

REQUEST FOR PROPOSAL (RFP)

RFP # 21-012

NEW YORK STATE EDUCATION DEPARTMENT

Title: New York State Technical and Education Assistance Center for Homeless Students

The New York State Education Department (NYSED), ESSA Funded Program Office, is seeking proposals to carry out the responsibilities of the New York State Technical and Education Assistance Center for Homeless Students (NYS-TEACHS) and to address issues involving homeless children and unaccompanied youth. NYS-TEACHS will work with NYSED, the Local Education Agencies (LEAs) Homeless Liaisons (linked by District) at <https://nysteachs.org/lea-liaisons/> as well as agencies providing services to homeless children and youth.

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.

NYSED will award **one** contract pursuant to this RFP. The contract resulting from this RFP will be for a term anticipated to begin **July 1, 2021 and to end June 30, 2026**.

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 #21-012 are as follows:

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

Questions regarding the request must be submitted by email to HomelessTAC@nysed.gov no later than the close of business **December 4, 2020**. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to [P-12 Competitive Procurement Contracts](#) no later than **December 18, 2020**. The following are the designated contacts for this procurement:

Program Matters

Melanie Faby

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Fiscal Matters

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M/WBE Matters

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The following documents should be submitted as separate files, as detailed in the Submission section of the RFP, and be received at NYSED no later than **January 15, 2021 by 3:00 PM Eastern Time**:

1. Submission Documents labeled **[name of bidder] Submission Documents RFP #21-012**
2. Technical Proposal labeled **[name of bidder] Technical Proposal RFP #21-012**
3. Cost Proposal labeled **[name of bidder] Cost Proposal RFP #21-012**
4. M/WBE Documents labeled **[name of bidder] M/WBE Documents RFP #21-012**

The technical, cost, submission and M/WBE proposals should be submitted using Microsoft Office or editable PDF. The email address for all the documentation is cau@nysed.gov.

Bidders are requested to submit their bids electronically. Please see the information below for instructions on submitting an electronic bid.

1. As indicated in the RFP, technical and cost proposal documents should be submitted in Microsoft Office. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable. Please do not submit the technical or cost proposal as a scanned PDF.
2. Submission documents requiring a signature must be signed using one of the methods listed below, and may be submitted in as a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:
 - a. handwritten signatures on faxed or scanned documents
 - b. e-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
 - c. stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents
4. Unacceptable forms of e-signatures include:
 - a. a typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person "signing"
5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by email the following attestation: "I agree, and it is my intent, to sign this document by [describe the signature solution used] and by electronically submitting this document to [name of recipient individual or entity]. I understand that my signing and submitting this document is the legal equivalent of having placed my handwritten signature on the submitted document and this attestation. I understand and agree that by electronically signing and submitting this document I am affirming to the truth of the information contained therein."
6. In order to ensure the timely receipt of your bid, please use the subject line "BID SUBMISSION RFP 21-012" - failure to appropriately label your bid or submitting a bid to any email address other than the one identified above may result in the bid not being received by the deadline and considered for award.
7. **Bids received after 3:00 pm Eastern Time on the due date will be disqualified.**

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, as well as the Technical Assistance Center (TAC) Certification Form, both located in 5.) Submission Documents. These required forms must be signed by an authorized person. **Bids that do not comply with the Mandatory Requirements and include both forms will be disqualified.**

1. The NYS-TEACHS must serve all geographic areas of New York State, including New York City. The bidder must establish either its principal place of business or a staffed satellite office in the greater New York City metropolitan area (within the five boroughs) as this area historically has the highest concentration of homeless children and youth in New York State.

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

For purposes of this procurement, NYS Education Department hereby establishes an overall goal of 10% of the total contract amount for M/WBE participation, 5% for Minority-Owned Business Enterprises (“MBE”) participation and 5% for Women-Owned Business Enterprises (“WBE”) participation based on the current availability of qualified MBEs and WBEs. All bidders must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. Minority and Women-Owned Business Enterprise (M/WBE) participation includes any and all services, materials or supplies purchased from New York State certified minority and women-owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with NYSED’s Minority and Women-Owned Business Enterprise goals as described below.

ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)

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

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

DOCUMENTATION OF GOOD FAITH EFFORTS

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

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

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

REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS

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

REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS

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

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

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

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

Background

The New York State Technical and Education Assistance Center for Homeless Students (NYS-TEACHS) will assist NYSED, LEAs, Homeless Liaisons, schools, and other service agencies for the homeless to provide the needed academic and other supportive services that these students and their families need to succeed in both school and life. NYS-TEACHS will meet the goals and activities set forth in the McKinney-Vento Homeless Assistance Act, New York State's McKinney Education Law §3209, NYSED Commissioner Regulations 100.2, as well as New York's State Plan for the Education of Homeless Children and Youth

(<http://www.nysed.gov/common/nysed/files/programs/essa/nys-essa-plan.pdf>).

Currently there are two websites devoted to serving homeless students in New York State: 1) NYS-TEACHS website (<http://www.nysteachs.org>), and 2) NYSED's Homeless Education website (<http://www.nysed.gov/essa/mckinney-vento-homeless-education>).

Deliverables and/or Project Description

Services to be Performed

The Scope of Work:

The responsibilities of NYS-TEACHS include statewide dissemination of information about the duties and responsibilities of Homeless Liaisons and LEAs, the effects of homelessness on children and adolescent youth, and effective strategies for assisting homeless children and unaccompanied youth to enroll in, and succeed in, school. This will be accomplished through the development and implementation of professional development activities and technical assistance that address the following:

1. Assist LEAs and/or Homeless Liaisons to:
 - Become more knowledgeable about their responsibilities and duties as described in the McKinney-Vento Homeless Assistance Act, New York State's McKinney Education Law §3209, and NYSED Commissioner Regulations 100.2, including the duties of the Homeless Liaisons.
 - Immediately enroll homeless students, even if the child or unaccompanied youth is unable to produce records normally required for enrollment and even if there is a dispute over school selection or enrollment.
 - Promptly arrange for LEA provided transportation to allow homeless children and unaccompanied youth to exercise their choices of schools, including attending their school of origin.

- Develop and revise existing dispute resolution procedures, including notifying the parent in writing of the right to appeal a decision regarding school selection or enrollment.
 - Educate and assist homeless parents or unaccompanied youth to utilize the Education Law §310 appeal process if there is a dispute regarding a homeless child or unaccompanied youth's access to a free, appropriate public education.
2. Expand the capacity of, and develop strategies for, NYSED & NYS-TEACHS to assist LEAs and/or Homeless Liaisons in their responsibilities for:
- Ensuring that homeless students receive educational services for which such families, children and unaccompanied youth are eligible.
 - Arranging for LEA provided before and after-school mentoring, tutoring and summer programs at the LEAs and/or at the shelters where homeless students are living.
 - Ensuring that LEAs understand the connection between housing instability, trauma, and success in school and assist them with the design and implementation of trauma-sensitive programming.
 - Through contact with local departments of social services and through conversation with homeless families, identify and enroll preschool-age homeless children into preschool programs, including Head Start, Even Start and pre-kindergarten programs.
 - Through contact with local youth shelters and the Office of Children and Family Services, identify, enroll, and offer counseling and other appropriate services for unaccompanied youth.
 - Informing parents or guardians of homeless children, at the time of enrollment, of the educational and related opportunities available to their children and opportunities to participate in the education of the children.
 - Assuring that public notices of the educational rights of homeless children and unaccompanied youth are disseminated where such children and unaccompanied youth receive services, such as schools, family shelters, runaway shelters, soup kitchens, medical clinics, and social service agencies.
 - Identifying policies regarding homeless students that act as a barrier to their enrollment and success and change these policies.
 - Through professional development, meetings, telephone contact and written correspondence, inform school personnel, service providers and advocates working with homeless families and unaccompanied youth of the duties of the LEA's Homeless Liaisons. All information regarding these meetings and professional development is articulated below.

To accomplish 1 and 2 above, the contractor will:

A. Professional Development, Technical Assistance, Trainings, Website and Materials

Coordinate by telephone, e-mail and/or digital meeting platforms such as but not limited to ZOOM, WebEX, and/or Microsoft TEAMS with providers of services to homeless and runaway children and unaccompanied youth and homeless families (including domestic

violence agencies, shelter operators, transitional housing facilities, runaway and youth centers, and transitional living programs for homeless youth) to enable homeless liaisons to identify homeless students, enroll them immediately, arrange for LEA provided transportation and refer for academic services, to include interdistrict issues, such as transportation or transfer of school records. The vendor may be asked to travel to Albany quarterly to meet with NYSED staff in order to discuss the above referenced issues, as required. These meetings are typically four hours long. In addition to these quarterly meetings, the vendor may be asked to travel to Albany four additional times per year for the NYS Runaway and Homeless Youth Committee meetings. These meetings are typically one full day in duration.

1. Maintain and update NYS-TEACHS website <http://www.nysteachs.org> and liaison database to reflect the current laws and regulations, and provide current basic documents relevant to McKinney -Vento Homeless Education; develop interactive capabilities for disseminating this information to school districts and their homeless liaisons. This website will be updated as required. The liaison database is in Excel format and currently includes contact information for 695 school districts, 34 New York City community school districts, 37 BOCES and approximately 300 New York State charter schools.
2. Maintain and provide technical assistance through the toll-free Homeless Education telephone hotline Monday through Friday, at least 8 hours per day, between the hours of 9:00 AM and 5:00 PM, excluding legal and State holidays. Establish a system to analyze these calls, follow-up, and track the barriers affecting these identified homeless issues. The vendor is expected to take approximately 2,600 calls per year. The vendor must immediately (same day) notify the State Education Department of any barrier to enrollment or continued attendance that the vendor cannot promptly resolve, as well as report to the State Education Department on a quarterly basis any barriers that were resolved.
3. Update, revise, print and disseminate posters, brochures and other publications to schools, social service providers and program participants statewide illustrating the educational rights and responsibilities of students experiencing homelessness and duties and responsibilities of the LEA Liaisons. All materials must be updated, if not already updated, according to the Title IX- McKinney Vento Act within the Every Student Succeeds Act (ESSA) effective July 1, 2016. The vendor will be required to update, print and disseminate approximately 80,000 posters, brochures, and other publications as needed *per year*. The majority of the materials have already been designed and drafted, and will need to be revised (as needed), printed, and disseminated. There may be a need to design/draft (as well as print and disseminate), up to one document per year. This includes approximately: 12,000 posters translated in a total of 9 languages that include Arabic, Bengali, Chinese, Haitian-Creole, Korean, Russian, Urdu, Spanish and English; 40,000 brochures total in English and Spanish; 16,000 publications from NYS-TEACHS including booklets, guides, tip-sheets, and PowerPoints; and approximately 12,000 other publications. The materials are disseminated either by mail or at workshops and trainings. All written products and materials developed by the contractor under this contract must be approved by NYSED prior to being disseminated or used for any NYS-TEACHS purposes.

4. Assess professional development and/or technical assistance needs dependent upon environmental and/or health-safety situations and develop a plan in collaboration with NYSED to conduct in person and/or through digital meeting platform such as but not limited to; ZOOM, WebEX, and/or Microsoft TEAMS:
 - Five (5) half-day workshops per year referred to as Annual Workshops for all Homeless Liaisons, LEA administrators, guidance counselors, registrars and staff from local agencies serving the homeless. Three of these Annual Workshops should be held in New York City for approximately 400-500 people, and 2 of these Workshops should be held in Albany, Rochester, Syracuse, Buffalo, Long Island, or other regional areas to be determined in the fall or spring of each contract year for approximately 100 to 200 participants at each workshop. Featured presenters should be experts on homelessness providing in-depth review of the rights of children and youth who are homeless. The vendor will be responsible for costs associated with this program, including conference space, presenters, and equipment. These programs should include the following:
 - the duties and responsibilities of Homeless Liaisons and LEAs;
 - information on developing trends involving homeless children and unaccompanied youth;
 - information on supporting the academic and social emotional needs of homeless children and unaccompanied youth so that they may succeed in school;
 - and identification of promising practices.
5. On-site regional area technical assistance trainings should be scheduled to accommodate approximately 20 to 50 participants. The vendor will be required to host approximately 22 of these regional trainings per year.
 - Approximately 5-7 of these trainings should be held in areas of the state where school districts may have under-identified the number of students experiencing homelessness based on school-age poverty rates in the region. The trainings are 2-3 hours long
 - In areas of the state where requested, facilitate approximately 4 trainings assessing both the academic and social/emotional needs of homeless children and unaccompanied youth. The trainings are 2-3 hours long.
 - Approximately 10-15 of these trainings should be held in areas of the state with the largest numbers of students experiencing homelessness, including the Big 5 School Districts. The trainings are typically held outside New York City in locations such as Buffalo, Rochester, Yonkers, and other cities throughout upstate New York and are one full day in duration.
6. The vendor shall conduct at least 22 planned webinars, with each webinar lasting 1-1 ½ hours long. The vendor should tailor separate webinars for participants in New York City and those in the rest of the state. Approximately 50 people should participate on average in each webinar, but the webinar platform should be able to accommodate several hundred. The webinars should cover topics such as the basics of McKinney-Vento, how to determine eligibility under McKinney-Vento, data collection and reporting for students in temporary housing, early childhood education

programs for children in temporary housing, unaccompanied youth, trauma-sensitive practices in schools, McKinney-Vento and Title I, and McKinney-Vento and students in out-of-home placements.

7. The vendor shall provide targeted technical assistance to New York City Department of Education (NYCDOE) and relevant New York City agencies (e.g. Department of Homeless Services, Administration for Children's Services, and the Human Resource Administration) regarding school stability, access to transportation, and access to preschool.
8. The vendor shall provide targeted assistance to approximately 2 other school districts and/or local departments of social services each year regarding coordination of services including identification of, enrollment for, and transportation of students experiencing homelessness.

B. Monitoring / Research / Data Assistance / Collaboration and Coordination: Identify effective strategies for assisting homeless children and unaccompanied youth to enroll in and succeed in school; identify areas of homeless education needing further investigation and monitoring;

supporting Homeless Liaisons in working with homeless students and their families; establishing effective performance indicators; coordinating and collaborating with homeless service agencies; and identifying LEA policies that act as a barrier for homeless students.

1. Analyze data in order to address possible under identification of school districts or any possible errors in their reporting of data. Assist with the collection of and report on the required data collection including, but not limited to; (1) Basic Education Data System (BEDS) the district/school student enrollment and staff counts (2) Student Information Repository System (SIRS) the student demographic, programs, and assessment data (3) ED Facts the state-reported data on students, staff, services, and outcomes at the state, district, and school levels for grades K-12, and (4) Consolidated State Performance Report (CSPR) program data that ED can use to demonstrate the effectiveness of Homeless programs in relation to the progress students are making regarding academic outcomes. Work collaboratively with NYSED to create and disseminate homeless data verification reports to all school districts.
2. Collaborate with NYSED on the transportation responsibilities of NYCDOE, Students in Temporary Housing program, and Office of Pupil Transportation (OPT) regarding the delivery of transportation services of homeless children and unaccompanied youth attending New York City schools.
3. Advise and assist NYSED with monitoring activities, which include identifying LEA policies that act as a barrier for homeless students and protocols that include recommendations of monitoring site visits and premonitoring homeless summary reports to guide NYSED homeless monitoring visits. The summary reports will include the number of students identified as homeless, trainings attended by school

district staff, the number of printed materials sent to school districts, and barriers submitted in order to identify any ongoing district homeless issues of noncompliance as well as other information to assist NYSED in its monitoring efforts.

4. Host three (3) conference calls with representatives from LEAs with McKinney-Vento grants that presently serve 157 LEAs to provide updates and information about McKinney-Vento programming. Design and host a full-day workshop/meeting for the grantees focused on improving McKinney-Vento programming, and design and implementation of trauma-sensitive programming.

Geographic Responsibility

New York State is a diverse State with the largest concentration of homeless children and their families located downstate in New York City, Long Island and Westchester. The other large cities also have homeless students, and there are pockets of homeless students throughout New York State. To view the distribution of the 2009-2010 and going forward school year(s) homeless data available for New York school districts, charter schools and New York City schools go to:

<https://nysteachs.org/topics/data-stats-homelessness/>. The NYS-TEACHS must serve all geographic areas of New York State, including New York City. The bidder must establish either its principal place of business or a staffed satellite office in the greater New York City metropolitan area as this area historically has the highest concentration of homeless children and youth in New York State.

Staffing Requirements

The hiring, supervision and evaluation of NYS-TEACHS staff will be the responsibility of the contractor. Staff should have the knowledge, skills and experience to support and carry out the work of NYS-TEACHS. The bidder must either have sufficient staff at the time the contract is awarded to carry out required activities within the very tight time frames of the contract or submit a plan for hiring sufficient staff. NYS-TEACHS staffing guidelines are as follows:

Staffing Guidelines/Qualifications

- NYS-TEACHS should be staffed with a minimum of one (1.0 FTE) full-time Project Director, preferably with a Master's Degree or above in education and/or related field. The Project Director should have knowledge/experience with current research on the education of homeless children and unaccompanied youth. The Project Director should also have experience and knowledge of how best to identify, enroll and help homeless children and unaccompanied youth to succeed in school, and have experience coordinating and collaborating with local social services, domestic shelters, runaway and homeless youth shelters and other agencies that serve homeless children and unaccompanied youth.
- NYS-TEACHS should be staffed with a minimum of three (3.0 FTE) full-time professional/managerial staff, preferably with a Bachelor's Degree or above.
- NYS-TEACHS should be staffed with a minimum of one (.50 FTE) part-time administrative support staff.
- Project staff should have expertise with current research on the academic and social needs of homeless children and unaccompanied youth and be able to assist in fulfilling the goals and activities of NYS-TEACHS.
- Project staff should have knowledge about and experience working with LEAs, local social service agencies and other homeless support agencies and advocates. Staff

should have education and/or related field credentials with a comprehensive knowledge of the needs of homeless children and unaccompanied youth and the ability to accomplish the goals and activities of NYS-TEACHS.

- Project staff should have expertise in professional development training and technical assistance.
- Project staff should have expertise in the use of technology for training.
- Project staff should have working knowledge of:
 1. The McKinney-Vento Act, the primary piece of federal legislation dealing with the education of children and youth experiencing homelessness in U.S. public schools. Full text of the Act: https://nysteachs.org/wp-content/uploads/2018/10/INF_LP_MVAct.pdf ;
 2. New York State Education Law 3209 that addresses the educational rights of students experiencing homelessness and the obligations of school districts to provide services to these students: <http://www.p12.nysed.gov/sss/lawsregs/3209.html>; and
 3. Commissioners Regulations: <http://www.emsc.nysed.gov/part100/pages/1002.html#x>

Payments and Reports

The vendor for the NYS-TEACHS will be required to submit quarterly program activity reports, describing its activities during the preceding quarter implementing the goals of the contract and reporting on progress toward key performance indicators. The vendor will be responsible for timely and accurate submission of all required quarterly reports. The reports will be due on the first day of November, February, May, and August of each contract year. **The first quarterly report will be due on November 1, 2021.** Payments will be approved after all reporting requirements are met. Payments will be processed and paid quarterly upon receipt and NYSED approval of an expenditure report and the NYS Standard Voucher.

Allowable Costs

Expenditure of funds is allowed for the following:

- Professional and non-professional salaries
- Employee benefits
- Purchased services (Consultants)
- Supplies, materials, and printing
- 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 and may be found at: <http://www.gsa.gov/portal/content/104877>.
- Purchased services with BOCES
- Indirect cost
- Budget should also include the following: Professional Development, including costs for use of facilities, morning and afternoon snacks (NO LUNCH IS ALLOWED), travel expenses for speakers/presenters/NYS-TEACHS staff, and any other additional professional development expenses (postage, copying CD's, materials, equipment, etc).

Requirements of Education Law Section 2-d

The Contractor agrees to comply with FERPA and New York State Education Law § 2-d. The NYS Education Department (NYSED) is required to ensure that all contracts with a third-party contractor that receives PII include a Data Privacy and Security Plan, pursuant to Education Law § 2-d and § 121.6 of the Regulations of the Commissioner of Education. For every contract, the Contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state.

Pursuant to Education Law § 2-d and § 121.3 of the Regulations of the Commissioner of Education, the NYS Education Department (“NYSED”) is required to post information to its website about its contracts with third-party contractors that will receive Student PII and/or Teacher and/or Principal APPR data (“APPR Data”), collectively referred to as PII.

The New York State Education Department’s Data Privacy Appendix (Appendix R) is annexed to this RFP, the terms of which are incorporated herein by reference, and which shall also be part of the Contract.

Bidders should use the templates and instructions in Appendix R to submit the required DPA EXHIBIT 1 - Contractor’s Data Privacy and Security Plan and DPA EXHIBIT 2 - Education Law § 2-d Bill of Rights for Data Privacy and Security and Supplemental Information for Contracts that Utilize Personally Identifiable Information and return them with their proposal for review.

Accessibility of Web-Based Information and Applications

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

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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.

Staff Changes

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

Contract Period

NYSED will award **one** contract pursuant to this RFP. The contract(s) resulting from this RFP will be for a term anticipated to begin **July 1, 2021 and to end June 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 Requirements and Obligations 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 section¹. 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.

¹ 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.

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

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

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

9. Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs 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

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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 subcontractor is also bound by these terms. The submission will become the basis on which NYSED will judge the respondent's ability to perform the required services as laid out in the RFP. This will be followed by various terms and conditions that reflect the specific needs of this project.

Project Submission

The proposal submitted in response to this RFP must include the following documents submitted by email to cau@nysed.gov in Microsoft Office or editable PDF per the electronic proposal submission procedures outlined above, preferably with each of the following sets of documents attached as a single file (i.e. one email with four attachments):

1. Submission Documents bearing an original signature
2. Technical Proposal
3. Cost Proposal bearing an original signature
4. M/WBE Documents bearing an original signature

The proposal must be received by **January 15, 2021, by 3:00 PM** at NYSED by email to cau@nysed.gov.

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

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

Bidders should specify all details and dates required to evaluate the technical proposal and should limit aspects of the project plan 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.

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Technical Proposal

(70 points)

The original completed Technical Proposal must be emailed and labeled [name of bidder] Technical Proposal RFP #21-012 and must include the following:

- Mandatory Requirements Certification Form **Signature Required**
- TAC Certification Form **Signature Required**
- Vendor Narrative
- Plan of Operation (template below)
- Data Privacy Appendix R **Signature Required**

Vendor Narrative:

(30 Points)

The Vendor Narrative submitted in response to this RFP must include the following:

- **Abstract:** A brief and general project abstract for meeting the goals and complying with the requirements of this RFP. **(2 points)**
- **Vendor Capacity:** Description of the applicant's knowledge and experience with the McKinney-Vento Homeless Assistance Act, capacity and previous experience working with Homeless Liaisons and LEAs, identification of effective strategies for assisting homeless children and unaccompanied youth to enroll in and succeed in school, and experience in meeting the educational and social services needs of homeless children and unaccompanied youth. **(18 points)**
- **Staffing Plan:** A description of the proposed NYS-TEACHS staffing. The description should address each of the bullets in the Staffing Guidelines/Qualifications section of this RFP. Include resumes of proposed NYS-TEACHS Director as well as resumes or position descriptions of all other planned professional/managerial staff. **(10 points)**

Plan of Operation

(40 Points)

The Plan of Operation must describe how the organization intends to implement all of the activities described in the Services to be Performed section of this RFP, including Professional Development, Technical Assistance, Trainings, Website, Materials, Monitoring, Research, Data Assistance, and Collaboration and Coordination. The Plan of Operation template, provided below, must be used for this purpose. The Plan of Operation must be specific enough to establish evaluation criteria and benchmarks for each activity, responsibility, or service. The Plan of Operation should provide a detailed outline of the proposed activities described in the RFP.

Include topics, size of audiences, and proposed dates and locations for the regional on-site professional development/trainings. Describe applicant's proposed strategy to work with NYSED staff, LEAs, local social service agencies, shelters and other homeless service agencies.

Describe professional development, technical assistance and monitoring efforts as they relate to activities to support LEAs and homeless service agencies in identifying, enrolling and helping homeless students to succeed in school.

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The Plan of Operation must provide activities that will result in the expected outcomes described in the RFP. These sections will be evaluated based on the comprehensiveness of the applicant’s plan to achieve NYSED anticipated results for each of the following:

- a) Professional Development, Technical Assistance, Trainings, Website and Materials **(20 Points)**;
- b) Monitoring / Research/ Data Assistance **(15 Points)**;
- c) Collaboration and Coordination **(5 Points)**.

Workplan Template

ACTIVITY	SCHEDULE OF IMPLEMENTATION	BENCHMARKS AGAINST WHICH SUCCESS IS MEASURED, INCLUDING EVALUATIONS USED TO MEASURE THAT SUCCESS

Cost Proposal (30 points)

The original completed Cost Proposal must be emailed and labeled **[name of bidder] Cost Proposal RFP #21-012** and must include the following:

- 1.) Year 1 Detailed Budget
- 2.) 5 Year Budget Summary, **Signature Required**
- 3.) Subcontracting Form
- 4.) M/WBE Purchases Form

Budgets must be submitted using whole dollar numbers.

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

M/WBE Documents

The original completed M/WBE Documents must be emailed and labeled **[name of bidder] M/WBE Documents RFP #21-012**. 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-Request for Partial Waiver

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

No Participation-Request for Complete Waiver

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

3.) Evaluation Criteria and Method of Award

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

Criteria for Evaluating Bids

All eligible proposals received by the deadline will be reviewed using the following criteria and ratings. Applicants must ensure that all components of this application request have been addressed, the required number of copies has been provided, all forms and assurances have been completed, and the original signatures 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 (70 Points)

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

Vendor Narrative

(30 points)

- Abstract **(2 points)**
- Vendor capacity **(18 points)**
- Staffing plan **(10 points)**

Plan of Operation

(40 Points)

- a) Professional Development / Technical Assistance / Trainings /Website /Materials **(20 Points);**
- b) Monitoring / Research/ Data Assistance **(15 Points);**
- c) Collaboration and Coordination **(5 Points).**

Financial Criteria (30 Points)

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

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

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

Method of Award

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

The contract issued pursuant to this proposal will be awarded to the 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 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

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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.

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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.

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

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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 – **Melanie Faby**
Contract Administration Unit – **Adam Kutryb**
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). 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;

(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

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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

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

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

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

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

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

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

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

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

4.) Assurances

The State of New York Agreement, Appendix A (Standard Clauses for all New York State Contracts), Appendix A-1 (Agency-Specific Clauses), and Appendix R (Data Privacy Appendix) **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
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 Betty A. Rosa, Interim 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,

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

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

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

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

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

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

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

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

(October 2019)

APPENDIX A-1
AGENCY-SPECIFIC CLAUSES

Payment and Reporting

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

Terminations

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

Responsibility Provisions

- A. General Responsibility Language
The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. Suspension of Work (for Non-Responsibility)
The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- C. Termination (for Non-Responsibility)

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

Property

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

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

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

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

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

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

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

Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New

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

- B. 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 nonresponsibility regarding the Contractor in the previous four years.
- D. Contractor certifies that no governmental entity or other governmental agency has terminated or withheld a procurement contract with the Contractor due to the intentional provision of false or incomplete information.
- E. Contractor affirms that it understands and agrees to comply with the procedures of the STATE relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6)(b).
- F. Contractor certifies that it is in compliance with NYS Public Officers Law, including but not limited to, §73(4)(a).

Notices

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

Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor’s agents, officers, employees or subcontractors.
- B. If required by the Office of State Comptroller (“OSC”) Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.

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

By mail: NYS Office of the State Comptroller
 Bureau of Contracts
 110 State Street, 11th 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 Privacy Appendix (where applicable)
 9. Appendix D - Program Work Plan

Revised 10/13/20

Appendix R
NEW YORK STATE EDUCATION DEPARTMENT'S
DATA PRIVACY APPENDIX

ARTICLE I: DEFINITIONS

As used in this Data Privacy Appendix (“DPA”), the following terms shall have the following meanings:

1. **Breach:** The unauthorized acquisition, access, use, or disclosure of Personally Identifiable Information in a manner not permitted by New York State and federal laws, rules and regulations, or in a manner which compromises its security or privacy, or by or to a person not authorized to acquire, access, use, or receive it, or a Breach of Contractor’s security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personally Identifiable Information.
2. **Commercial or Marketing Purpose:** means the sale, use or disclosure of Personally Identifiable Information for purposes of receiving remuneration, whether directly or indirectly; the sale, use or disclosure of Personally Identifiable Information for advertising purposes; or the sale, use or disclosure of Personally Identifiable Information to develop, improve or market products or services to Students.
3. **Disclose:** To permit access to, or the release, transfer, or other communication of personally identifiable information by any means, including oral, written or electronic, whether intended or unintended.
4. **Education Record:** An education record as defined in the Family Educational Rights and Privacy Act and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. Part 99, respectively.
5. **Educational Agency:** As defined in Education Law § 2-d, a school district, board of cooperative educational services, school, charter school, or the New York State Education Department.
6. **Eligible Student:** A student who is eighteen years of age or older.
7. **Encrypt or Encryption:** As defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Security Rule at 45 CFR § 164.304, means the use of an algorithmic process to transform Personally Identifiable Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.
8. **NIST Cybersecurity Framework:** The U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.
9. **Parent:** A parent, legal guardian or person in parental relation to the Student.

- 10. Personally Identifiable Information (PII):** Means personally identifiable information as defined in § 99.3 of Title 34 of the Code of Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g, and Teacher or Principal APPR Data, as defined below.
- 11. Release:** Shall have the same meaning as Disclose.
- 12. School:** Any public elementary or secondary school including a charter school, universal pre-kindergarten program authorized pursuant to Education Law § 3602-e, an approved provider of preschool special education, any other publicly funded pre-kindergarten program, a school serving children in a special act school district as defined in Education Law § 4001, an approved private school for the education of students with disabilities, a State-supported school subject to the provisions of Article 85 of the Education Law, or a State-operated school subject to the provisions of Articles 87 or 88 of the Education Law.
- 13. Services:** Services provided by Contractor pursuant to this contract with the NYS Education Department to which this Data Privacy Appendix is attached and incorporated.
- 14. Student:** Any person attending or seeking to enroll in an Educational Agency.
- 15. Student Data or Student Personally Identifiable Information:** Personally Identifiable Information as defined in § 99.3 of Title 34 of the Code of Federal Regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g.
- 16. Subcontractor:** Contractor’s non-employee agents, consultants and/or subcontractors engaged in the provision of Services.
- 17. Teacher or Principal APPR Data:** Personally Identifiable Information from the records of an Educational Agency relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of Education Law §§ 3012-c and 3012-d.

ARTICLE II: PRIVACY AND SECURITY OF PII

1. Compliance with Law.

Contractor may receive PII regulated by several New York and federal laws and regulations, among them, the Family Educational Rights and Privacy Act ("FERPA") at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); New York Education Law § 2-d; and the Regulations of the Commissioner of Education at 8 NYCRR Part 121. The Parties enter into this DPA to address the requirements of New York law. Contractor agrees to maintain the confidentiality and security of PII in accordance with applicable New York, federal and local laws, rules and regulations. Neither the Services provided nor the manner in which such Services are provided shall violate New York law.

2. Authorized Use.

Contractor has no property or licensing rights or claims of ownership to PII, and Contractor must not use PII for any purpose other than to provide the Services.

3. Contractor’s Data Privacy and Security Plan.

Contractor shall adopt and maintain administrative, technical and physical safeguards, measures and controls to manage privacy and security risks and protect PII in a manner that complies with New York State, federal and local laws, rules and regulations, and the NYS Education Department’s (“NYSED”) policies. Education Law § 2-d requires that Contractor provide NYSED with a Data Privacy and Security Plan that outlines such safeguards, measures and controls including how the Contractor will implement all applicable state, federal and local data privacy and security requirements. Contractor’s Data Privacy and Security Plan is attached to this DPA as DPA Exhibit 1.

4. NYSED’s Data Privacy and Security Policy

State law and regulation require NYSED to adopt a data privacy and security policy that complies with Part 121 of the Regulations of the Commissioner of Education and aligns with the NIST Cyber Security Framework. Contractor shall comply with NYSED’s Data Privacy and Security Policy located at <http://www.nysed.gov/data-privacy-security/nysed-data-privacy-and-security-policy> and other applicable policies.

5. Right of Review and Audit.

Upon NYSED’s request, Contractor shall provide NYSED with copies of its policies and related procedures that pertain to the protection of PII in a form that does not violate Contractor’s confidentiality obligations and applicable laws. In addition, Contractor may be required to undergo an audit of its privacy and security safeguards, measures and controls as it pertains to alignment with the requirements of New York State laws and regulations, NYSED’s policies applicable to Contractor, and alignment with the NIST Cybersecurity Framework performed by an independent third party at Contractor’s expense, and provide the audit report to NYSED. In lieu of performing an audit, Contractor may provide NYSED with an industry standard independent audit report on Contractor’s privacy and security practices that is no more than twelve months old.

6. Contractor’s Employees and Subcontractors.

- (a) Contractor shall only disclose PII to Contractor’s employees and Subcontractors who need to know the PII in order to provide the Services and the disclosure of PII shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
- (b) Contractor must ensure that each Subcontractor performing Services where the Subcontractor will receive or have access to PII is contractually bound by a written agreement that includes confidentiality and data security obligations

equivalent to, consistent with, and no less protective than, those found in this DPA.

- (c) Contractor shall examine the data privacy and security measures of its Subcontractors prior to utilizing the Subcontractor. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: notify NYSED and remove such Subcontractor's access to PII; and, as applicable, retrieve all PII received or stored by such Subcontractor and/or ensure that PII has been securely deleted and destroyed in accordance with this DPA. In the event there is an incident in which the Subcontractor compromises PII, Contractor shall follow the Data Breach reporting requirements set forth herein.
- (d) Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.
- (e) Other than Contractor's employees and Subcontractors, Contractor must not disclose PII to any other party unless such disclosure is required by statute, court order or subpoena, and the Contractor makes a reasonable effort to notify NYSED of the court order or subpoena in advance of compliance but in any case, provides notice to NYSED no later than the time the PII is disclosed, unless such disclosure to NYSED is expressly prohibited by the statute, court order or subpoena.

7. Training.

Contractor shall ensure that all its employees and Subcontractors who have access to PII have received or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access.

8. Termination

The obligations of this DPA shall continue and shall not terminate for as long as the Contractor or its Subcontractors retain PII or retain access to PII.

9. Data Return and Destruction of Data.

- (a) Contractor is prohibited from retaining PII or continued access to PII or any copy, summary or extract of PII, on any storage medium (including, without limitation, in secure data centers and/or cloud-based facilities) whatsoever beyond the term of the Contract unless such retention is either expressly authorized for a prescribed period by the Contract, expressly requested in writing by NYSED for purposes of facilitating the transfer of PII to NYSED, or expressly required by law. As applicable, upon expiration or termination of the Contract, Contractor shall transfer PII, in a format agreed to by the Parties to NYSED.

- (b) When the purpose that necessitated the receipt of PII by Contractor has been completed or Contractor's authority to have access to PII has expired, Contractor shall ensure that all PII (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) as well as any and all PII maintained on behalf of Contractor in a secure data center and/or cloud-based facilities that remain in the possession of Contractor or its Subcontractors is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that PII cannot be read or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the PII cannot be retrieved. Only the destruction of paper PII, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.
- (c) Contractor shall provide NYSED with a written certification of the secure deletion and/or destruction of PII held by the Contractor or Subcontractors to the contact and address for notifications set forth in the Contract.
- (d) To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), they agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party.

10. Commercial or Marketing Use Prohibition.

Contractor agrees that it will not sell PII or use or disclose PII for a Commercial or Marketing Purpose.

11. Encryption.

Contractor shall use industry standard security measures including encryption protocols that comply with New York law and regulations to preserve and protect PII. Contractor must encrypt PII at rest and in transit in accordance with applicable New York laws and regulations.

12. Breach.

Contractor shall promptly notify NYSED of any Breach of PII in the most expedient way possible and without unreasonable delay no later than seven (7) business days after discovery of the Breach. Notifications required pursuant to this section must be in writing, given by personal delivery, e-mail transmission (if contact information is provided for the specific mode of delivery), or by registered or certified mail, and must to the extent available, include a description of the Breach which includes the date of the incident and the date of discovery; the types of PII affected and the number of records affected; a description of Contractor's investigation; and the name of a point of contact. Notifications required by this section must be sent to NYSED at the contact provided for contract related notifications with a copy to the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234. Violations of the

requirement to notify NYSED shall be subject to a civil penalty pursuant to Education Law § 2-d. The Breach of certain PII protected by Education Law § 2-d may subject the Contractor to additional penalties.

13. Cooperation with Investigations.

Contractor agrees that it will cooperate with NYSED, and law enforcement where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Contractor will be the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.

14. Notification to Individuals.

Where a Breach of PII occurs that is attributable to Contractor and/or its Subcontractors, Contractor shall pay for or promptly reimburse NYSED the full cost of NYSED's notification to Parents, Eligible Students, teachers, and/or principals, in accordance with Education Law § 2-d and 8 NYCRR Part 121.

15. Termination.

The confidentiality and data security obligations of the Contractor under this DPA shall survive any termination of this DPA but shall terminate upon Contractor's certifying that it has destroyed all PII.

ARTICLE III: PARENT AND ELIGIBLE STUDENT PROVISIONS

1. Parent and Eligible Student Access.

Education Law § 2-d and FERPA provide Parents and Eligible Students the right to inspect and review their child's or the Eligible Student's Student Data stored or maintained by NYSED. To the extent Student Data is held by Contractor pursuant to the Contract, Contractor shall respond within thirty (30) calendar days to NYSED's requests for access to Student Data necessary for NYSED to facilitate such review by a Parent or Eligible Student, and facilitate corrections, as necessary. If a Parent or Eligible Student contacts Contractor directly to review any of the Student Data held by Contractor pursuant to the Contract, Contractor shall refer the Parent or Eligible Student to NYSED and notify NYSED.

2. Bill of Rights for Data Privacy and Security.

As required by Education Law § 2-d, the Parents Bill of Rights for Data Privacy and Security and the Supplemental Information for the Contract is included as DPA Exhibit 2 and incorporated into this DPA. Contractor shall complete and sign DPA Exhibit 2 and it shall be appended to this DPA. Pursuant to Education Law § 2-d, NYSED is required to

post the Parents Bill of Rights for Data Privacy and Security and the Supplemental Information about each contract where the contractor will receive PII on its website.

DPA EXHIBIT 1 - Contractor's Data Privacy and Security Plan

The NYS Education Department (NYSED) is required to ensure that all contracts with a third-party contractor that receives PII include a Data Privacy and Security Plan, pursuant to Education Law § 2-d and § 121.6 of the Regulations of the Commissioner of Education. For every contract, the Contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state. **While this plan is not required to be posted to NYSED's website, contractors should nevertheless ensure that they do not include information that could compromise the security of their data and data systems.**

1.	Outline how you will implement applicable data privacy and security contract requirements over the life of the Contract.	
2.	Specify the administrative, operational and technical safeguards and practices that you have in place to protect PII.	
3.	Address the training received by your employees and any Subcontractors engaged in the provision of services under the Contract on the federal and state laws that govern the confidentiality of PII.	
4.	Outline contracting processes that ensure that your employees and any Subcontractors are bound by written agreement to the requirements of the Contract, at a minimum.	

5.	Specify how you will manage any data privacy and security incidents that implicate PII and describe any specific plans you have in place to identify breaches and/or unauthorized disclosures, and to meet your obligations to report incidents to the NYSED.	
6.	Describe how data will be transitioned to NYSED when no longer needed by you to meet your contractual obligations, if applicable.	
7.	Describe your secure destruction practices and how certification will be provided to the NYSED.	
8.	Outline how your data privacy and security program/practices align with NYSED's applicable policies.	
9.	Outline how your data privacy and security program/practices materially align with the NIST CSF v1.1 using the Framework chart below.	PLEASE USE TEMPLATE BELOW.

The table below will aid the review of a Contractor’s Data Privacy and Security Plan. Contractors should complete the Contractor Response sections in the table below to describe how their policies and practices align with each category in the Data Privacy and Security Plan template. To complete these 23 sections, a Contractor may: (i) Demonstrate alignment using the National Cybersecurity Review (NCSR) Maturity Scale of 1-7 ; (ii) Use a narrative to explain alignment (may reference its applicable policies); and/or (iii) Explain why a certain category may not apply to the transaction contemplated. Further informational references for each category can be found on the NIST website at <https://www.nist.gov/cybersecurity>

Function	Category	Contractor Response
IDENTIFY (ID)	<p>Asset Management (ID.AM): The data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes are identified and managed consistent with their relative importance to organizational objectives and the organization’s risk strategy.</p>	
	<p>Business Environment (ID.BE): The organization’s mission, objectives, stakeholders, and activities are understood and prioritized; this information is used to inform cybersecurity roles, responsibilities, and risk management decisions.</p>	
	<p>Governance (ID.GV): The policies, procedures, and processes to manage and monitor the organization’s regulatory, legal, risk, environmental, and operational requirements are understood and inform the management of cybersecurity risk.</p>	
	<p>Risk Assessment (ID.RA): The organization understands the cybersecurity risk to organizational operations (including mission, functions, image, or reputation), organizational assets, and individuals.</p>	
	<p>Risk Management Strategy (ID.RM): The organization’s priorities, constraints, risk tolerances, and assumptions are established and used to support operational risk decisions.</p>	

Function	Category	Contractor Response
	<p>Supply Chain Risk Management (ID.SC): The organization’s priorities, constraints, risk tolerances, and assumptions are established and used to support risk decisions associated with managing supply chain risk. The organization has established and implemented the processes to identify, assess and manage supply chain risks.</p>	
PROTECT (PR)	<p>Identity Management, Authentication and Access Control (PR.AC): Access to physical and logical assets and associated facilities is limited to authorized users, processes, and devices, and is managed consistent with the assessed risk of unauthorized access to authorized activities and transactions.</p>	
	<p>Awareness and Training (PR.AT): The organization’s personnel and partners are provided cybersecurity awareness education and are trained to perform their cybersecurity-related duties and responsibilities consistent with related policies, procedures, and agreements.</p>	
	<p>Data Security (PR.DS): Information and records (data) are managed consistent with the organization’s risk strategy to protect the confidentiality, integrity, and availability of information.</p>	
	<p>Information Protection Processes and Procedures (PR.IP): Security policies (that address purpose, scope, roles, responsibilities, management commitment, and coordination among organizational entities), processes, and procedures are maintained and used to manage protection of information systems and assets.</p>	

Function	Category	Contractor Response
	<p>Maintenance (PR.MA): Maintenance and repairs of industrial control and information system components are performed consistent with policies and procedures.</p>	
	<p>Protective Technology (PR.PT): Technical security solutions are managed to ensure the security and resilience of systems and assets, consistent with related policies, procedures, and agreements.</p>	
DETECT (DE)	<p>Anomalies and Events (DE.AE): Anomalous activity is detected and the potential impact of events is understood.</p>	
	<p>Security Continuous Monitoring (DE.CM): The information system and assets are monitored to identify cybersecurity events and verify the effectiveness of protective measures.</p>	
	<p>Detection Processes (DE.DP): Detection processes and procedures are maintained and tested to ensure awareness of anomalous events.</p>	
RESPOND (RS)	<p>Response Planning (RS.RP): Response processes and procedures are executed and maintained, to ensure response to detected cybersecurity incidents.</p>	
	<p>Communications (RS.CO): Response activities are coordinated with internal and external stakeholders (e.g. external support from law enforcement agencies).</p>	

Function	Category	Contractor Response
RECOVER (RC)	<p>Analysis (RS.AN): Analysis is conducted to ensure effective response and support recovery activities.</p>	
	<p>Mitigation (RS.MI): Activities are performed to prevent expansion of an event, mitigate its effects, and resolve the incident.</p>	
	<p>Improvements (RS.IM): Organizational response activities are improved by incorporating lessons learned from current and previous detection/response activities.</p>	
RECOVER (RC)	<p>Recovery Planning (RC.RP): Recovery processes and procedures are executed and maintained to ensure restoration of systems or assets affected by cybersecurity incidents.</p>	
	<p>Improvements (RC.IM): Recovery planning and processes are improved by incorporating lessons learned into future activities.</p>	
	<p>Communications (RC.CO): Restoration activities are coordinated with internal and external parties (e.g. coordinating centers, Internet Service Providers, owners of attacking systems, victims, other CSIRTs, and vendors).</p>	

DPA EXHIBIT 2 - Education Law § 2-d Bill of Rights for Data Privacy and Security and Supplemental Information for Contracts that Utilize Personally Identifiable Information

Parents (including legal guardians or persons in parental relationships) and Eligible Students (students 18 years and older) can expect the following:

1. A Student's Personally Identifiable Information (Student PII) cannot be sold or released for any Commercial or Marketing purpose. Student PII, as defined by Education Law § 2-d and the Family Educational Rights and Privacy Act ("FERPA"), includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR § 99.3 for a more complete definition.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency. This right may not apply to Parents of an Eligible Student.
3. State and federal laws such as Education Law § 2-d; the Regulations of the Commissioner of Education at 8 NYCRR Part 121, FERPA at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. § 1232h (34 CFR Part 98); and the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); protect the confidentiality of Student PII.
4. Safeguards associated with industry standards and best practices including, but not limited to, encryption, firewalls and password protection must be in place when Student PII is stored or transferred.
5. A complete list of all student data elements collected by New York State Education Department ("NYSED") is available at www.nysed.gov/data-privacy-security/student-data-inventory and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of Student PII addressed. (i) Complaints should be submitted to the NYS Education Department at www.nysed.gov/data-privacy-security/report-improper-disclosure, by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to privacy@nysed.gov; or by telephone at 518-474-0937.
7. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of Student PII occurs.

8. NYSED workers that handle Student PII will receive training on applicable state and federal laws, policies, and safeguards associated with industry standards and best practices that protect PII.
9. NYSED contracts with vendors that receive Student PII will address statutory and regulatory data privacy and security requirements.

Supplemental Information

Pursuant to Education Law § 2-d and § 121.3 of the Regulations of the Commissioner of Education, the NYS Education Department (“NYSED”) is required to post information to its website about its contracts with third-party contractors that will receive Student PII and/or Teacher and/or Principal APPR data (“APPR Data”), collectively referred to as PII.

Name of Contractor	
Description of the purpose(s) for which Contractor will receive/access PII	
Type of PII that Contractor will receive/access	<p>Check all that apply:</p> <p><input type="checkbox"/> Student PII</p> <p><input type="checkbox"/> APPR Data</p>
Contract Term	<p>Contract Start Date:</p> <p>Contract End Date:</p>
Subcontractor Written Agreement Requirement	<p>Contractor will not utilize Subcontractors without a written contract that requires the Subcontractors to adhere to, at a minimum, materially similar data protection obligations imposed on the contractor by state and federal laws and regulations, and the Contract. (check applicable option)</p> <p><input type="checkbox"/> Contractor will not utilize Subcontractors.</p> <p><input type="checkbox"/> Contractor will utilize Subcontractors.</p>
Data Transition and Secure Destruction	<p>Upon expiration or termination of the Contract, Contractor shall:</p> <ul style="list-style-type: none"> • Securely transfer data to NYSED, or a successor contractor at NYSED’s option and written discretion, in a format agreed to by the parties. • Securely delete and destroy data.

