost Proposal-Do Not Open** and must include the following:

1. Bid Form Cost Proposal—Schedule of Deliverables: Years 1-5  
Components 1, 2 and 3 **Signature Required**
2. Subcontracting Form for all students
3. M/WBE Purchases Form for all students

**The Financial Criteria portion of the RFP will be scored based upon the five (5)-year grand total for Components 1, 2 and 3.**

### M/WBE Documents

The original plus one (1) copy of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #21-010 -M/WBE Documents-Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

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

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

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

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

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**No Participation-Request for Complete Waiver**

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

### 3.) EVALUATION CRITERIA AND METHOD OF AWARD

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

#### Criteria for Evaluating Bids

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

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

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

#### Technical Criteria

<b>Technical Criteria for Components 1, 2 and 3</b>	<b>70% of Total Score</b>
	<b>70 Points</b>

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

<b>Technical Criteria for Section 1 - Component 1 - Scaling and Scale Maintenance</b>		<b>(15 Points)</b>
	<b>Technical Score Evaluation</b>	Points
1a	Establishing New Scales, Scale Maintenance and Field Test Form Equating Plan	10
1b	Technical Report for each Field Test Administration School Year	5

<b>Technical Criteria for Section 1 Component 2 – Standard Setting</b>		<b>(20 Points)</b>
	<b>Technical Score Evaluation</b>	Points
2a	Operational Score Collection	10
2b	Standard Setting Meetings and Technical Reporting	10

<b>Technical Criteria for Section 3 - COMPONENT 3 - Data Analysis and Technical Reports</b>		<b>(20 Points)</b>
	<b>Technical Score Evaluation</b>	Points
3a	Reliability/Validity Analysis and Technical Reporting	10
3b	Alignment Studies	5
3c	Cognitive Lab Studies	5

<b>Technical Criteria for Section 4 – General Requirements for ALL COMPONENTS</b>		<b>(15 Points)</b>
<b>Technical Score Evaluation</b>		<b>Points</b>
4a	Data Security, Data Privacy and Appropriate Use	5
4b	Program Management and Staffing	5
4c	Qualifications and References	5

### Financial Criteria

<b>Financial Criteria (30% of total score)</b>	<b>30 Points</b>
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The Financial Criteria portion of the RFP will be scored based upon the five-year grand total for Components 1, 2 and 3. The cost proposal will be awarded points pursuant to a formula, which awards the highest score of thirty (30) points to the proposal with the lowest cost. The remaining cost proposals will be awarded points based on the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of thirty points. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.

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

### Method of Award

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

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

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

### NYSED's Reservation of Rights

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

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the selected bidder; (13) utilize any and all ideas submitted in the proposals received; (14) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening; (15) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; (16) request best and final offers.

### **Post Selection Procedures**

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

### **Debriefing Procedures**

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

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

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

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

## **Contract Award Protest Procedures**

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

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

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

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

## **Vendor Responsibility**

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

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

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the [Office of the State Comptroller's Help Desk](#) at 866-370-4672 or 518-408-4672 or by email at [ITServiceDesk@osc.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 [NYSED's Procurement Lobbying Law Policy Guidelines webpage](#).

Designated Contacts for NYSED  
Program Office – McKenzie Johnson  
Contract Administration Unit – Bethany Bennett  
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 submission, NYSED encourages bidders to include it 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](#)) 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;

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(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

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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 Clauses for all New York State Contracts), Appendix A-1 (Agency-Specific Clauses), and the completed Form CPO2-Confidential: Contractor's Data Privacy and Security Plan (separate document posted with RFP) **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
8. Sexual Harassment Policy Certification

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

**Full Participation-No Request for Waiver**

**Signatures Required**

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

**Partial Participation- Request for Partial 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

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

## State of New York Agreement

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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

exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given 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,

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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)

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

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 Section 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") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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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. 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. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents, web-based information and applications are accessible to persons with disabilities. All delivered documentation and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before

documents and applications will be considered a qualified deliverable under the contract or procurement.

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

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

Certifications

- A. Contractor certifies that it has met the disclosure requirements of State Finance Law §139-k and that all information provided to the State Education Department with respect to State Finance Law §139-k is complete, true and accurate.
- B. Contractor certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
- C. Contractor certifies that no governmental entity has made a finding of non-responsibility 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.
- C. The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B is due by May 15th of each year and covers actual employment data performed during the prior period of April 1st to March 31st. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

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

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

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

By fax:             (518) 408-1716

- C. Consultant Staff Changes. If this is a contract for consulting services, Contractor will maintain continuity of the consultant team staff throughout the course of the contract. All changes in staff will be subject to STATE approval. The replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate.
- D. Order of Precedence. In the event of any discrepancy, disagreement, conflict or ambiguity between the various documents, attachments and appendices comprising this contract, they shall be given preference in the following order to resolve any such discrepancy, disagreement, conflict or ambiguity:
  - 1. Appendix A – Standard Clauses for all State Contracts
  - 2. State of New York Agreement
  - 3. Appendix A-1 - Agency Specific Clauses
  - 4. Appendix X - Sample Modification Agreement Form (where applicable)
  - 5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)
  - 6. Appendix B - Budget
  - 7. Appendix C – Payment and Reporting Schedule
  - 8. Appendix R – Data Security and Privacy Plan (where applicable)
  - 9. Appendix S – Parents’ Bill of Rights for Data Privacy and Security (where applicable)
  - 10. Appendix S-1 - Attachment to Parents’ Bill of Rights (where applicable)

11. Appendix D – Program Work Plan

(Revised 6/12/17)

## 5.) ATTACHMENTS

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

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