

REQUEST FOR PROPOSAL (RFP)

RFP# 17-020

NEW YORK STATE EDUCATION DEPARTMENT

Title: Summer Food Service Program Campaign

The New York State Education Department (NYSED) is seeking proposals for a comprehensive statewide multi-media campaign to promote the Summer Food Service Program (SFSP) to low income families. The vendor would be responsible for developing an impressive statewide multi-media campaign that advertises the availability of nutritious meals for anyone 18 years old and younger during the summer months at no cost through the SFSP.

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. For the purposes of this RFP, this definition does not include costs associated with the printing and placement of campaign deliverables on buses, trains, and billboards.

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.

NYSED will award one (1) contract pursuant to this RFP. **The contract resulting from this RFP will be for a term of one (1) year, anticipated to begin April 1, 2017 and end March 31, 2018, with the option of up to four (4) one-year renewals.**

Components contained in RFP #17-020 are as follows:

1. Description Of Services To Be Performed
2. Submission
3. Evaluation Criteria and Method of Award
4. Assurances
5. Submission Documents
6. Appendices
7. Attachment

Questions regarding the request must be submitted by email to RFP17020@nysed.gov no later than the close of business **August 26, 2016**. Questions regarding this request should be identified as either Program or Fiscal. A Questions and Answers Summary will be posted to <http://www.p12.nysed.gov/comprocontracts/comprocontracts.html> no later than **September 7, 2016**.

The following are the designated contacts for this procurement:

Program Matters	Fiscal Matters	M/WBE Matters
Cheryl Nary	Nell Brady	Joan Ramsey
Email: RFP17020@nysed.gov	Email: RFP17020@nysed.gov	Email: RFP17020@nysed.gov

The following documents must be submitted in separately sealed envelopes, as detailed in the Submission section of the RFP, and be received at NYSED no later than **September 23, 2016 by 3:00 PM:**

1. Submission Documents labeled **Submission Documents – RFP#17-020 DO NOT OPEN**
2. Technical Proposal labeled **Technical Proposal – RFP #17-020 DO NOT OPEN**
3. Cost Proposal labeled **Cost Proposal – RFP#17-020 DO NOT OPEN**
4. M/WBE Documents labeled **M/WMBE Documents – RFP#17-020 DO NOT OPEN**
5. CD ROM containing the technical, cost, submission and M/WBE proposals submitted using Microsoft Word. Place in a separate envelope labeled **CD-ROM-RFP#17-020 DO NOT OPEN.**

The mailing address for all of the above documentation is:

NYS Education Department
Attn: Nell Brady
Bureau of Fiscal Management
Contract Administration Unit 501 W EB
89 Washington Avenue
Albany, NY 12234

(Facsimile copies of the proposals are NOT acceptable)

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1. DESCRIPTION OF SERVICES TO BE PERFORMED

Work Statement and Specifications:

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

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

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

ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)

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

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

DOCUMENTATION OF GOOD FAITH EFFORTS

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

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

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

REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS

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

REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS

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

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

1.1. BACKGROUND AND PURPOSE

The Summer Food Service Program (SFSP) was established to ensure that low-income children continue to receive nutritious meals when school is not in session, primarily between May and September. Through the SFSP, free meals that meet federal nutrition guidelines are provided to children 18 years old and under at approved SFSP sites. The promotion of summer feeding sites in New York State communities increases program awareness among children and families that depend upon the availability of free or reduced price meals during the school year. The more parents, children, and teenagers know about where sites are located, the more children will come to eat.

The United States Department of Agriculture Food and Nutrition Services (FNS) and State agencies are engaged in a continued effort to increase participation in the SFSP. The SFSP is one of the most needed but underutilized Federal nutrition assistance programs, reaching only 17% of the 21 million children nation-wide that receive free or reduced price meals during the school year. Through the SFSP, low-income children are provided with nutritious meals and the opportunity to participate in organized activities, thereby enabling low-income parents to stretch food dollars and have healthy recreation for their children. The SFSP also provides summer employment for food service workers and utilizes federal funding to support program operations. The overall goal of this promotion is to make children and their families aware of the availability of free summer meals.

New York State (NYS) administers the largest SFSP in the United States. On average, New York State serves meals to 438,929 children each operating day, which represents 17% of the total number of children served through the program in the nation. NYS has previously contracted with vendors to provide program promotion in various regions throughout the state, and has observed increases in both the number of children participating in the program as well as the number of sponsors administering it.

Additional information about the SFSP is available on the NYSED Child Nutrition Program website at http://portal.nysed.gov/portal/page/portal/CNKC/SFSP_pp. Resources available through the USDA SFSP Outreach Toolkit are available here: <http://www.fns.usda.gov/sfsp/summer-meals-toolkit>.

1.2. PROJECT DESCRIPTION

The NYS Education Department’s Office of Child Nutrition Program Administration is seeking bids from vendors for a comprehensive statewide media campaign that focuses on the promotion of the SFSP. The vendor awarded the contract will carry out a media campaign that leads to an increase in, or at a minimum sustains, the number of meals served to children through the SFSP each contract year. For reference, ~19,500,000 meals were served to children through the SFSP during school year 2014-2015. NYSED expects the majority of outreach activities promoting the program to children and families to occur during the SFSP’s peak operating months, which are June through August of each year.

1.2.1. COVERAGE

The vendor’s campaign will reach and promote the availability of the SFSP to low-income children and families throughout New York State. NYSED has identified one (1) county in each of the ten (10) NYS regions (shown in **Figure 1 – NYS Regional Map**) in which the vendor shall provide campaign promotion for each year of the contract in **Table 1 – Selected Counties**. Over the course of the 5 years (should the contract be renewed in years 2-5), the vendor shall have provided outreach in 47 counties.

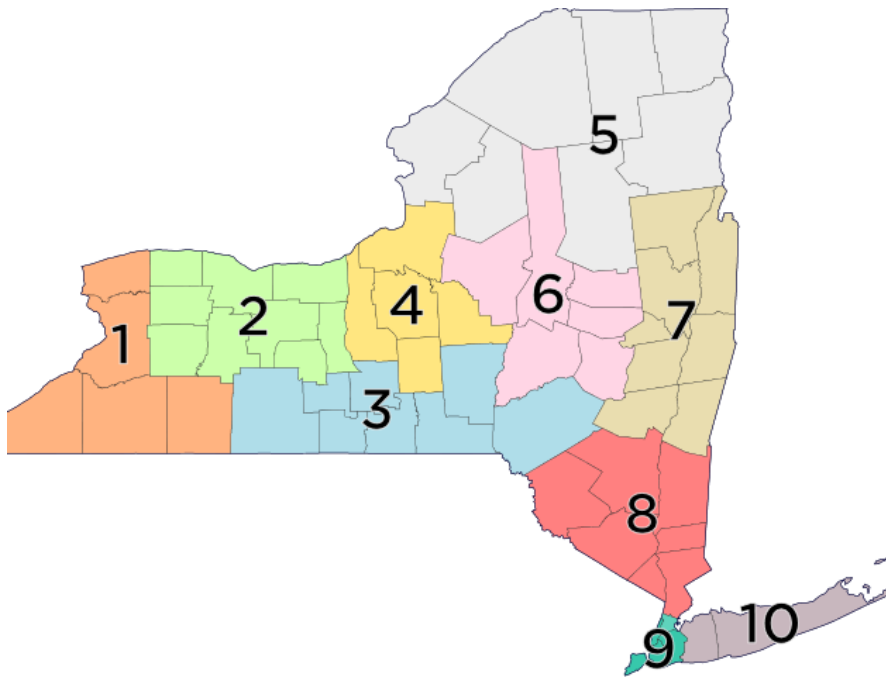


FIGURE 1 – NYS REGIONAL MAP

1. **Western New York** – Niagara, Erie, Chautauqua, Cattaraugus, Allegany
2. **Finger Lakes** – Orleans, Genesee, Wyoming, Monroe, Livingston, Wayne, Ontario, Yates, Seneca
3. **Southern Tier** – Steuben, Schuyler, Chemung, Tompkins, Tioga, Chenango, Broome, Delaware
4. **Central New York** – Cortland, Cayuga, Onondaga, Oswego, Madison
5. **North Country** – St. Lawrence, Lewis, Jefferson, Hamilton, Essex, Clinton, Franklin
6. **Mohawk Valley** – Oneida, Herkimer, Fulton, Montgomery, Otsego, Schoharie
7. **Capital District** – Albany, Columbia, Greene, Warren, Washington, Saratoga, Schenectady, Rensselaer

8. **Hudson Valley** – Sullivan, Ulster, Dutchess, Orange, Putnam, Rockland, Westchester
9. **New York City** – New York, Bronx, Queens, Kings, Richmond
10. **Long Island** – Nassau, Suffolk

TABLE 1 – SELECTED COUNTIES

Region	Year 1	Year 2*	Year 3*	Year 4*	Year 5*
1	Cattaraugus	Chautauqua	Niagara	Allegany	Erie
2	Wayne	Yates	Seneca	Orleans	Monroe
3	Delaware	Tioga	Schuyler	Chemung	Broome
4	Cortland	Madison	Cayuga	Onondaga	Oswego
5	Jefferson	Lewis	Essex	Clinton	Franklin
6	Otsego	Schoharie	Fulton	Oneida	Herkimer
7	Warren	Washington	Albany	Greene	Schenectady
8	Dutchess	Orange	Putnam	Ulster	Sullivan
9	Bronx	Kings	Queens	Richmond	New York
10	Nassau	Suffolk	Nassau	Suffolk	Nassau

**This is a one-year contract. Years 2-5 are contingent upon optional one-year contract renewals.*

1.2.2. PROMOTIONAL MATERIALS/DELIVERABLES

The vendor’s statewide campaign shall include the print and media deliverables listed below for each year of the contract. NYSED does not expect the vendor to deploy each type of deliverable in each selected county; rather, the vendor shall deploy deliverables that are appropriate for each geographical area and have the greatest opportunity, based upon research and/or previous experience, to reach the target audience. **The vendor’s statewide campaign should include deliverables that reflect the approximate composition set forth in Table 2 below, which should be considered when estimating the total cost and time/effort necessary to produce and implement each deliverable category. The maximum amount of funding available for this contract is \$1,000,000 annually.**

TABLE 2 –DELIVERABLES

Type of Deliverable	Approximate Annual Deliverable Composition	Approximate Annual Deliverable Cost*	Approximate Annual Quantity (Panels)**
Bus advertisement	20%	Up to \$200,000	750
Subway/train advertisement	35%	Up to \$350,000	915
Billboard advertisement	20%	Up to \$200,000	35
Other media	25%	Up to \$250,000	See below

** These estimates include the cost of any staff or consultant time associated with carrying out the deliverables. Please also note that activities (such as evaluation and artwork design) that do not fall within just one of the deliverable-types listed above must also be factored into the total project budget, anticipated to be no more than \$1,000,000 annually.*

*** NYSED understands that there are many different options regarding size, placement, and type of panel or advertisement, and the cost varies widely. These are approximate quantities intended to offer bidders a general idea of what NYSED expects during each year of this campaign.*

- Print Deliverables
 - Print deliverables include the posting of advertisements on buses, trains, and billboards. Each print deliverable (panel) should be posted for a duration of four consecutive weeks at any time during the SFSP’s busiest operating period, which begins the last week of June and ends in August.

- Other Media Deliverables
 - Digital Marketing
 - The vendor should provide targeted advertisement of the SFSP through the internet and mobile phone devices. The vendor’s digital marketing approach should provide the following:
 - maximum digital display impressions that are available on various platforms and devices
 - ability to target households with children ages 0-18 with a household income below \$50,000
 - routing to relevant websites, such as the FNS Summer Meal Site Finder (<http://www.fns.usda.gov/summerfoodrocks>)
 - provide daily performance-based reporting and measurement analytic
 - Digital marketing activities should take place for an 8-week period between the last week of June through August.
 - Radio Public Service Announcements (PSAs)
 - Each year of the contract, the vendor shall contact a minimum of three radio stations that broadcast to residents in each selected county to publicize the SFSP. Of the radio stations contacted, the expectation is that at least one radio station that reaches residents in each selected county will air a SFSP PSA a minimum of three times. A radio station that reaches residents in more than one selected county may be used to fulfill this expectation in those additional counties providing that the PSA is aired a minimum of three times.
 - The vendor shall provide interested radio stations with the USDA-developed PSAs and PSA scripts specifically designed to attract families. PSAs and PSA scripts are available to download in both English and Spanish at <http://www.fns.usda.gov/sfsp/raise-awareness>.
 - SFSP PSAs highlight a benefit program that is available within the community and should be aired to the public free of charge; therefore, any cost associated with this deliverable will be minimal.

The vendor shall develop all artwork and promotional materials with stimulating colors and engaging art and design. The artwork developed for this campaign will be used to produce a “brand” that is recognizable among the public. Accordingly, NYSED anticipates that most of the creative design work will be conducted in the first year of the contract with the possibility of minor enhancements in any renewal contract years.

The sample design and the proposed work plan submitted as part of the vendor’s proposal will serve as the foundation for contract activities in Year 1. All artwork and advertisements for Year 1 will be submitted to NYSED by May 1, 2017. NYSED may request that the vendor make changes to the project design/concept . Should any changes be requested, the vendor must submit the revised project materials for NYSED approval within two weeks of the request. All artwork/advertisements must be approved by NYSED prior to release/placement. To promote the SFSP as a brand, NYSED expects the vendor to use the same artwork and designs for all campaign deliverables (with formatting altered to the extent necessary for various deliverable-types). The vendor shall develop artwork that is appropriate for use in all NYS counties and regions. The vendor should not develop separate or additional artwork for specific counties or regions. All materials developed shall be appropriate for the target audience; materials shall be ethnically diverse, appropriate for students with limited English proficiency (LEP), and target both urban and rural students.

The vendor shall ensure that printed and digital marketing campaign deliverables utilize the title “Summer Food Service Program” and include all three of the established phone numbers listed below. The vendor’s promotional materials must highlight the toll-free phone numbers and online maps that families can use to locate summer feeding sites closest to them. Information and links to toll-free numbers and maps are provided below:

- National Hunger Hotline:
An invaluable resource for families seeking food assistance, the National Hunger Hotline delivers information about open Summer Meal sites. The Hotline, operated by the New York City Coalition Against Hunger (NYCCH),

shares information about food assistance resources that State agencies and organizations provide to FNS. Individuals and families seeking food assistance can call 1-866-3-HUNGRY or 1-877-8-HAMBRE, from 8:00 AM to 8:00 PM EST, to speak with a Hotline representative who will guide them to local food resources, including Summer Meal sites.

- **FNS Summer Meal Site Finder:**
Another terrific tool for families is the FNS Summer Meal Site Finder. This web-based site locator is available online to anyone looking for a Summer Meal site for children. Families may visit the site locator, any time after May 15, to access the updated map and find Summer Meal sites in their neighborhood. Website: <http://www.fns.usda.gov/summerfoodrocks>
- **Call 2-1-1:**
2-1-1 provides information about the summer food service program for children. Call 3-1-1 in the NYC area. Website: <http://www.211.org/services/food>

Translation

The vendor shall be responsible for the translation and delivery of campaign materials in additional languages other than English in counties where 15% or more of the population speaks a single language other than English. Data from the 2010 American Community Survey indicates that 15% or more of the population speaks Spanish in the following NYS counties:

- Bronx County: 46%
- Queens County: 24%
- New York County: 23%
- Westchester County: 18%
- Kings County: 17%

The vendor should provide campaign materials in Spanish in the respective proportion with the remainder provided in English for each of the counties listed above. Please note that, as stated above, the USDA-developed Radio Public Service Announcements (PSAs) are already available in both English and Spanish.

USDA Nondiscrimination Statement

All campaign materials must include the appropriate USDA nondiscrimination statement:

- Materials and artwork that is limited to one page or less may use the shortened version of the statement: “This institution is an equal opportunity provider.”
- All other documents must include the full nondiscrimination statement listed below:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA

through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Confirmation of Deliverable Implementation

The vendor shall provide written correspondence to NYSED confirming the date that each print deliverable (bus, train, and billboard advertisements) is implemented in each county. Correspondence shall be sent no later one (1) week from the initial date that the deliverable is posted. NYSED prefers written correspondence via email.

1.2.3. EVALUATION

Each year of the contract, NYSED will provide the vendor with a list of ten (10) open SFSP sites (one (1) open SFSP site in each identified county) in which the vendor is to administer a very brief survey (**NYSED Summer Food Service Program Evaluation Survey – Attachment A**) to SFSP participants. The vendor should strive to obtain a total of 200 survey responses (either a parent or child). The survey will gather information from respondents related to how they heard about the SFSP while also soliciting ideas to increase awareness of the program in the future. The vendor will be responsible for printing survey forms and supplying writing instruments for participant use along with any travel expenses necessary to implement the survey on-site. The vendor will also be responsible for the collection of survey forms and the tabulation of responses to each survey question.

Tabulated responses from evaluation surveys along with original participant survey forms must be submitted to NYSED with the second quarterly report due in October each year of the contract. The vendor shall utilize survey results to guide campaign planning for the upcoming year, in consultation with NYSED. Survey results shall be considered when constructing project work plans and budget for renewal years, particularly when determining deliverable composition percentages, to enable a greater dissemination of deliverables deemed to be more effective.

1.3. REPORTING

The vendor will provide the following to NYSED:

- Annual Work Plan:
The contractor will submit a comprehensive work plan detailing all contract activities for the contract year. The work plan shall specify the quantity and duration (with start and end dates) for each deliverable in each county

selected for targeted outreach; deliverable quantities and durations shall be appropriate based upon survey data and participant feedback from the prior year. Should NYSED choose to renew the contract, the vendor shall submit project work plans for NYSED approval no later than April 1 of each renewal year of the contract. All artwork and digital media advertisements developed or used for this campaign shall be submitted with the annual work plan and must be approved by NYSED prior to its reproduction and/or use. In contract Year 1, the vendor will submit all artwork and advertisements to NYSED by May 1, 2016; all designs will be based on the sample design submitted with the contractor’s proposal, pending any minor changes requested by NYSED. The work plan submitted with the proposal will serve as the work plan for year one, pending any minor adjustments requested by NYSED.

- **Quarterly Reports:**

The contractor will submit quarterly progress reports within 30 calendar days of each reporting quarter. Quarterly progress reports shall detail the contractor’s progress toward the following activities:

- Developing of project artwork
- Securing advertisement space and implementing Print Deliverables. When applicable, progress reports shall include actual start and end dates and the number of print advertisements implemented in each county during the reporting quarter.
- Securing advertisement space and implementing digital advertisements. When applicable, progress reports shall include actual start and end dates and the number of digital advertisements provided.
- Contacting radio stations and securing a radio station to air SFSP PSAs. When applicable, progress reports shall include a list of the radio stations contacted in each selected county, whether radio stations played a SFSP PSA, and the number of PSAs provided.
- Conducting project evaluation.

1.4. TIMELINE OF CAMPAIGN ACTIVITIES

TABLE 3 – TIMELINE

Month	Expected Activities
April	<ul style="list-style-type: none"> • Contract Start Date: April 1 • Submit project artwork and work plan; revise if requested* • Submit Quarterly Report for 4th quarter (January – March)**
May	<ul style="list-style-type: none"> • Submit project artwork and work plan; revise if requested** • Obtain NYSED approval for project artwork and work plan • Secure advertisement space
June	<ul style="list-style-type: none"> • Distribute Print and Other Media deliverables
July	<ul style="list-style-type: none"> • Distribute Print and Other Media deliverables • Conduct survey evaluation at SFSP open sites • Submit Quarterly Report for 1st quarter (April – June)
August	<ul style="list-style-type: none"> • Distribute Print and Other Media deliverables • Conduct survey evaluation at SFSP open sites
September	<ul style="list-style-type: none"> • Tabulate survey evaluation responses
October	<ul style="list-style-type: none"> • Tabulate survey evaluation responses • Submit Quarterly Report for 2nd quarter (July – September) • Submit evaluation results along with original participant surveys
November	<ul style="list-style-type: none"> • Plan for following campaign year
December	<ul style="list-style-type: none"> • Plan for following campaign year
January	<ul style="list-style-type: none"> • Plan for following campaign year • Submit Quarterly Report for 3rd quarter (October – December)

February	<ul style="list-style-type: none"> Plan for following campaign year
March	<ul style="list-style-type: none"> Create project work plan and artwork for upcoming campaign year

* Contract Years 2-5

** Contract Year 1

1.5. PRICING

NYSED reserves the right to reduce contract funding to an amount it deems appropriate if USDA Child Nutrition funding is decreased. NYSED shall meet and reach an agreement on a reduced Scope of Work commensurate with the level of available funding, which will require review and approval by the Office of the State Comptroller.

1.6. PAYMENT

NYSED will make payments to the vendor as deliverables are completed, provided that the vendor submits sufficient evidence of deliverable completion along with an accompanying voucher. Vouchers submitted for payment must include a list of completed deliverables and costs consistent with the approved work plan and budget contained in the executed contract. Evidence will consist of a description of each completed deliverable, including start and end dates, location, size, and type of promotional activity. Payments to subcontractors should be listed on vouchers, including the subcontractor's name, payment amount, and nature of services provided. Vouchers with incomplete information will be returned to the vendor. Payment will be contingent upon NYSED review and approval of the completed deliverables.

1.7. SUBCONTRACTING LIMIT

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. For the purposes of this RFP, the definition of subcontracting does not include the printing and placement of campaign deliverables on buses, trains, and billboards.

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

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

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

If the vendor proposes to change subcontractors during the contract period, NYSED must be notified prior to the change. NYSED reserves the right to reject any replacement subcontractors proposed by the vendor and reserves the right to approve all changes in subcontractors. The Subcontracting Form located in the Cost Proposal 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.

1.8. STAFF CHANGES

The vendor 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.

1.9. CONTRACT PERIOD

NYSED will award one (1) contract pursuant to this RFP. **The contract resulting from this RFP will be for a term of one (1) year, anticipated to begin April 1, 2017 and end March 31, 2018, with the option of up to four (4) one-year renewals.**

Extensions for the four (4) additional one (1) year periods would be dependent upon:

- the successful completion of the first year's activities;
- funds being allocated for the program in the State budget for the period;
- successful negotiation of a scope of continued services (which may simply be the continuation of the same services described in the original agreement);
- successful negotiation of associated costs, (which may have been pre-determined in the original contract language by limiting rate increases to a specific factor);
- the mutual agreement of both parties; and
- approval of a contract extension agreement by the NYS Comptroller as described in section 3 of Appendix A, which is contained in this document.

1.10. ELECTRONIC PROCESSING OF PAYMENTS

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

1.11. M/WBE OPPORTUNITIES

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

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

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

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

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

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

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

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

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

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

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

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

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this 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 businesses².

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.

² Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to Empire State Development (<http://www.esd.ny.gov/MWBE/Certification.html>) by the deadline for submission of proposals for eligibility determination. It is the responsibility of

6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the Empire State Development (“ESD”) directory of certified businesses, which can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>. The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.

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

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

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

10. Contractor shall submit all necessary M/WBE documents and/or forms as described above as part of their proposal in response to NYSED procurement.

11. The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas which must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.

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

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

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

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

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

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

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

the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

II. Whether there has been written notification to appropriate certified M/WBEs that appear in the Empire State Development website, found at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

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

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

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

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

2. SUBMISSION

Documents to be submitted with this proposal:

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

Project Submission:

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

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

The proposal must be received by **Friday, September 23, 2016 by 3:00 PM** at NYSED in Albany, NY.

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

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

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

Any materials submitted with the bid response will be subject to FOIL after the winning vendor's contract has received final approval from the Office of the New York State Comptroller. Any material that the bidder feels may be proprietary or confidential should be marked as such.

Note: Proposals must be labeled "**RFP #17-020 Summer Food Service Program Campaign**". This information should be on all the sealed envelopes contained in your submission.

2.1. TECHNICAL PROPOSAL (70 POINTS)

The original plus four copies of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP #17-020 Technical Proposal-Do Not Open** and must include the following:

- Project Description as outlined below
- Organizational Capacity and Experience as outlined below

1.) Project Description (40 points):

- A. A comprehensive work plan for year 1 of the contract, beginning with the contract start date (April 1, 2017). The work plan should include, for each type of print and media deliverable, the county or counties in which the deliverable will be deployed, the quantity, duration, and relevant start and end dates consistent with scope of work and timeline information provided in section 1 of this RFP. (10 points)
- B. A description of the bidder's approach to implementing each advertisement deliverable: Print (trains, buses, billboards) and other media (digital marketing, radio). This description should also include the anticipated reach of each advertisement deliverable. (5 points)
- C. A description of the methodology used to determine which advertisement deliverables have the greatest ability to reach the target audience in each NYS region. Methodologies that utilize marketing research and/or previous experience in this determination are preferred. (10 points)
- D. The sample artwork (using 8 ½" X 11" paper) that the bidder has created should:
 - i. be visually appealing, colorful, clear, and promote the Summer Food Service Program. (5 points)
 - ii. be appropriate for low-income audiences, specifically children 18 years old and younger, and should demonstrate incorporation of ethnic diversity. (5 points)
 - iii. include all three toll-free phone numbers, the web address for the FNS Meal Site Finder, and the USDA nondiscrimination statement as listed in this RFP. (5 points)

2.) Organizational Capacity and Experience (30 points):

- A. Evidence of experience working with government and/or community-based organizations to carry out marketing campaigns utilizing a variety of advertising channels. (10 Points)
- B. Evidence of experience with utilizing marketing research and marketing trends in media planning and buying. (5 points)
- C. Evidence of experience with establishing, implementing and evaluating marketing projects aimed at program promotion. (5 Points)
- D. Evidence of experience implementing advertisement campaigns targeting low-income children and families with multicultural and ethnically diverse backgrounds. (5 Points)
- E. Evidence of experience with creative development and graphic design. Experience in the creation of recognizable designs to build brand identity is preferred. (5 points)

2.2. COST PROPOSAL (30 POINTS)

The original (bearing an original signature in blue ink) plus two (2) copies of the completed Cost Proposal must be mailed in a separate envelope labeled **RFP #17-020 - Cost Proposal-Do Not Open** and must include the following:

- 1.) Year 1 Budget
- 2.) Budget Narrative
- 3.) Subcontracting Form
- 4.) M/WBE Purchases Form

The Year 1 Budget, Subcontracting Form, and the M/WBE Purchases Form are located within the Cost Proposal Excel file posted separately with this RFP.

The Financial Criteria portion of this RFP will be scored based upon the grand total for the Year 1 Budget.

For the development of this campaign, it is expected that NYSED will have available up to a maximum of one million dollars (\$1,000,000) for each year of the contract.

2.3. M/WBE DOCUMENTS

The original of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #17-004-M/WBE Documents-Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver

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

Signatures Required

Partial Participation-Partial Request for Waiver

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

Signatures Required

No Participation-Request for Complete Waiver

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

Signatures Required

3. EVALUATION CRITERIA AND METHOD OF AWARD

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

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

The technical portion of the proposal will be reviewed and rated by the evaluation committee according to the criteria below. Proposals receiving an average of at least sixty percent (60%) of the points available for the Technical Proposal (a total of 42 out of 70 points) will move on to the next step of the process. Proposals with an average score of less than 42 points in the Technical Proposal section will be eliminated from further consideration and no financial score will be calculated.

Technical Criteria (70 points)

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

1. Project Description (40 Points)
2. Organizational Capacity (30 Points)

Financial Criteria (30 Points)

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

3.2. FINANCIAL CRITERIA FOR EVALUATING BIDS

The Financial Criteria portion of the RFP will be scored based upon the grand total of the Year 1 Budget. Deliverable costs must include all costs required to produce the deliverables, including: staff costs, fringe benefits, purchased services, non-personal services, indirect costs, and other costs.

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

The submitted budget will be awarded points pursuant to a formula that awards the highest score of **thirty (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 **thirty (30) points**.

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

3.3. 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.

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.

3.4. 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.

3.5. POST SELECTION PROCEDURES

Upon selection, the successful bidder will enter into negotiations for a contract with NYSED. The contents of this RFP, any subsequent correspondence related to final contract negotiations, and such other stipulations as agreed upon may be made a part of the final contract developed 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.

3.6. DEBRIEFING PROCEDURES

All unsuccessful bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED. Bidders may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Contact person at:

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

The Fiscal Contact person will make arrangements with program staff to provide a written summary of the proposal's strengths and weaknesses, as well as recommendations for improvement. Within fifteen (15) business days, the program staff will issue a written debriefing letter to the bidder.

3.7. CONTRACT AWARD PROTEST PROCEDURES

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

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

NYS Education Department
Contract Administration Unit
89 Washington Avenue
Room 505W EB
Albany, NY 12234

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

3.8. 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, the Department must make an affirmative responsibility determination. The factors to be considered include: legal authority to do business in New York State; integrity; capacity- both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a Vendor Responsibility Questionnaire. School districts, Charter Schools, BOCES, public colleges and universities, public libraries, and the Research Foundation for SUNY and CUNY are some of the exempt entities. For a complete list, see: <http://www.osc.state.ny.us/vendrep/documents/vrdocrules.pdf>.

Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions at: <http://www.osc.state.ny.us/vendrep/systeminit.htm> or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>. Vendors should also refer to the VendRep System checklist, which can be found at <http://www.osc.state.ny.us/vendrep/documents/checklist.pdf>.

For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website: <http://www.osc.state.ny.us/vendrep/templates.htm> or may contact the State Education Department or the OSC 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).

3.9. PROCUREMENT LOBBYING LAW

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

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

Designated Contacts for NYSED

Program Office – **Cheryl Nary**
Contract Administration Unit – **Nell Brady**
M/WBE – **Joan Ramsey**

3.10. CONSULTANT DISCLOSURE LEGISLATION

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

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

To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor’s Planned Employment From Contract Start Date Through

the End of the Contract Term ([Form A](#) - see link below). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information *prospectively from the start date of the contract through the end of the contract term*.

Form A: <http://www.osc.state.ny.us/agencies/gbull/g226forma.doc>

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

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

Form B: <http://www.osc.state.ny.us/agencies/gbull/g226formb.doc>

For more information, please visit the OSC web site for G-Bulletin 226 at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

Public Officer's Law Section 73

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

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

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

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

(ii) officers and employees of statewide elected officials;

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

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

Public Officer's Law Section 73 can be found at <http://www.nyintegrity.org/law/ethc/POL73.html>.

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.

3.11. WORKERS' COMPENSATION COVERAGE AND DEBARMENT

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

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

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

PROOF OF COVERAGE REQUIREMENTS

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

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

Proof of Workers' Compensation Coverage

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

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

3.12. PROOF OF DISABILITY BENEFITS COVERAGE

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

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

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at:

<http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>. Alternatively, questions relating to either workers' compensation or disability benefits coverage should be directed to the NYS Workers' Compensation Board, Bureau of Compliance at (518) 486-6307.

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

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

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance ("DTF") that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In 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 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, available through this link: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

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

4. ASSURANCES

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

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

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

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

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

Full Participation-No Request for Waiver

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

Signatures Required

Partial Participation-Partial Request for Waiver

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

Signature Required

No Participation-Request for Complete Waiver

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

Signature Required

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

APPENDIX A
STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor

Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement

that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by

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

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

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

26. IRAN DIVESTMENT ACT.

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

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

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

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

(January 2014)

APPENDIX A-1

Payment and Reporting

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

Terminations

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

Responsibility Provisions

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

Property

- A. The Contractor shall maintain a complete inventory of all realty, equipment and other non-expendable assets including, but not limited to, books, paintings, artifacts, rare coins, antiques and other collectible items purchased, improved or developed under this agreement. The Contractor shall submit a copy of the inventory in a form identical to or essentially similar to,

Exhibit A annexed hereto. The term "non-expendable assets" shall mean for the purposes of this agreement any and all assets which are not consumed during the term of this agreement and which have a cost of One Thousand Dollars (\$1,000) or more.

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

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

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

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

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

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

Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.
- B. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- C. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- D. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have

waived its right or remedy.

- E. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State Management/Confidential employees.
- F. No fees shall be charged by the Contractor for training provided under this agreement.
- G. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- H. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.

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

Certifications

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

Notices

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

Miscellaneous

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

The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B is due by May 15th of each year and covers actual employment data performed during the prior period of

April 1st to March 31st. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 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 D – Program Workplan

(Revised 10/20/15)