

REQUEST FOR PROPOSAL (RFP)

RFP # 25-006

NEW YORK STATE EDUCATION DEPARTMENT

Title: Regional Bilingual Education Resource Network

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

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

Such technical assistance may be in-person or remote, as appropriate. When appropriate, Regional RBERNs may, with OBEWL approval, open satellite offices to serve the needs of larger or significantly dense regions.

NYSED will award eight (8) contracts as a result of this RFP. Six (6) of the Regional RBERN contracts will be awarded in the following regions of New York State (see Attachment A): West, Mid-West, Mid-State, Hudson Valley, Capital District, Long Island, and one (1) of the Regional RBERN contracts will be awarded in New York City. NYSED will award one (1) Statewide RBERN contract, which may be located in any region of New York State. Eligible bidders can only bid for one (1) Regional RBERN award but may bid on both a regional award and the Statewide RBERN award but must submit separate proposals. Each contract resulting from this RFP will be for a term anticipated to begin on **July 1, 2025**, and end on **June 30, 2030**.

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

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

Service Area: **Regional**

Mandatory Requirements: See Mandatory Requirements section of the RFP.

Components contained in RFP #25-006 are as follows:

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

Questions regarding the request must be submitted by email to **RBERNRF25-006@nysed.gov** no later than the close of business January 24, 2025. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to [Competitive Procurement Contracts](#) no later than February 7, 2025. The following are the designated contacts for this procurement:

Program Matters

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Fiscal Matters

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Bidders are requested to submit their bids electronically. The following documents should be submitted by email as detailed in the Submission section of the RFP, and must be received at NYSED no later than **February 28, 2025 by 3:00 PM Eastern Time**:

1. Submission Documents labeled **[name of bidder] Submission Documents RFP #25-006**
2. Technical Proposal labeled **[name of bidder] Technical Proposal RFP #25-006**
3. Cost Proposal labeled **[name of bidder] Cost Proposal RFP #25-006**
4. M/WBE Documents labeled **[name of bidder] M/WBE Documents RFP #25-006**

The email address for all the documentation is cau@nysed.gov.

Instructions for Submitting an Electronic Bid:

1. The technical and cost proposal documents should be submitted in Microsoft Office. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable. Please do not submit the technical or cost proposal as a scanned PDF.
2. Submission documents requiring a signature must be signed using one of the methods listed below and may be submitted as a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:

- 3.1 handwritten signatures on faxed or scanned documents
 - 3.2 e-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
 - 3.3 stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents.
4. Unacceptable forms of e-signatures include:
- 4.1 a typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person “signing.”
5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by email the following attestation: “I agree, and it is my intent, to sign this document by [describe the signature solution used] and by electronically submitting this document to [name of recipient individual or entity]. I understand that my signing and submitting this document is the legal equivalent of having placed my handwritten signature on the submitted document and this attestation. I understand and agree that by electronically signing and submitting this document I am affirming to the truth of the information contained therein.”
6. In order to ensure the timely receipt of your bid, please use the subject line “BID SUBMISSION RFP 25-006” – failure to appropriately label your bid or submitting a bid to any email address other than the one identified above may result in the bid not being received by the deadline or considered for award.
- 7. Bids must be received by 3:00 pm Eastern Time on the due date.**

1. Description of Services to be Performed

Work Statement and Specifications

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

Mandatory Requirements

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

1. Bidders for each Regional RBERN must be located in the region of the State, as defined in Attachment A, which they will serve through this project. Bidders for the Statewide RBERN may be located in any region of the State. Eligible bidders may only bid for one regional technical assistance support center but may bid on both a regional award and the statewide award.

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

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

ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)

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

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

DOCUMENTATION OF GOOD FAITH EFFORTS

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

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

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

REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS

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

REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS

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

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

Service-Disabled Veteran-Owned Business (SDVOB) Participation Goals Pursuant to Article 3 of the Veterans' Services Law

[Article 3 of the Veterans' Services Law](#) allows eligible Veteran business owners to get certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB). The goal of Article 3 is to encourage and support eligible SDVOBs to play a greater role in the state's economy by increasing their participation in New York State's contracting opportunities. To this end, NYSED strongly encourages bidders to make maximum possible use of SDVOBs as subcontractors and/or suppliers under this contract, consistent with the requirements of State Finance Law and State procurement guidelines, as well as NYSED policies and procedures. Bidders should consider fulfilling the requirements of this contract through the participation of SDVOBs at a rate of 6%. For additional information about this program, including a list of SDVOBs, please visit the [Office of General Services, Division of Service-Disabled Veterans' Business Development website](#).

Background

The number of ELLs in New York State schools continues to grow, with an increasing number of districts reporting ELLs each year. NYS Commissioner's Regulations Part 154 (C.R. Part 154) defines English Language Learners (ELLs) as students who, by reason of foreign birth or ancestry, speak or understand a language other than English and speak or understand little or no English, and require support in order to become proficient in English, and who score below a state designated level of proficiency on the New York State Identification Test for English Language Learners (NYSITELL) and have not tested out of that status on the annual New York State English as a Second Language Achievement Test (NYSESLAT). For the 2023-24 school year, 308,582 of NYS enrolled students were identified as ELLs. In total, these ELLs represent some 230 languages, with nearly 90% represented in the 12 most common home languages and 83% represented in the five most common languages. See table below.

| English Language Learner Most Common Languages 2023-2024* | | |
|--|----------------------------------|-------------------------------------|
| Language | Number of ELLs in NYS | Percentage of Total ELLs |
| Spanish | 212,295 | 68.8% |
| Chinese | 17,582 | 5.7% |
| Arabic | 12,529 | 4.1% |
| Russian | 7,728 | 2.5% |
| Bengali | 7,088 | 2.3% |
| Haitian Creole | 4,772 | 1.5% |
| Ukrainian | 3,135 | 1.0% |
| Urdu | 3,053 | 1.0% |
| French | 2,996 | 1.0% |
| Uzbek | 2,035 | 0.7% |
| Tajik | 1,315 | 0.4% |
| Panjabi | 1,281 | 0.4% |

*Excluding "English" and "Other"

In an effort to help all NYS educators promote greater efficiency and effectiveness in the teaching of English Language Learners (ELLs), heritage speakers of world languages, and immigrant students,

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the Office of Bilingual Education and World Languages (OBEWL) created a coordinated and cohesive system of support centers focusing on the principles in the NYSED Blueprint for English Language Learner Success and NYS Commissioner's Regulations Part 154 (CR. Part 154). These centers are called the Regional Bilingual Education Resource Network (RBERN), and they work to help each district and school create for ELLs an educational environment that engages everyone in meaningful teaching and learning, respects diversity, provides opportunities for all children to achieve at the highest levels, and enables them to become proficient in the English language while capitalizing on their strengths in terms of their home language(s) and heritage. Decision-making for the RBERNs will be informed by NYSED and will be based on data and evidence-based practices.

The RBERN network is NYSED's main program initiative for the provision of research-based professional learning, in-service, training, information dissemination, and technical assistance in areas related to ELL education. These supports may be in-person or remote, as appropriate. RBERN technical assistance providers will be expected to provide these supports to all New York State public schools and districts, Charter schools, and nonpublic schools within the RBERN's region, with a special focus on those schools that are determined, in collaboration with OBEWL, to be at risk of, or needing, assistance or intervention to improve results for ELLs.

The primary goal of the RBERNs is to support schools in delivering efficient and excellent education for ELLs. As part of this goal, the RBERNs will align their activities to support OBEWL and NYSED priorities, including, but not limited to:

1. [The Blueprint for ELL Success](#)
2. [Commissioner's Regulations Part 154](#)
3. [Comprehensive ELL Education Program](#)
4. [Dual Language Immersion and other bilingual education programs](#)
5. [ESSA Title III: Language Instruction for ELLs and Immigrant Children](#)
6. [NYS English language proficiency assessments](#)
7. [The NYSED Academic and Linguistic Demands: Creating Access to the Next Generation Learning Standards in English Language Arts for Linguistically Diverse Learners \(ALDs\)](#)
8. [NYSED ELL Parents' Bill of Rights](#) and other family supports
9. [The New York State Seal of Biliteracy](#)
10. Support for Indigenous language programs in NYS public schools
11. [Support for immigrant and newcomer students](#)
12. [New York State Graduation Measures Initiative](#)
13. [NYS Culturally Responsive-Sustaining Education \(CR-SE\) Framework](#)
14. [NYS Diversity, Equity, and Inclusion \(DEI\) Policy and Guidance](#)

15. [Support for ELLs with disabilities resulting from dyslexia, dysgraphia, and dyscalculia](#)

16. [NYS Literacy Initiative](#)

All RBERN support should be grounded in the Blueprint for ELL Success, CR Part 154 and other foundational documents as identified by NYSED. See the [Office of Bilingual Education and World Languages \(OBEWL\) website](#) for additional information.

Deliverables and/or Project Description

Collaboration and communication are critical to the success of the RBERN network. As such, all RBERN centers are required to work professionally and collaboratively with one another. Meaningful engagement with all partners improves the effectiveness of the intensive team approach to increase stakeholder capacity. All activities addressed below must be conducted in coordination with OBEWL and the Statewide RBERN.

Deliverables of the Regional RBERNs

Professional staff of the Regional RBERNS will complete the following activities:

1. Professional Learning: Create and deliver Professional Learning resources that support the education and instruction of ELLs, immigrant students, multilingual learners, and their families to districts and schools. .
 - 1.1 Support implementation of The Blueprint for ELL Success and other foundational documents essential to the success of all teachers and administrators of ELLs, including those named in the Background section.
 - 1.2 Support implementation of C.R. Part 154; NYS Education Law Section 3204; Title III Part A of ESSA; and other state and federal policies, regulations, and laws related to education of ELLs and immigrant students, including, but not limited to ELL identification and placement, ELL assessment and accountability, ELL family engagement, and supporting Students with Interrupted/Inconsistent Formal Education (SIFE).
 - 1.3 Support all topics related to quality instruction of ELLs, including, but not limited to, best practices for teaching and administration of bilingual and ENL programs including newcomer and SIFE programs; implementation of NYSED generated research-based resources such as the Academic and Linguistic Demands and Culturally Responsive-Sustaining Education Framework; increasing ELL graduation rates and decreasing ELL dropout rates; supporting Early Multilingual Learners (EMLLS) enrolled in NYS preschools; supporting how the New York State Graduation Measures Initiative impacts education of English Language Learners; addressing inclusion of ELLs when developing support for students with disabilities resulting from dyslexia, dysgraphia, and dyscalculia; supporting literacy development for linguistically diverse learners as part of the NYS Literacy Initiative; and other topics identified by NYSED OBEWL during the term of the contract.
 - 1.4 Support district and school leaders, teachers, administrators, parents, community members, and other stakeholders, either in small groups or individually, to develop and strengthen best educational and instructional practices for ELLs. Special focus of this

support will be provided on those schools determined, in collaboration with OBEWL and the Statewide RBERN, to have high need for targeted assistance or intervention to improve results for ELLs.

- 1.5 Conduct one Regional Parent/ Guardian/Caregiver Institute every year for approximately 75-100 participants in collaboration with other service providers and professional organizations that focus on parents/guardians/caretakers' rights and responsibilities as partners in their children's education. Equivalent alternate family support events (e.g., multilingual workshop series) may be delivered in place of this event with approval from OBEWL.
 - 1.6 Assist NYSED in facilitating an annual one-day conference to provide current NYSED information and to address the most current statewide issues related to the education of ELLs.
 - 1.7 Regional RBERNS must provide above supports to all districts and schools within the RBERN region and may be requested to provide supports to districts and schools outside of the RBERN region as identified by OBEWL.
 - 1.8 Professional learning sessions may be delivered in person or virtually depending on the needs of the audience (e.g., districts, schools, families, students). When possible, virtual sessions should be open for enrollment from stakeholders statewide.
 - 1.9 Prior to creating resources, Regional RBERNS should coordinate with the Statewide RBERN to avoid unnecessary duplication and to ensure that needs of all regions on the selected topic are being addressed. Under the guidance of the State RBERN, collaborate with other Regional RBERNS to make resources available to schools and districts in the different regions throughout New York State, as appropriate.
 - 1.10 All professional learning activities are informed by data gathered by the Regional RBERN to inform and track effectiveness of Regional RBERN activities. Regional RBERNS must develop a contract with RICs or a central data collection for the LEAs in their region to gather relevant data. Data will be provided to OBEWL through quarterly and annual reports and to the Regional RBERN evaluation vendor (see Attachment C: RBERN Evaluation for details) as needed.
2. Technical Assistance: Provide Technical Assistance that support the education and instruction of ELLs, immigrant students, multilingual learners, and their families to districts and schools. Special focus of this support will be provided on those schools that are identified through NYSED's Accountability system and Corrective Action Plans determined, in collaboration with OBEWL and the Statewide RBERN, to have high need for targeted assistance or intervention to improve results for ELLs.
 - 2.1 Promote and assist districts and schools in the development and implementation of sustainable Dual Language Immersion and Transitional Bilingual Education programs in Pre-K to 12 grades.
 - 2.2 Serve as lead or provide guidance to qualifying districts for creating and maintaining a Title III Consortium to support enhanced educational opportunities for ELLs in districts

with small numbers of ELLs.

- 2.3 Support OBEWL in the administration of the New York State Seal of Biliteracy (NYSSB) including assistance with delivery of professional learning opportunities and technical assistance; recruitment of schools within the RBERN region to offer the NYSSB for the first time; conducting Culminating Project Visits to 3-5 schools per region annually; distributing Seals and medallions to participating schools in the spring of each year including the shipping and delivery of packages to participating schools throughout the RBERN region; and assigning one Resource Specialist, or other staff member as approved by NYSED, to serve on the NYSSB Task Force.
 - 2.4 Deliver professional learning opportunities and technical assistance to support districts and schools in implementation of the Puerto Rican/Hispanic Youth Leadership Institute (PR/HYLI).
 - 2.5 Support in implementation and promotion of OBEWL programs to support their students and teachers including, but not limited to, BRIDGES for Academic Success, the Multilingual SIFE Screener, Clinically Rich-Intensive Teacher Institutes, and the CUNY Initiative on Immigration and Education.
 - 2.6 Assist with the recruitment of interpreters for on-site, face-to-face interpretation and translators to assist with the translation of documents, materials, and assessments for ELL populations. Maintain an electronic directory of trained translators and interpreters in the different target languages to share with the service area as needed.
 - 2.7 Assist all programs teaching Indigenous languages within the RBERN region and collaborate with other Regional RBERNS to ensure that all Indigenous language programs are supported throughout NYS.
 - 2.8 All technical assistance activities are informed by data gathered by the Regional RBERN to inform and track effectiveness of Regional RBERN activities. Regional RBERNS must develop a contract with RICs or a central data collection for the LEAs in their region to gather relevant data. Data will be provided to OBEWL through quarterly and annual reports and to the Regional RBERN evaluation vendor (see Attachment C: RBERN Evaluation for details) as needed.
- 3 Strategic Planning and Resource Development: Support OBEWL activities in strategic planning and development of resources to support education and instruction of ELLs within NYS.
- 3.1 Engage in a regional planning process as described in Attachment B: Regional Planning Process. Specific determination of how resources of the Regional RBERN will be deployed to meet each of the tasks in deliverables 1 and 2 will be determined in consultation with OBEWL and the Statewide RBERN and informed by regional planning.
 - 3.2 Participate in OBEWL-led strategic planning workgroups which lead to development of education guidance, research articles, and other resources on topics of identified need (e.g., ELLs with disabilities, ELL graduation rates, implementation of NYS World Language Learning Standards).

- 3.3 Create at least three articles each year to be printed in the OBEWL monthly newsletter.
 - 3.4 Develop and maintain a local website that includes regional demographic information and information regarding activities offered by the Regional RBERN. Ensure that all information is aligned to the OBEWL and RBERN on Demand website.
- 4 Monitoring and Compliance: Support OBEWL monitoring and compliance activities
- 4.1 Conduct reviews of CR Part 154 Comprehensive ELL Education Plans (CEEPs) for the districts in their region. Regional RBERNs will provide feedback and guidance based on their review; OBEWL staff will be responsible for final approvals and directing communication to districts and schools. Additional plans, such as the NYC schools' Language Allocation Policy Plans, may also be reviewed upon request from OBEWL.
 - 4.2 Participate in school monitoring visits to investigate complaints, determine compliance with ELL related laws and regulations, and to support progress of districts that hold Compliance Assurance Plans with OBEWL. It is anticipated that each Regional RBERN will participate in up to five (5) such visits every year. Visits will average 3 days in district and will require pre- and post-planning meetings. Visits may be held in any region of New York State.
- 5 Partnership: Engage in partnership activities with OBEWL and other stakeholders:
- 5.1 All RBERN staff (listed in the Minimum Staffing Guidelines section of this RFP), including all RBERN Executive Directors, are required to attend one two (2)-day in-person meetings of the full RBERN staff for training, planning, information dissemination, and/or professional development in Albany each year, coordinated by OBEWL.
 - 5.2 All RBERN staff, including all RBERN Executive Directors, are required to attend one one-or-two (1-2) day in-person meeting of all RBERN staff, coordinated by the Statewide RBERN, during which all RBERNs will highlight major initiatives and collaborations.
 - 5.3 In addition to the activities described in tasks 5.1 and 5.2, all RBERN Executive Directors are required to attend one (1) virtual meeting every month and two one (1)-day in-person meetings of the RBERN Executive Directors in Albany each year.
 - 5.4 Establish a collaborative working relationship with staff at the BOCES, districts and schools (including charter and nonpublic schools), Institutions of Higher Education (IHEs), community-based organizations (CBOs), and communities in the region where they are required to provide services. Such relationships with other NYSED-funded student support networks may also be developed, as appropriate.
 - 5.5 Ensure that positions funded through these contracts are utilized to address State and regional district and school improvement needs identified in coordination with NYSED and that such resources are not directed locally for any other purposes.
 - 5.6 Attendance at these meetings described in tasks 5.1, 5.2, and 5.3 are mandatory and non-negotiable. OBEWL will determine the dates and times for these meetings.

Deliverables of the Statewide RBERN

The Statewide RBERN will collaborate, coordinate, and lead activities with the Regional RBERNs to ensure that all districts and schools receive consistent guidance and information on current evidence-based and/or research-validated teaching/learning practices and language acquisition theories and processes. In collaboration with OBEWL, the Statewide RBERN will coordinate the planning and content delivery of Regional RBERNs to ensure that they address priorities of NYSED and best practices to address student and school needs. Through this coordination the Statewide RBERN will also ensure that all RBERNs provide consistent messaging across New York State and work to minimize needless duplication of professional learning and resource development. All coordination efforts of the Statewide RBERN will be conducted with involvement of OBEWL for final approval, as necessary. All coordination efforts of the Statewide RBERN will be conducted with involvement of OBEWL for final approval, as necessary.

To support the goals described above, the statewide RBERN will complete the following activities:

1. Coordination of Regional RBERN Activities: Collaborate with OBEWL to ensure that Regional RBERNs provided consistent support to districts across New York State on the education and instruction of ELLs, immigrant students, multilingual learners, and their families to districts and schools.
 - 1.1 Review and, as necessary revise, Regional RBERN professional learning opportunity slide decks and handouts, guidance resources, and other materials.
 - 1.2 Review Annual Plans of Regional RBERNs to determine potential areas of contradiction, unnecessary duplication, and unserved needs within the state. Team with OBEWL and all RBERNs to update all Annual Plans as needed to address identified concerns. Ensure that planned professional learning and technical assistance activities meet priorities identified by NYSED identified in the Background section of the RFP.
 - 1.3 Identify research-based practices and resources that are in alignment with the Blueprint for ELL Success and C.R. Part 154 and present to Regional RBERNs for implementation in their support of districts and schools.
 - 1.4 Develop and maintain public website for sharing RBERN resources (currently known as “RBERN on Demand”) which will serve as a resource for educators who are unable to attend in-person or virtual sessions. Work with Regional RBERNs to identify specific professional learning content and resources to meet the needs of all stakeholders. Ensure that all information is in alignment to NYSED priorities and information included on the [OBEWL website](#). Website must comply with Section 508 of the Rehabilitation Act of 1973.
 - 1.5 Maintain a Data Management System to house and make available all RBERN professional learning content to be available for other RBERN use.
 - 1.6 As needed, deliver professional learning opportunities to NYS schools that cannot be supported by Regional RBERNs due to scheduling, location, or other conflicts.

- 2 Strategic Planning and Resource Development: Coordinate participation of Regional RBERN and provide direct support to OBEWL activities in strategic planning and development of resources to support education and instruction of ELLs within NYS.
 - 2.1 Develop a Statewide RBERN Annual Plan based on the review and analysis of all Regional RBERN Annual Plans. Consult with OBEWL prior to beginning process to determine appropriate stakeholders to involve. Review outcomes with OBEWL to determine how much time Regional RBERNs should devote to specific tasks during the year.
 - 2.2 Participate in OBEWL-led strategic planning workgroups which lead to development of education guidance, research articles, and other resources on topics of identified need (e.g., ELLs with disabilities, ELL graduation rates, implementation of NYS World Language Learning Standards). Ensure that resources created and supported by workgroups meet priorities identified by NYSED identified in the Background section of the RFP.
 - 2.3 Create at least three articles each year to be printed in the OBEWL monthly newsletter.
 - 2.4 Develop and maintain a Statewide RBERN website that includes information regarding activities offered by the Statewide RBERN. Ensure that all information is aligned to the OBEWL and RBERN on Demand websites.
- 3 Civil Rights: Oversee and maintain an ELL civil rights complaint telephone hotline and website (currently known as “ELL Parent Hotline”) that provides parents and guardians of ELLs with information about their rights under federal and New York State law and NYSED Commissioner’s regulations and allows them to submit civil rights complaints regarding compliance with these laws and regulations. This service will be available in the twelve (12) languages most commonly spoken by NYS English Language Learners (see chart in the Background section of RFP). This service will complement NYSED resources provided for New York’s diverse ELL population and by providing access to community members who do not have internet access or may not be literate.
 - 3.1 The telephone hotline is critical for community members who do not have internet access or may not be literate. Telephone hotline details:
 - 3.1.1 Hotline must provide prompts in each of these languages to direct callers towards providing their information.
 - 3.1.2 During business hours of 9 AM to 4 PM from Monday through Friday, calls in the top five (5) languages spoken in the State and any other language for which the Statewide RBERN has internal language capacity must be answered by a live Statewide RBERN staff member, as available.
 - 3.1.3 For times in which a live staff member is unavailable, including off hours, and for languages in which the Statewide RBERN does not have internal staff capacity, calls will be recorded and provided to a translation service within two business days.

- 3.1.4 System will include additional voice mailbox with instructions delivered in English for calls in lower incidence languages (i.e., beyond the top twelve languages).
 - 3.1.5 Calls not relating to ELL issues pursuant to CR Part 154 will be referred, via OBEWL, to the appropriate division at NYSED.
 - 3.1.6 Calls pertaining to ELL issues that cannot be resolved by the Statewide RBERN will be referred to OBEWL.
 - 3.1.7 All calls must be logged and responded to within five days of receipt. All responses to callers will include interpretation or translation as needed, either via the Statewide RBERN's internal language capacity or via use of a certified interpreter or translator contracted by the vendor.
 - 3.1.8 The Statewide RBERN will keep a record of all complaints received, including the name of the complainant, contact information, the school or district involved, the nature of the call, and the outcome of the call. This record will be submitted quarterly to OBEWL.
- 3.2 ELL civil rights website details
- 3.2.1 All complaints will be logged and responded to within 5 business days of submission. If more time is required to resolve the issue, the Statewide RBERN may initially respond with a notice acknowledging the complaint, translated into the language in which the complaint was submitted. Any complaint that cannot be resolved within 15 business days of a complaint submission must be referred to OBEWL.
 - 3.2.2 Complaints not relating to ELL issues pursuant to CR Part 154 will be referred, via OBEWL, to the appropriate division at NYSED.
 - 3.2.3 All responses to complaints will include interpretation or translation as needed, either via the RBERN's internal language capacity or via use of a certified interpreter or translator.
 - 3.2.4 The Statewide RBERN will keep a record of all complaints received, including the name of the complainant, contact information, the school or district involved, the nature of the call, and the outcome of the call. This record will be submitted quarterly to OBEWL.
- 3.3. Disseminate current information, including funding opportunities, relevant to the education and civil rights of ELLs and immigrant students through email, listservs, letters, electronic newsletters, meetings, or special announcements, as appropriate, for the different target languages.
- 4 Translations: The Statewide RBERN will provide translations for informational and educational materials for students and families, as requested by OBEWL. Translations may be required for at least 10 documents per year. Specific deliverables include:

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- 4.1 Maintain and update as necessary current language glossaries and make publicly available for schools to use as accommodations for NYS tests. Glossaries must meet the standards described in the NYS test manuals posted on the Office of State Assessment website.
 - 4.2 Assist Regional RBERNs and NYS schools with the recruitment of interpreters for on-site, face-to-face interpretation and translators to assist with the translation of documents, materials, and assessments for ELL populations.
 - 4.3 Maintain an electronic directory of trained translators and interpreters in the different target languages on the Statewide RBERN website.
 - 4.4 Identify and disseminate information about and provide lists of print materials, on-line resources, research, and multimedia materials in target languages for bilingual education and world language programs from Grades Pre-K-12 to schools throughout NYS.
- 5 Partnership: Engage in partnership activities with OBEWL and other stakeholders:
- 5.1 The Statewide RBERN will coordinate one one-or-two (1-2) day in-person meeting of all RBERN staff, during which all RBERNs will highlight major initiatives and collaborations. All Statewide RBERN staff are required to attend this meeting.
 - 5.2 All Statewide RBERN staff (listed in the Minimum Staffing Guidelines section of this RFP), including the RBERN Executive Directors, are required to attend one two (2)-day in-person meetings of the full RBERN staff for training, planning, information dissemination, and/or professional development in Albany each year, coordinated by OBEWL.
 - 5.3 The Statewide RBERN Executive Director is required to attend one one-or-two (1-2) day in-person meeting of all RBERN staff, coordinated by the Statewide RBERN, during which all RBERNs will all highlight major initiatives and collaborations.
 - 5.4 In addition to the activities described in tasks 5.1, 5.2, and 5.3, the Statewide RBERN Executive Director is required to attend one (1) virtual meeting every month and two one (1)-day in-person meetings of the RBERN Executive Directors in Albany each year.
 - 5.5 Ensure that positions funded through these contracts are utilized to address State and regional district and school improvement needs identified in coordination with NYSED and that such resources are not directed locally for any other purposes.
 - 5.6 Attendance at these meetings described in tasks 5.1, 5.2, 5.3, and 5.4 are mandatory and non-negotiable. OBEWL will determine the dates and times for these meetings.

Minimum Staffing Guidelines

The full-time Executive Director and full-time Resource Specialists should be employed by the vendor. Consultants should not be used to fill these full-time positions. Oversight of the RBERN within

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the vendor should be carried out by instructional staff to be consistent with mission of providing instructional and professional development support to NYS educators.

Number and Qualifications of RBERN Staff

| Region | West, Mid-West, Mid-State, Capital District | Hudson Valley | Long Island | NYC | Statewide RBRN |
|--------------------------------|--|--------------------------|--------------------|------------|---------------------------|
| Full-time Executive Director | 1 FTE | 1 FTE | 1 FTE | 1 FTE | 1 FTE |
| Full-time Resource Specialists | 4 FTE | 6 FTE | 7 FTE | 9 FTE | 3 FTE |
| Part-time Resource Specialists | 2* | 2* | 2* | 2* | 2* |

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

1. **Qualifications/Duties of Executive Director:** The Executive Director must hold a Master’s degree or above, valid New York State certification as an administrator (S.B.L, S.D.L, S.A.S., and/or S.D.A.) or its equivalent and valid New York State certification as a teacher of ELLs (teaching certificate in English to Speakers of Other Languages (ESOL), Grades K-12 or its equivalent, or one or more Bilingual Extension Certificates in different languages). They must have a minimum of five (5) years of experience in educational leadership, including bilingual and ENL education, and a minimum of three (3) years of teaching experience. Any changes to the Executive Director after the start of the contract must be approved by the Associate Commissioner of the Office of Bilingual Education and World Languages.

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

2. **Qualifications/Duties of Resource Specialists.** Resource Specialists should hold a Master’s degree or above and valid New York State certification as a teacher of ELLs (teaching certificate in English to Speakers of Other Languages (ESOL), Grades K-12 or its equivalent, or one or more Bilingual Extension Certificates in different languages). They should have a minimum of five (5) years of teaching experience in bilingual education and/or ENL. RBERNs may hire Resource Specialists with expertise and qualifications in other areas (e.g., World Languages, Special Education, technology) to support identified needs with approval of NYSED.

The Resource Specialists will provide specialized technical assistance, professional learning and school improvement work throughout the region, as identified through the Regional Planning Process. Each Resource Specialist shall work at least a 10-month schedule. Each RBERN shall ensure that there is at least one Resource Specialist available (either working full-time or serving on-call) to

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support statewide and regional planning and to provide continued support for NYSED priorities/initiatives during all 12 months of the year.

Any changes to the Resource Specialists after the start of the contract should be approved by the Associate Commissioner of the Office of Bilingual Education and World Languages.

RBERN Activities and Functions

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

The Statewide RBERN will collaborate, coordinate, and lead activities with the Regional RBERNS. Such collaboration may include workshops, conferences, videoconferencing, listservs, and professional learning events that include staff as presenters.

Note: The vendor will be responsible for event coordination and associated costs, unless otherwise specified in this RFP. No-cost space should be sought out to the greatest extent possible. Travel expenses must adhere to the established New York State travel rates. Maximum allowable rates can be accessed at: [GSA Rates](#). The Technical Assistance Center Guidelines, located in 5. Submission Documents, attached separately, must be followed regarding allowable expenses.

Service Regions

NYSED will award eight (8) separate contracts from this RFP; one in each of the following regions of the State (seven total). The seven (7) regions are: West, Mid-West, Mid-State, Hudson Valley, Capital District, Long Island, and New York City. These regions were developed to align with the NYSED Joint Management Team (JMT) regions which have the highest ELL enrollments in the state; support for districts in the remaining two JMT regions will be shared among the Regional RBERNS as approved by OBEWL. When appropriate, Regional RBERNS may, with OBEWL approval, open additional satellite offices within their regions to serve the needs of larger or significantly dense regions. Bidders should see Attachment A: RBERN Regions to determine their RBERN region. The Statewide RBERN may be located in any region within the State.

The table below lists the seven (7) RBERN regions, and the number of awards for each service region. The Regional RBERNS will serve ELLs in districts and schools in multiple BOCES areas (or within all NYCPS districts for the NYSED RBERN at NYC) contained within these regions. Please see **Attachment A** for additional information regarding the regions.

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

REGIONAL RBERN

| RBERN Region | Number of Awards |
|------------------|------------------|
| Capital District | 1 |
| Hudson Valley | 1 |
| Long Island | 1 |

| | |
|---------------|---|
| Mid-State | 1 |
| Mid-West | 1 |
| New York City | 1 |
| West | 1 |

Confidentiality

While carrying out the services described in this RFP, the Regional and Statewide RBERNs will receive potentially confidential and/or sensitive information, including Personally Identifiable Information for students and their families. This information could come from various sources (e.g. parents, school personnel, students, community members, and others). The RBERNs, including any subcontractors, must take all precautions and necessary steps to maintain confidentiality.

Ownership

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

Payments and Reports

Each RBERN will be required to submit an annual Action Plan by August 31 of each year (except for Year 1. The Year 1 Action Plan will have been submitted with the proposal in response to this RFP and may be revised by the vendor by August 31, 2025, if requested by NYSED). The Action Plan will outline how the RBERN will accomplish its goals and objectives.

The annual Action Plan must include:

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

Key activities should reflect the following criteria:

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

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

In addition to the yearly narrative of how funds will be allocated by budget categories, each RBERN will submit a quarterly detailed expenditure summary on how funds are utilized by each RBERN to address the goals in meeting the educational needs of ELLs in their respective regions. OBEWL

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reserves the right to request copies of purchase orders or any other supporting documentation. Payments will be made based on a timely submission of the quarterly reports with an accompanying voucher. Timely reporting means that these submissions are received within 30 days of the end of each quarter. Quarterly vouchers are submitted on NYSED Standard Vouchers.

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

Consultant Staff Changes

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

Requirements of Education Law Section 2-d

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

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

Accessibility of Web-Based Information and Applications

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

Subcontracting Limit

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

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

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

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

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

Contract Period

NYSED will award **8** contract(s) pursuant to this RFP. The contract(s) resulting from this RFP will be for a term anticipated to begin July 1, 2025 and to end June 30, 2030

Electronic Processing of Payments

In accordance with a directive dated January 22, 2010, by the Director of State Operations - Office of Taxpayer Accountability, all state agency contracts, grants, and purchase orders executed after February 28, 2010, shall contain a provision requiring that contractors and grantees accept electronic payments.

M/WBE and Equal Employment Opportunities Requirements: Contractor Requirements and Obligations under New York State Executive Law, Article 15-A (Participation by Minority Group Members and Women with Respect to State Contracts)

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

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

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

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

1. All state contracts and all documents soliciting bids or proposals for state contracts contain or make reference to the following provisions:
 - 1.1 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.
 - 1.2 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.
 - 1.3 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

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.

opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses.

6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the [Empire State Development \(“ESD”\) directory of certified businesses](#). The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.
7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.
8. Contractor shall include the provisions set forth in paragraphs (6) and (7) above in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.
9. Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs that effectuates the purpose of this section.
10. Contractor shall submit all necessary M/WBE documents and/or forms as described above as part of their proposal in response to NYSED procurement.
11. The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas that must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.
12. Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.
13. Upon written notification from NYSED M/WBE Program Unit as to any deficiencies and required remedies thereof, the contractor shall, within the period of time specified, submit compliance reports documenting remedial actions taken and other information relating to the operation and implementation of the Utilization Plan.
14. Where it appears that a contractor cannot, after a good faith effort, comply with the M/WBE participation requirements, contractor may file a written application with NYSED M/WBE Program Unit requesting a partial or total waiver (M/WBE 101) of such requirements setting forth the reasons for such contractor’s inability to meet any or all of the participation requirements, together with an explanation of the efforts undertaken by the contractor to obtain the required M/WBE participation.

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

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

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- 1.1 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
 - 1.2 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.
2. Whether there has been written notification to appropriate certified M/WBEs that appear in the [Empire State Development website](#).

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

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

All M/WBE firms are required to be certified by Empire State Development (ESD). Online Certification can be found at the [New York State Contract System website](#).

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

2. Submission

Documents to be submitted with this proposal

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

Project Submission

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

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

The proposal must be received by **February 28F, 2025, by 3:00 PM** by email to cau@nysed.gov.

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

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

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

Any proprietary material considered confidential by the bidder will specifically be so identified, and the basis for such confidentiality will be specifically set forth in the proposal by

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submitting the form “Request for Exemption from Disclosure Pursuant to the Freedom of Information Law,” located in 5) Submission Documents.

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

Regional RBERN Technical Proposal (70 points)

The completed Technical Proposal should be emailed and labeled [name of bidder] Technical Proposal – RFP #25-006 and include a **Mandatory Requirements Certification Form (Signature Required)** and a **Proposal Narrative**. The narrative should include:

1. Program Management Plan (25 points)

Please describe:

- 1.1 The program’s organizational structure, governance, and lines of communication. Include an organizational chart and the vendor’s background and experience in successfully providing programs and services for ELL student populations. Include evidence of the applicant’s capability to plan and provide professional learning and technical assistance activities on ELL related topics. (5 points);
- 1.2 The program’s ability to address the specific needs of the service region, including the number of ELLs by district enrolled in the service region, a list of major languages and unique features or problems relative to the education of ELLs in the service region. (5 points);
- 1.3 The applicant’s track record, capacity, and expertise to successfully address and carry out the mission to serve ELLs, to form required partnerships, and to effectively collaborate with other regional State-funded networks in the region. Provide examples of tools, resources, techniques, and strategies that the applicant and any partner entities have developed and utilized for approaching this type of work. (5 points);
- 1.4 The project staffing and supervision plan, including the qualifications of the full-time Executive Director and each of the full- and part-time resource specialists. Please refer to the Minimum Staffing Guidelines section of the RFP for guidelines. (10 points)

2. Project Description (25 points)

- 2.1 Describe the bidder’s vision and goals for how its program advance the education of ELLs, heritage speakers of world languages, and immigrant students within the RBERN region. Explain how the proposed approach will align with and advance the commitments and values of relevant Board of Regents’ and NYSED policies, frameworks, and standards. (5 points)
- 2.2 Please describe in detail how the contractor will carry out all activities and functions in the

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“Project Description and Scope of Services to be Performed” section of the RFP.:

- 2.2.1 How the vendor will carry out all Professional Learning activities and functions (5 points);
- 2.2.2 How the vendor will carry out all Technical Assistance activities and functions (5 points);
- 2.2.3 How the vendor will carry out all Strategic Planning and Resource Development activities and functions (5 points);
- 2.2.4 How the vendor will carry out all Monitoring and Compliance and all Partnership activities and functions (5 points);

3. Action Plan for Year 1 (20 points)

Please describe:

- 3.1 How the vendor will implement the goals and objectives outlined in the Description of Services to be Performed section of the RFP (5 points);
 - 3.1.1 The schedule of implementation for the goals and objectives outlined in the Description of Services to be Performed section of the RFP (5 points);
 - 3.1.2 The specific, measurable, and quantifiable benchmarks that the vendor will use to measure the success of each activity in advancing project goals and objectives: What is the indicator of success, and what is the target number? (5 points);
 - 3.1.3 The services to be provided by the vendor, as well as services provided by subcontract (5 points)

Statewide RBERN Technical Proposal (70 points)

The completed Technical Proposal should be emailed and labeled **[name of bidder] Technical Proposal – RFP #25-006** and include a **Mandatory Requirements Certification Form (Signature Required)** and a **Proposal Narrative**. The narrative should include:

1. Program Management Plan (25 points)

Please describe:

- 1.1 The program’s organizational structure, governance, and lines of communication. Include an organizational chart and the vendor’s background and experience in successfully providing programs and services for ELL student populations. Include evidence of the applicant’s capability to plan and provide professional learning and technical assistance activities on ELL related topics. (5 points);

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- 1.2 The program's ability to address the specific needs of New York State, including the number of ELLs by district, a list of major languages and unique features or problems relative to the education of ELLs in the state. (5 points);
- 1.3 The applicant's track record, capacity, and expertise to successfully address and carry out the mission to serve ELLs, to form required partnerships, and to effectively collaborate with other State-funded networks. Provide examples of tools, resources, techniques, and strategies that the applicant and any partner entities have developed and utilized for approaching this type of work. (5 points);
- 1.4 The project staffing and supervision plan, including the qualifications of the full-time Executive Director and each of the full- and part-time resource specialists. Please refer to the Minimum Staffing Guidelines section of the RFP for guidelines. (10 points)

2. Project Description (25 points)

- 2.1 Describe the bidder's vision and goals for how its program advance the education of ELLs, heritage speakers of world languages, and immigrant students within New York State. Explain how the proposed approach will align with and advance the commitments and values of relevant Board of Regents' and NYSED policies, frameworks, and standards. (5 points)
- 2.2 Please describe in detail how the contractor will carry out all activities and functions in the "Project Description and Scope of Services to be Performed" section of the RFP.:
 - 2.2.1 How the vendor will carry out all Coordination of Regional RBERN Activities and functions (5 points);
 - 2.2.2 How the vendor will carry out all Strategic Planning and Resource Development activities and functions (5 points);
 - 2.2.3 How the vendor will carry out all Civil Rights activities and functions (5 points);
 - 2.2.4 How the vendor will carry out all Translations and Partnership activities and functions (5 points);

3. Action Plan for Year 1 (20 points)

Please describe:

- 3.1 How the vendor will implement the goals and objectives outlined in the Description of Services to be Performed section of the RFP (5 points);
- 3.2 The schedule of implementation for the goals and objectives outlined in the Description of Services to be Performed section of the RFP (5 points);

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- 3.3 The specific, measurable, and quantifiable benchmarks that the vendor will use to measure the success of each activity in advancing project goals and objectives: What is the indicator of success, and what is the target number? (5 points);
- 3.4 The services to be provided by the vendor, as well as services provided by subcontract (5 points)

Cost Proposal

(30 Points)

The completed Cost Proposal should be emailed and labeled **[name of bidder] RFP #25-006 Cost Proposal** and include the following:

1. First Year Detailed Budget (7/1/25-6/30/26)
2. Five Year Summary
3. Subcontracting Form
4. M/WBE Purchases Form

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

M/WBE Documents

The original completed M/WBE Documents should be emailed and labeled **[name of bidder] M/WBE Documents – RFP #25-006** . Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver

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

Partial Participation-Request for Partial Waiver

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

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4. **EEO 100** Staffing Plan
5. **M/WBE 101** Request for Waiver
6. **M/WBE 105** Contractor's Good Faith Efforts

No Participation-Request for Complete Waiver

1. M/WBE Cover Letter, **Signatures Required**
2. **EEO 100** Staffing Plan
3. **M/WBE 101** Request for Waiver
4. **M/WBE 105** Contractor's Good Faith Efforts

3. Evaluation Criteria and Method of Award

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

Criteria for Evaluating Bids

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

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

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

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

Technical Criteria (70 Points)

1. Program Management Plan (25 points)
2. Project Description (25 points)
3. Action Plan for Year 1 (20 points)

Financial Criteria (30 Points)

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

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

The submitted budget will be awarded points pursuant to a formula that awards the highest score of 30 points to the budget that reflects the lowest overall cost. The remaining budgets will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of 30 points.

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

Method of Award

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

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

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

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

NYSED's Reservation of Rights

NYSED reserves the right to: (1) reject any or all proposals received in response to the RFP; (2) withdraw the RFP at any time, at the agency's sole discretion; (3) make an award under the RFP in whole or in part; (4) disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP; (5) seek clarifications of proposals; (6) use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP; (7) prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available; (8) prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments; (9) change any of the scheduled dates; (10) waive any requirements that are not material; (11) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (12) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with

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

Post Selection Procedures

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

Debriefing Procedures

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

1. All unsuccessful bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED of non-award. Bidders may request a debriefing by submitting a written request to the Fiscal Contact person at RBERNRF25-006@nysed.gov
2. Upon receipt of a timely written request from the unsuccessful bidder, NYSED will schedule the debriefing to occur within a reasonable time following receipt of the request. Debriefings will be conducted in person, unless NYSED and the bidder mutually agree to utilize other means, including but not limited to telephone, video-conferencing or other types of electronic communication.
3. The debriefing will include: a) the reasons that the proposal submitted by the unsuccessful bidder was not selected for an award; b) the qualitative and quantitative analysis employed by NYSED in assessing the relative merits of the proposals; c) the application of the selection criteria to the unsuccessful bidder's proposal; and d) when the debriefing is held after the final award, the reasons for the selection of the winning proposal. The debriefing will also provide, to the greatest extent practicable, general advice and guidance to the unsuccessful bidder concerning potential ways that their future proposals could be more responsive.

Contract Award Protest Procedures

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

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1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.
2. The protest must be filed within ten (10) business days of receipt of a debriefing or disqualification letter. The protest letter must be filed with the Contract Administration Unit by emailing: RBERNRF25-006@nysed.gov.
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 ten (10) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.
4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

Vendor Responsibility

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

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

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

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

Subcontractors:

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

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

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

Procurement Lobbying Law

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

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

Consultant Disclosure Legislation

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

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

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To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor's Planned Employment from Contract Start Date Through the End of the Contract Term (Form A). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information ***prospectively from the start date of the contract through the end of the contract term.***

[Form A](#) is available on OSC's website.

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

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

[Form B](#) is available on OSC's website.

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

Public Officer's Law Section 73

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

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

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

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

(ii) officers and employees of statewide elected officials;

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

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

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

NYSED Substitute Form W-9

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

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

Workers' Compensation Coverage and Debarment

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

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

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

PROOF OF COVERAGE REQUIREMENTS

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

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

Proof of Workers' Compensation Coverage

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

1. **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
2. **Form SI-12**– Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance; or
3. **CE-200**– Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

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

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

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

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

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

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

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

1. [ST-220 CA](#)
2. [ST-220 TD](#)

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

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4. Assurances

The State of New York Agreement, Appendix A (Standard Clauses for all New York State Contracts), Appendix A-1 (Agency-Specific Clauses), and Appendix R (Data Security and Privacy Plan Provisions) **WILL BE INCLUDED** in the contract that results from this RFP. Vendors who are unable to complete or abide by these assurances should not respond to this request.

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

1. Non-Collusion Certification
2. MacBride Certification
3. Certification-Omnibus Procurement Act of 1992
4. Certification Regarding Lobbying; Debarment and Suspension; and Drug-Free Workplace Requirements
5. Offerer Disclosure of Prior Non-Responsibility Determinations
6. NYSED Substitute Form W-9 (If bidder is not yet registered in the SFS centralized vendor file.)
7. Iran Divestment Act Certification
8. Sexual Harassment Policy Certification
9. Certification Under Executive Order No. 16

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, **Signatures Required**
5. **M/WBE 100** Utilization Plan
6. **M/WBE 102** Notice of Intent to Participate
7. **EEO 100** Staffing Plan

Partial Participation-Request for Partial Waiver

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

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

No Participation-Request for Complete Waiver

1. M/WBE Cover Letter, **Signatures Required**
2. **EEO 100** Staffing Plan
3. **M/WBE 101** Request for Waiver
4. **M/WBE 105** Contractor's Good Faith Efforts

STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through Dr. Betty A. Rosa, 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

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exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

Appendix A
STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State

contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily

authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway

Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
[NYS M/WBE Directory](#)

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

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

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

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

appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

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

(June 2023)

APPENDIX A-1
AGENCY-SPECIFIC CLAUSES

Payment and Reporting

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

Terminations

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

Responsibility Provisions

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

such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

Property

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

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

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

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

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

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

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

Safeguards for Services and Confidentiality

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

of such agreement shall be provided to the State.

- B. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents, web-based information and applications are accessible to persons with disabilities. All delivered documentation and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before documents and applications will be considered a qualified deliverable under the contract or procurement.
- C. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- D. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- E. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- F. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State Management/Confidential employees.
- G. No fees shall be charged by the Contractor for training provided under this agreement.
- H. Partisan Political Activity and Lobbying. Funds provided pursuant to this Agreement shall not be used for any partisan political activity or for activities that may influence legislation or the election or defeat of any candidate for public office.
- I. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- J. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.

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

Certifications

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

F. Contractor certifies that it is in compliance with NYS Public Officers Law, including but not limited to, §73(4)(a).

Notices

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

Miscellaneous

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

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

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

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting
By fax: (518) 474-8030 or (518) 473-8808

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

By mail: NYS Education Department
Contract Administration Unit
Room 505 W EB
Albany, NY 12234
By fax: (518) 408-1716

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

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

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

Revised 5/23/22

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

ARTICLE I: DEFINITIONS

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

1. **Access:** The ability to view or otherwise obtain, but not copy or save, data arising from the on-site use of an information system or from a personal meeting.
2. **Breach:** The unauthorized Access, acquisition, use, or Disclosure of Personal Information that is (a) accomplished in a manner not permitted by New York State and federal laws, rules, and regulations, or in a manner that compromises its security or privacy, (b) executed by or provided to a person not authorized to acquire, access, use, or receive it, or (c) a Breach of Contractor's or Subcontractor's security that leads to the accidental or unlawful destruction, loss, alteration, Access to or Disclosure of, Personal Information.
3. **Disclose or Disclosure:** The intentional or unintentional release, transfer, or communication of Personal Information by any means, including oral, written, or electronic.
4. **Personal Information:** Information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.
5. **Services:** Services provided by Contractor pursuant to this Contract with the New York State Education Department ("NYSED") to which this DPA is attached and incorporated.
6. **Subcontractor:** Contractor's non-employee agents, consultants, volunteers, including student interns, who is engaged in the provision of Services pursuant to an agreement with or at the direction of the Contractor.

ARTICLE II: PRIVACY AND SECURITY OF PERSONAL INFORMATION

1. **Compliance with Law.**

When providing Services pursuant to this Contract, Contractor may receive and/or have Access to Personal Information regulated by one or more New York and/or federal laws and regulations, including, but not limited to, the Family Educational Rights and Privacy Act at 12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); the New York Education Law at § 2-d (8 NYCRR Part 121); the New York General Business Law at article 39-F; and the New York Personal Privacy Protection Law at Public Officers Law article 6-A. Contractor agrees to maintain the confidentiality and security of Personal Information in accordance with applicable New York, federal and local laws, rules and regulations.

2. Data Privacy and Security.

- (a) Contractor agrees and understands that Contractor has no property, licensing, or ownership rights or claims to Personal Information Accessed by or Disclosed to Contractor for the purpose of providing Services, and Contractor shall not use Personal Information for any purpose other than to provide Services. Contractor will ensure that its Subcontractors agree and understand that neither the Subcontractor nor Contractor has any property, licensing or ownership rights or claims to Personal Information received or Accessed by or Disclosed to Subcontractor for the purpose of assisting Contractor in providing Services.
- (b) Contractor shall adopt and maintain reasonable safeguards to protect the security, confidentiality, and integrity of Personal Information in a manner that complies with General Business Law section 899-bb and other applicable New York State, federal and local laws, rules and regulations.
- (c) Upon NYSED's request, Contractor may be required to undergo an audit of its privacy and security safeguards, measures, and controls, or in lieu of performing an audit, provide NYSED with an industry standard independent audit report on Contractor's privacy and security practices that is no more than twelve months old.

3. Contractor's Employees and Subcontractors.

- (a) Access to or Disclosure of Personal Information shall only be provided to Contractor's employees and Subcontractors who need to know the Personal Information to provide the Services and such Access and/or Disclosure of Personal Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
- (b) Contractor must ensure that each Subcontractor performing Services where the Subcontractor will have Access to and/or receive Disclosed Personal Information is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
- (c) Contractor shall examine the data privacy and security measures of its Subcontractors. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall (i) notify NYSED, (ii) as applicable, remove such Subcontractor's Access to Personal Information; and (iii) as applicable, retrieve all Personal Information received or stored by such Subcontractor and/or ensure that such Personal Information has been securely deleted or securely destroyed in accordance with this DPA. In the event there is an incident in which Personal Information held, possessed, or stored by the Subcontractor is

compromised, unlawfully Accessed, or unlawfully Disclosed, Contractor shall follow the Data Breach reporting requirements set forth in Section 5 of this DPA.

- (d) Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.
- (e) Other than Contractor's employees and Subcontractors who have a need to know the Personal Information, Contractor must not provide Access to or Disclose Personal Information to any other party unless such Disclosure is required by statute, court order or subpoena, and Contractor notifies NYSED of the court order or subpoena no later than the time the Personal Information is Disclosed, unless such Disclosure to NYSED is expressly prohibited by the statute, court order or subpoena. Notification shall be made in accordance with the Notice provisions of this r Contract and shall also be provided to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.
- (f) Contractor shall ensure that its Subcontractors know that they cannot provide Access to or Disclose Personal Information to any other party unless such Disclosure is required by statute, court order or subpoena. If a Subcontractor is required to provide Access to or Disclose Personal Information pursuant to a court order or subpoena, the Subcontractor shall, unless prohibited by statute, court order or subpoena, notify Contractor no later than two (2) days before any Personal Information is Disclosed. Upon receipt of notice from a Subcontractor, Contractor shall provide notice to NYSED no later than the time that the Subcontractor is scheduled to provide Access to or Disclose the Personal Information.
- (g) Contractor shall ensure that all its employees and Subcontractors who will receive Personal Information will be trained on the federal and state laws governing confidentiality of such data prior to receipt.

4. Data Return and Destruction of Data.

- (a) Contractor is prohibited from retaining Disclosed Personal Information or continuing to Access Personal Information, including any copy, summary or extract of Personal Information, on any storage medium (including, without limitation, hard copies, and storage in secure data centers and/or cloud-based facilities) beyond the term of the this Contract unless such retention is expressly authorized by the this Contract, necessary for purpose of facilitating the transfer of Personal Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this Contract, Contractor shall transfer Personal Information to NYSED in a format agreed to by the Parties.
- (b) When the purpose that necessitated Contractor's Access to and/or Disclosure of Personal Information has been completed or Contractor's authority to have Access to Personal Information and/or retain Disclosed Personal Information has expired, Contractor shall ensure that, as applicable, (1) all privileges providing Access to

Personal Information are revoked, and (2) all Personal Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) retained by Contractor and/or its Subcontractors, including all Personal Information maintained on behalf of Contractor or its Subcontractors in a secure data center and/or cloud-based facilities is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read, or reconstructed. Hard copy media must be shredded or destroyed such that Personal Information cannot be read, or otherwise reconstructed, and electronic media must be securely cleared, purged, or destroyed such that the Personal Information cannot be retrieved, read, or reconstructed. When Personal Information is held in paper form, destruction of such Personal Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.

- (c) Upon request by NYSED, Contractor may be required to provide NYSED with a written certification of (1) revocation of Access to Personal Information granted by Contractor and/or its Subcontractors, and (2) the secure deletion and/or secure destruction of Personal Information held by the Contractor or Subcontractors, at the address for notifications set forth in this Contract.
- (d) To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), Contractor agrees that it will not attempt to re-identify de-identified data and/or transfer de-identified data to any person or entity, except as provided in subsection (a) of this section and that it will prohibit its Subcontractors from the same.

5. Breach.

- (a) Contractor shall promptly notify NYSED of any Breach of Personal Information, regardless of whether the Contractor or a Subcontractor suffered the Breach, without delay and in the most expedient way possible, but in no circumstance later than seven (7) calendar days after discovery of the Breach. Notifications shall be made in accordance with the notice provisions of this contract and shall also be provide to the office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234 and must include a description of the Breach that identifies the date of the incident, the date of discovery, the types of Personal Information affected and the number of records affected; a description of Contractor's investigation; and the name of a point of contact.
- (b) Contractor and its Subcontractors will cooperate with NYSED, and law enforcement where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Contractor or its Subcontractors will be

the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.

- (c) Contractor shall promptly notify the affected individuals of any Breach, regardless of whether Contractor or a Subcontractor suffered the Breach. Such notice shall be made using one of the methods prescribed by § 899-aa (5) of the New York General Business Law. If Contractor requires information from NYSED to perform such notifications, Contractor shall reimburse NYSED for the cost of assembling and providing such information to Contractor.

6. Termination.

The confidentiality and data security obligations of Contractor under this DPA shall survive any termination of this Contract to which this DPA is attached and shall continue for as long as Contractor or its Subcontractors retain Access to Personal Information.