

REQUEST FOR PROPOSAL (RFP)

RFP #16-017

NEW YORK STATE EDUCATION DEPARTMENT

Title: Cultural Resources Survey Program

The NYS Education Department is seeking proposals to select consultants to deliver components of its Cultural Resources Survey Program. The primary purpose of the program is to provide information on cultural resources (archaeological, structural and architectural properties representing prehistoric and/or historic periods) associated with New York State Department of Transportation (DOT) undertakings, although other state agency undertakings may also require investigations. The program is accomplished through the conduct of cultural resource investigations in identified DOT project areas statewide, and through the preparation of reports on investigation results. The resulting information is used to determine if the cultural resources identified in the project area meet the criteria for inclusion in the National Register of Historic Places.

Subcontracting will be limited to thirty percent (30%) of the total contract budget. Subcontracting is defined as non-employee direct, personal services and related incidental expenses, including travel. Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprise (M/WBE) participation goals for this RFP through one of three methods. Compliance methods are discussed in detail in the Minority/Women-Owned Business Enterprise (M/WBE) Participation Goals section below.

The eligible bidders are for-profit and not-for-profit organizations, as well as Institutions of Higher Education. NYSED will make one Statewide and three regional awards. The contracts resulting from this RFP will be for five years, anticipated to begin April 1, 2017 and to end March 31, 2022.

Mandatory Requirements: See Mandatory Requirements section of the RFP.

Components contained in RFP #16-017 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)
- 6.) Attachment 1
- 7.) Attachment 2 (separate file)

Questions regarding the request must be submitted by E-mail to CRSP@nysed.gov no later than the close of business July 8, 2016. Questions regarding this request should be identified as either Program, Fiscal, or M/WBE. A Questions and Answers Summary will be posted to <http://www.nysm.nysed.gov/research-collections/archaeology/crsp/rfp> no later than July 15, 2016. The following are the designated contacts for this procurement:

RFP #16-017

Program Matters

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The following documents must be received at NYSED no later than **August 10, 2016 by 3:00 PM:**

1. Submission Documents labeled **Submission Documents - RFP #16-017 Do Not Open**
2. Technical Proposal labeled **Technical Proposal - RFP #16-017 Do Not Open**
3. Cost Proposal labeled **Cost Proposal – RFP #16-017 Do Not Open**
4. M/WBE Documents labeled **M/WBE Documents—RFP #16-017 Do Not Open**
5. CD-ROM containing the technical, cost, submission and M/WBE proposals submitted using Microsoft Word. Place in a separate envelope labeled **CD-ROM-RFP#16-017 Do Not Open.**

****All proposals must be labeled either, “Statewide”, “Region A”, “Region B”, or “Region C”**

The mailing address for all the above documentation is:

NYS Education Department
Bureau of Fiscal Management
Attn: Nell Brady, RFP#16-017
Contract Administration Unit
89 Washington Avenue, Room 501W EB
Albany, NY 12234

(Facsimile copies of the proposals are NOT acceptable)

1.) Description of Services to be Performed

Work Statement and Specifications

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

Mandatory Requirements:

The eligible bidder must agree to the Mandatory Requirements found below and must submit the Mandatory Requirements Certification Form located in 5.) Submission Documents, signed by an authorized person.

1. Key personnel (Program Director, Project Director, Principal Investigator, Architectural Historian, Crew Chief, Laboratory Director, and Research Specialist) must meet the appropriate Secretary of the Interior's standards for directing archaeological and architectural investigations (see http://www.nps.gov/history/local-law/arch_stnds_9.htm)
2. Archaeological collections processing must be available during the period of performance of the contract.
3. The curation of all archaeological collections made under this contract must comply with the appropriate Federal, State, and professional standards for documentation and storage (see e.g., https://www.nps.gov/history/local-law/arch_stnds_7.htm#cur)

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

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

ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)

Bidders should submit subcontracting/supplier forms that meet or exceed NYSED's participation goals for this procurement. All subcontracting/supplier forms must be submitted with the bid proposal. In addition, bidders must complete and submit **M/WBE 100: Utilization Plan**, **M/WBE 102: Notice of Intent to Participate** and **EEO 100: Staffing Plan**. Instructions and copies of these forms are

located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

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

DOCUMENTATION OF GOOD FAITH EFFORTS

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

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

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

REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS

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

REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS

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

Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

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

I. INTRODUCTION

A. Purpose

The New York State Education Department (NYSED) is releasing this Request for Proposals (RFP) to select consultants to deliver components of its Cultural Resources Survey Program (CRSP) within the New York State Museum (NYSM). The primary purpose of the program is to provide information on cultural resources (archaeological, structural, and architectural properties representing prehistoric and/or historic periods) associated with New York State Department of Transportation (DOT) undertakings, although other state agency undertakings may also require investigations. The program is accomplished through the conduct of cultural resource investigations in identified DOT project areas statewide, and through the preparation of reports on investigation results. The resulting information is used to determine if the cultural resources identified in the project area meet the criteria for inclusion in the National Register of Historic Places (NRHP).

NYSED is seeking to retain a maximum of four (4) qualified consultants to conduct cultural resource investigations to ensure compliance with state and federal cultural resource laws and regulations. A maximum term of five years is anticipated (4/1/17 – 3/31/22):

Contract

Statewide

Regional:

(A) NYSDOT Regions 1 - 2, 7

(B) NYSDOT Regions 3-6

(C) NYSDOT Regions 8-11

Consultants interested in more than one contract should submit separate proposals and clearly label the proposals “Statewide”, “Region A”, “Region B”, or “Region C.” DOT region locations are plotted on Attachment 1.

For programmatic purposes, NYSED desires to award a contract to a vendor that can perform a large, statewide contract. NYSED desires to make three regional contract awards as listed above, to provide NYSED contingent cultural resource survey capabilities. The regional contracts are designed for task assignments that cannot be performed by the statewide contractor or by NYSED staff. These contracts will only be utilized as necessitated by DOT and other state agency assignment workloads. It is anticipated that the regional contracts will be

used for reconnaissance (Phase IA/IB) surveys, architectural surveys, and site examinations (Phase II testing) only. The statewide contract will be used for all phases of cultural resource investigations.

Reconnaissance (or Phase IA/IB) surveys are designed to locate and identify on project maps all existing prehistoric and historic archaeological sites (sites), to the extent possible given current professional standards for field work, and locate, inventory/photograph, and identify on project maps standing buildings / structures (including bridges and other engineering features) districts, and objects within the project area that are eligible for listing on the State/National Register of Historic Places (S/NRHP), and provide adequate information on buildings/structures for the State Historic Preservation Office/Office of Parks, Recreation and Historic Preservation (SHPO/OPRHP) and Federal Highway Administration (FHWA) concurrence to the S/NRHP eligibility recommendations or require site examination (Phase II testing) if additional information is needed for that recommendation.

A site examination (Phase II) is designed to present all information necessary to determine eligibility for listing on the S/NRHP, including, but not limited to, horizontal and vertical extent of the site in the project area, the types of information the site can produce (subsurface features, postmold patterns, charcoal for dating, ceramic samples, information on technology, etc.), the temporal and cultural affiliation(s) of the site and its physical, prehistoric and/or historic integrity, and an identification of the context(s) and research questions, if any, that may be addressed through data recovery. Eligibility requirements for the S/NRHP are presented in *National Register Bulletin* 15 and 36.

Data Recovery (or Phase III excavation) is designed to mitigate impacts to a S/NRHP-eligible site within project limits to obtain the data necessary to describe and interpret the site, address research topics developed in the Data Recovery Plan, and preserve the information that would be lost to construction impact. The investigator will be provided with a general project plan showing the limits of impact. The investigator will be responsible for developing a Data Recovery Plan that includes research design, methodology, schedule, and budget. SED, DOT, and OPRHP/SHPO will review the plan and request revision if warranted. SED will provide directions for any other form of mitigation. Once approved, the data recovery plan will be executed according to project schedule.

Typically, a list of tasks is assigned to the statewide contractor by NYSED at the beginning of the New York State fiscal year, based upon a list developed by DOT and other state agencies. Additional tasks are identified by DOT and other state agencies during the fiscal year. When such tasks are identified, the tasks will be reviewed for potential assignment to SED staff. If SED staff cannot perform a task as a result of current workload, the task assignment will be forwarded to the statewide contractor for review. If the statewide contractor cannot perform the task because of current workload, the task order will be assigned to the appropriate regional contractor based solely on the geographic location of the task.

NYSED will require the consultants to develop and conduct cultural resource investigations during project planning and design when the DOT indicates such investigations are warranted, and

according to the scheduling needs of the DOT and the workload of NYSED. Schedules for product delivery may be as short as 30 working days.

NYSED makes no guarantee that work will be assigned under awarded contracts. The need for these agreements is based on current projections of NYSED's workload and the projected size of the DOT and other state agency cultural resource programs during the contract period.

Cultural resource surveys historically have been associated primarily with DOT road rehabilitation or widening, intersection improvement, new alignment and widening, and bridge replacement projects. Highway rehabilitation and widening projects, two to five miles in length within a 30 m (100 ft) corridor, have historically comprised approximately 35% of the projects. Intersection improvements averaging one half mile in length have comprised approximately 10% of the projects. New highway alignment and widening averaging one half to one mile in length have comprised approximately 15% of the projects. Bridge replacements with associated highway widening and approach work averaging one half to one mile in length have comprised approximately 40% of the projects. These projects generally have included architectural/structural inventories, ranging from an average of approximately 20 structures for bridge rehabilitation or replacement projects to an average of approximately 100 structures for highway widening projects.

B. Background

Based on authorizing legislation (Chapter 651 of the Laws of 1945 and Chapter 121 of the Laws of 1958), the NYSM within NYSED is authorized to undertake cultural resource investigations for other New York State agencies under its Cultural Resource Survey Program. This work complements the mission of the Museum: "The New York State Museum serves the lifelong educational needs of New Yorkers and visitors through its collections, exhibitions, scholarship, programs, media and publications in science, history, anthropology, and art. The Museum explores and expresses New York State's significant natural and cultural diversity, past and present."

The Museum has managed CRSP for DOT undertakings since 1963. NYSM staff performs approximately one-half of the annual effort; the remainder is delivered through consultant services. The program provides important research and educational benefits, and it represents an essential and critical element of DOT's multibillion-dollar construction program.

In accordance with the regulations of the National Historic Preservation Act and the New York State Historic Preservation Act, FHWA and DOT must take into consideration the effect that transportation undertakings will have on property in, or eligible for inclusion in, the National Register of Historic Places. To comply with these regulations, DOT must provide the information necessary to determine National Register eligibility to the State Historic Preservation Officer and FHWA for federally funded projects, and to the Commissioner of Parks, Recreation and Historic Preservation for state funded projects. Because cultural resource investigations are done during the early stages of developing proposed transportation projects, their performance has significant schedule implications for DOT's entire construction program.

The NYSM/NYSED establishes the schedule for the performance of individual cultural resource investigations in conjunction with DOT. As DOT program needs change, however, schedules may be adjusted and surveys added (or deleted) by the NYSM to reflect DOT's new priorities. Consequently, demonstrated capability to accommodate schedule changes in a responsive and timely manner will be an important factor in NYSED's proposal evaluation process. This capability will be determined based on the number of staff members and ability to have multiple crew available at any given time.

C. Objectives

The objectives of the effort being solicited under this RFP are to:

- (1) conduct high quality cultural resource investigations that provide information necessary to ensure compliance with all applicable state and federal requirements;
- (2) conduct cultural resource investigations that meet the research and performance standards of the NYSM/NYSED in the most cost effective manner possible;
- (3) conduct the cultural resource investigations such that individual DOT project schedules and overall program needs are met; and
- (4) ensure that the information obtained and research generated as a result of the program remain in the public domain as a benefit to the people of New York State to the fullest extent possible.

II. PROJECT SCHEDULE; LEVEL OF EFFORT; ORGANIZATION

A. Project Schedule; Level of Effort

It is anticipated that NYSED and the consultants selected as a result of this RFP will enter into a five year contract to carry out the services being requested in this RFP.

Investigations for DOT projects under the statewide contract resulting from this solicitation will be located throughout New York State. Investigations performed under the regional contracts will be limited to those portions of the state contained within the DOT regions listed earlier in this RFP (also see Attachment 1).

The Statewide contractor will be expected to complete between 100 and 150 cultural resource surveys annually for NYSED. Consultants interested in the statewide contract should carefully evaluate their ability to perform such a large program located throughout New York State given their current staffing and projected workloads.

Projects that cannot be completed by the NYS Museum's in-house program or the Statewide contractor may be assigned to the regional contractors. Regional contractors will be expected to complete between 10 and 20 cultural resource surveys annually.

A reconnaissance survey (combining Phase IA and IB surveys) is the level of work for most of the projects that will originate under these contracts. These surveys generally include both archaeological and architectural components, but some surveys only require one or the other of

these components. If the project is extensive and/or the impact area is not well defined, a pre-reconnaissance (Phase IA) survey may precede the reconnaissance survey. Site examinations (Phase II testing) to assess National Register of Historic Places eligibility of located sites are frequently required, and occasionally extensive (Phase III) data recovery as mitigation is required, increasing substantially the scope of archaeological work, analysis, and reporting. It is anticipated that data recovery projects will not be assigned to the regional contractors. The scope of these levels of work are described in Attachment 2 of this RFP.

B. Organization

A NYSM staff member will be designated to work with the Consultant. This individual will be available to answer any questions, and provide overall direction on the performance of the task assignment. The Consultant should not, however, consider this individual a staff resource. The requirement to obtain necessary information and perform cultural resource investigations is the responsibility of the Consultant.

Once an assignment is made, the Consultant will be responsible for coordinating with the appropriate DOT regional office. The DOT regional office will provide the Consultant with the necessary letters to notify the landowner of the cultural resource survey, and the regional office will also provide any updated and/or additional information regarding the survey assignment.

The CSRP staff member will also inform the Consultant of the requirements regarding fiscal reporting formats and schedules.

The Consultant will be required to provide the CRSP staff member with a cost estimate to complete the requested levels of work for each project assignment. A statement of work, detailing the Consultant's understanding of the project and level of work proposed, may also be required. The cost estimate and statement of work will be subject to review by DOT or other state agency as well as NYSED. Approval of the estimate and statement of work are required before a notice to proceed can be issued by the CRSP Project Director.

III. QUALIFICATION REQUIREMENTS

As stated in the Mandatory Requirements section of this RFP, proposals submitted in response to this RFP must demonstrate compliance with each of the minimum qualification requirements identified below. Inability to demonstrate compliance with these requirements will result in the rejection of the proposal as unacceptable.

MANDATORY REQUIREMENTS

1. Key personnel must meet the Secretary of the Interior's standards set forth in 36 CFR 61 for directing archaeological and architectural investigations. (see http://www.nps.gov/history/local-law/arch_stnds_9.htm)
2. Archaeological collections processing facilities must be available during the period of performance of the contract.

3. Curation of all archaeological collections made under this contract must comply with the appropriate Federal, State, and professional standards for documentation and storage (e.g., 36 CFR Part 79). (see https://www.nps.gov/history/local-law/arch_stnds_7.htm#cur).

DESIREABLES The Consultant should demonstrate familiarity with New York State archaeology and history and the capacity to perform archaeological and architectural investigations statewide, or within a specific region corresponding to those identified earlier in this RFP. If the consultant submits a proposal for the statewide contract, it should clearly demonstrate its ability to complete 100 to 150 task projects of varying scope each year given its current staffing and projected workload. Consultants submitting proposals for the statewide contract should also demonstrate their ability to accommodate changes in project scopes and project deletions and additions inherent in the DOT cultural resource program. Consultants submitting proposals for the regional contracts should demonstrate their ability to successfully complete 10 to 20 task projects annually and to conduct three to four simultaneous project assignments according to established time schedules given current staffing and workloads.

IV. SCOPE OF SERVICES

A. Sections of Work

The Consultant shall, at a minimum, be responsible for the following:

1. Performing pre-reconnaissance, architectural, and reconnaissance surveys, site examinations and data recovery mitigations in accordance with the specifications included as Attachment 2 to this RFP. Data recovery projects will only be performed by the statewide contractor
2. Preparing required draft and final technical reports in accordance with the specifications detailed in Attachment 2 to this RFP, and fiscal reports as specified in the contract.
3. Attending meetings as required resolving problems or concerns regarding survey performance and/or reports.

B. Tasks/Deliverables

1. NYSED will make task assignments to the Consultant. When the task assignment is made, the type of investigation required and the schedule for performance will be provided by NYSED. Most projects will require a reconnaissance survey, which locates and identifies on project maps and describes all known and discovered archaeological sites and all structures (including buildings, bridges, roads, and other engineering features and objects) within the project area (a structure is within the project area if it or any of its associated property is in the project area). If an archaeological site is found for which additional information is needed to make National Register of Historic Places eligibility recommendations, a site examination request must be submitted to the assigned CRSP staff member according to the procedures described in Attachment 2. Attachment 2 details the work scope specifications for reconnaissance surveys and site examinations, and describes the level of structural

documentation needed for reconnaissance surveys. The work scope may be updated from time to time as requirements for the program change. The Contractor will follow the most recent version of the work scope in pursuance of the contract.

A pre-reconnaissance survey may be requested on occasion. The purpose of the pre-reconnaissance survey is to review existing information to identify known archaeological sites in the project area, and to assess the sensitivity of the project area for yet unknown sites. All the information needed to determine National Register eligibility of structures in the project area is provided in the pre-reconnaissance survey.

2. When task assignments are made, NYSED will identify the type of investigation to be conducted and the schedule for performance based on information provided by the Department of Transportation or other agency. A cost estimate will be requested from the Consultant. This estimate will be prepared on the basis of information provided by NYSED. Additional project information may be provided by the DOT Regional staff, and a field visit to the project area if necessary. A statement of work, indicating the Consultant's understanding of the task assignment and work plan, may also be requested by NYSED. The cost estimate and statement of work are subject to review and approval by NYSED and by DOT if so desired prior to issuance of a notice to proceed by the assigned CRSP staff member. The Consultant is expected to perform the assignment within the schedule and cost parameters approved by NYSED and DOT. In the event that the schedule and/or cost estimate are determined to be insufficient for project completion for reasons outside of the Consultant's control, after notice to proceed is issued by SED, the Consultant must contact NYSED in writing, within five (5) working days to justify a requested change to the schedule and/or budget. The contractor may not continue work until SED has approved the additional time and/or cost.
3. At the time the task assignment is made, NYSED will provide the Consultant with preliminary project information obtained through DOT or other agency. The Consultant will be responsible for obtaining historic maps and relevant data from the NYS Office of Parks, Recreation and Historic Preservation, the New York State Archives and Library and local repositories. It will be the Consultant's responsibility to contact the DOT regional cultural resource coordinator to obtain more detailed project scope information. If this information alters the size, type, schedule, or budget of the survey, the Contractor must notify NYSED in writing as to how this changes the project scope within five (5) working days. Any such changes are subject to SED review and approval before work can be initiated by the contractor. The DOT regional cultural resource coordinator will provide the Consultant with letters that will notify landowners of the scheduled survey.
4. For all archaeological sites that the Consultant considers potentially eligible for the National Register of Historic Places, the Consultant will provide NYSED with a request for site examination, as described in Attachment 2.
5. The Consultant will prepare a report on the results of the investigations. The format and required content of the survey report are contained in Attachment 2. One (1) copy of the report, all with original photographs, will be provided electronically to NYSED for review.

RFP #16-017

The Consultant will make all revisions to the report required by NYSED. After corrections are made, the Consultant will submit the required number of hard and electronic copies of the report as specified by the assigned CRSP staff member. After compliance review, the Consultant will provide any additional information that may be required by DOT or the Office of Parks, Recreation and Historic Preservation in order to determine eligibility, if so directed by NYSED.

6. The Consultant will provide the assigned CRSP staff member with brief, written updates of all active task assignments by the last working day of each month. The status of each project will be described in one to two sentences in a format acceptable to CRSP.
7. The Consultant will prepare periodic reports of expenditures as specified in the contract, or as required by NYSED during the performance of the contract.
8. It is intended that the contracts issued pursuant to this request will be for a period of five years. Continuation of the contract during its term is subject to funds being allocated for the program in the State budget for the period.
9. The contract will provide that collections generated by task assignments will be curated at the NYSM if those collections are acceptable to the Anthropology Collections Committee, unless alternative arrangements are made. A deed of gift will be required before the collection is curated. It is the responsibility of the contractor to obtain the deed of gift. Alternative arrangements for the long-term storage and curation of archaeological collections made under this contract must be identified, explained and documented in the proposal. The contractor is responsible for the care of the collection before it is transferred to the NYSM. All artifacts must be cataloged according to NYSM standards prior to transfer to the NYSM.

Compensation

The contractor will be compensated based solely on an hourly rate, by job category, for the number of hours directly devoted to projects assigned to the contractor under this contract. The hourly rate includes employee compensation, benefits, overhead, travel (e.g. mileage), meals, and lodging. Hourly costs also include the cost of auxiliary items such as printing, copying, and laboratory costs.

The contractor may charge the hourly rate for time spent in the field, in the laboratory, or otherwise devoted exclusively to the performance of duties assigned to the contractor under this contract. The contractor may charge the hourly rate for travel time to and from the job site. This excludes time spent commuting from a person's residence to the contractor's offices.

The contract amounts in each of the four designated regions will be based on the estimated number of projects in each of these regions. All services will be reimbursed on a payment for service delivered basis, subject to NYSED review/approval.

Payment

RFP #16-017

Payment for services provided under the program shall be made upon the vendor's completion and NYSED's acceptance of each of the following deliverables:

- Background Research
- Archaeological Fieldwork
- Historical Architectural Survey
- Laboratory work
- Final report.

The activities involved with each of these deliverables are defined in Attachment 2. The completion of each deliverable must be considered satisfactory to NYSED in order for payment to be made. Payments will be based on the approved hourly rates, up to the number of hours established for each deliverable the approved cost estimate. Payments will be made monthly for all deliverables completed during the previous month.

Electronic Processing of Payments

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

Contract Period

The contracts resulting from this RFP will be for five years, anticipated to begin April 1, 2017 and to end March 31, 2022.

Subcontracting Limit

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

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

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

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

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

located in the Submission Documents must be updated annually and submitted to NYSED. Using this form, the vendor must also report to NYSED, on an annual basis, actual expenditures incurred for all subcontractors and indicate which subcontracting costs are associated with M/WBE.

Consultant Staff Changes

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

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

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

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

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

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

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

RFP #16-017

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

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

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

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

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

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

4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section¹. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).

5. Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses².

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

² Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to Empire State Development (<http://www.esd.ny.gov/MWBE/Certification.html>) by the deadline for submission of proposals for eligibility determination. It is the responsibility of the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

RFP #16-017

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

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

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

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

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

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

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

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

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

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

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

RFP #16-017

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

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

II. Whether there has been written notification to appropriate certified M/WBEs that appear in the Empire State Development website, found at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

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

1) fully comply with the participation goals specified in the RFP; OR

2) partially comply with the participation goals specified in the RFP, and include a request for partial waiver, and document its good faith efforts to fully comply with the percentage goals specified in the RFP; OR

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

All M/WBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD. Online Certification can be found at

<https://ny.newnycontracts.com/FrontEnd/StartCertification.asp?TN=ny&XID=2029>

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

2.) Submission

Documents to be submitted with this proposal

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

Project Submission:

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

1. Submission Documents Two (2) copies (one bearing an original signature)
2. Technical Proposal—Six (6) copies (one bearing an original signature in blue ink)
3. Cost Proposal—Three (3) copies (one bearing an original signature in blue ink)
4. M/WBE Documents—One (1) copy (bearing an original signature in blue ink)
5. Microsoft Word (CD format)—One (1) electronic version with the submission, technical, cost, and M/WBE proposals. Please place the CD-ROM in a separate envelope.

****All proposals must be labeled either, “Statewide”, “Region A”, “Region B”, or “Region C”****

The proposal must be received by **August 10, 2016 by 3:00 PM** at NYSED in Albany, New York.

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

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

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

RFP #16-017

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

Note: Proposals must be labeled "RFP#16-017 Cultural Resource Investigations". This information, along with the region in which you are applying, should be on all the sealed envelopes contained in your submission.

The proposal evaluation will be based on a total possible score of one hundred (100) points.

Technical Proposal

(75 Points)

The original plus five copies of the Technical Proposal must be mailed in a separate envelope labeled, "**RFP#16-017 Technical Proposal Do Not Open**" and must include in the following order:

- Mandatory Requirements Certification Form
- Proposal Description as outlined in 1-5 below

Signature Required

Cost information is **not** to be included in the Technical and Management Submittal. Extensive paraphrasing and/or repetition of the RFP and/or Attachment 2 is strongly discouraged and will be taken into account during the scoring process. In preparing the proposal, please follow the format listed below.

- 1. Table of Contents**
- 2. Approach and Scope of Services**

Provide a discussion that demonstrates understanding of the objectives of CRSP and its impact upon the State's transportation program. Include in this discussion a narrative that demonstrates understanding of the applicable federal and state requirements for performing cultural resource surveys in New York. Highlight the strengths of your organization, and address how your capabilities and experience will achieve program objectives. This should include a discussion of any proposed prime/subcontractor relationship, including allocation of work and coordination of staff assignments. Clearly describe how such an arrangement will benefit NYSED. Describe your organization's ability to respond to multiple, simultaneous task assignments statewide or region wide. Contractors submitting proposals for the statewide contract should briefly describe their understanding of the size of the statewide program and their organization's ability to execute that program. Briefly describe anticipated communications and interactions with NYSED and NYSDOT.

Provide a complete and detailed discussion of your approach for performing the work and accomplishing project objectives. Your discussion should:

- a. Describe the proposed methodology for survey performance, referencing the instruction in Attachment 2 of the RFP, and discuss how problems (e.g., access denial, not receiving adequate mapping or site file search information, weather related delays) encountered in survey performance would be handled. Also describe the methodology for report preparation, referencing the specifications provided in Attachment 2 of this RFP, and include a sample report format. Consultants submitting proposals for the statewide contract must also demonstrate their ability to accommodate changes in project scopes and project deletions and additions inherent in the DOT cultural resource program.
- b. Describe available laboratory facilities and equipment for the submitting institution and any proposed subcontractors. Describe the techniques for analyses that will be used (e.g., historic ceramic, glass, prehistoric pottery, and lithics). Indicate whether the Consultant employs laboratory director and/or material analysis specialists.
- c. Collections and documents will be curated by the NYSM unless other arrangements are made. If another facility is proposed, describe and document the facility and demonstrate how it meets the Federal requirements for collection repositories. Include an explanation of benefit of an alternative facility to NYSED and the People of the State of New York. . Include a description of the procedures for how artifacts and associated data, notes, and background materials will be maintained and catalogued. Describe how the security, preservation, long-term care and accessibility of the collections and their associated records will be handled. If the curation facility identified is not part of the Contractor's facilities, a letter from the curation facility-confirming acceptance of the anticipated collections is required.
- d. Describe all other equipment and resources available for the performance of this program. Include specific information regarding the extent, type and amount of any such equipment and resources. Provide examples of previous applications of available resources.
- e. Describe quality control and quality assurance procedures for research, field investigations, laboratory analysis, and report preparation.

3. Organization and Staffing

- a. Provide an organizational chart for the project showing the names of the key personnel, including any subcontractors. This chart must identify existing staff members and any anticipated new staff. The chart should also indicate lines of communication between the Consultant, any proposed subcontractors, NYSED and DOT. Include, for example, the following:
 - Program Director
 - Project Director(s)/Principal Investigator(s)
 - Architectural Historian(s)

- Crew Chief(s)
- Laboratory Director(s)
- Research specialists in prehistoric and historic archaeology, archaeological laboratory analysis, cartography, and archaeological collections curation

Submit resumes for all key personnel referenced above (including any subcontractors). If subcontractors are to be used, explain the specific need for the expertise and describe the arrangements.

- b. Provide a management plan detailing how survey assignments will be coordinated, including multiple simultaneous assignments statewide or region wide, to effect delivery on a statewide or region wide basis; response time to assignments, including what procedures/practices are in place to ensure survey schedules are met; and how your organization will accommodate possible sudden shifts in survey priorities.
- c. Describe how key personnel will be assigned to individual survey efforts. If subcontractors are proposed, describe how project assignments will be determined. Identify the factors that impact key personnel assignments, such as survey complexity, duration, etc. Discuss contingency plans for key personnel assignments. NYSED should have a clear understanding of the breakdown of key personnel responsibilities including how task assignments will be made.
- d. Describe the level of interaction contemplated with CRSP, DOT, and other relevant organizations.
- e. The prime must describe how it will maintain quality control for work performed by its proposed subcontractor(s), and define the responsibility of the prime and any proposed subcontractor(s) for product delivery.

4. Technical Approach to Example Task Order Specifications

Provide a detailed description of the organization's technical approach to the example task assignment specifications presented in 5). Submission Documents – Sample Task Order. No cost data are to be presented in this section. A detailed schedule for the initiation and completion of fieldwork and the delivery of draft and final reports to NYSED should be included in the description. This will include the number of hours estimated for each labor category for each deliverable in the following format, which will be the same as those hours used to calculate the total cost on the Bid Form Cost Proposal - Sample Task Order. If additional titles are used they also should be listed and hours assigned:

Position/Title	Background Research Hours	Archaeological Fieldwork Hours	Architectural Survey Hours	Laboratory Work Hours	Report Preparation Hours	Total Hours
Program Director						
Asst Program Director						

Administrative Asst						
Project Director						
Architectural Historian						
CADD Specialist/Drafter						
Crew Chief						
Lab Director						
Field Technician						
Lab Technician						
Researcher						
Office Manager/ Clerical						

5. Experience

The qualifications and prior experience of the bidder are of great importance to NYSED. Direct, prior experience in coordinating and delivering a cultural resources survey program is strongly preferred. Contractors submitting proposals for the statewide contract should exhibit experience in performing a program of that size and complexity. Demonstrated related experience in transportation-related projects is highly desirable. Bidders should evidence their knowledge of, and experience in, the following areas:

- pertinent federal and New York State historic preservation laws and regulations
- historic archaeology, architectural history, prehistoric archaeology, industrial archaeology, transportation archaeology, local history research, documentary research, map interpretation, cartography
- historical architecture inventory and evaluation of buildings and transportation facilities (bridges, canals, etc.) for National Register of Historic Places eligibility recommendations for individual properties and districts
- archaeological research, field investigations, laboratory analysis, and report preparation for all phases of cultural resource investigations (i.e., prereconnaissance through data recovery mitigation)
- developing prehistoric and historic context statements
- analysis of materials and interpretation of survey results
- transportation projects
- dating of historic structures and properties and assessment of their integrity
- New York State history and prehistory
- writing research reports and publication in the areas indicated above
- preparation, cataloging and curation of archaeological materials and their associated data in accordance with 36 CFR Part 79
- preparation and implementation of quality control/quality assurance plans

Provide a list of current projects and those completed within the last three (3) years that are relevant to this effort. A proposal for the statewide contract should clearly demonstrate its

ability to complete 100 to 150 task projects of varying scope each year given its current staffing and projected workload. Proposals for the regional contracts must demonstrate their ability to successfully complete 10 to 20 task projects annually and to conduct three to four simultaneous project assignments according to established time schedules given current staffing and workloads. Indicate key personnel who are, or have worked, on such projects. Provide evidence of the organization's record of meeting demanding schedules and timely delivery of reports. Include names, addresses and telephone numbers of contacts with the listed clients. NYSED reserves the right to request additional information from any source so named. Provide copies of at least three (3) representative reports prepared for clients within the last three (3) years. These reports should demonstrate experience with historic and prehistoric background research, map analysis, building inventories, archaeological testing, analysis, and interpretation.

Cost Proposal

(25 Points)

The original plus two (2) copies of the completed Cost Proposal must be mailed in a separate envelope labeled **RFP #16-017-Cost Proposal-Do Not Open** and must include the following:

- | | |
|------------------------------------------------|---------------------------|
| 1.) Bid Form-Cost Proposal – Hourly Rates | Signature Required |
| 2.) Bid Form Cost Proposal - Sample Task Order | |
| 2.) Subcontracting Form | |
| 3.) M/WBE Subcontractor/Supplier Form | |

The Financial Criteria portion of the RFP will be scored based upon the total cost of the Sample Task Order for the entire five year contract period ending 3/31/22.

The Consultant shall be compensated for survey assignments on the basis of an hourly rate for each of the personnel categories identified under 1. Bid Form Cost Proposal below.

The contractor will be compensated based solely on an hourly rate, by job category, for the number of hours directly devoted to projects assigned to the contractor under this contract. The hourly rate includes employee compensation, benefits, overhead, travel (e.g. mileage), meals, and lodging. Hourly costs also include the cost of auxiliary items such as printing, copying, and supply costs.

The contractor may charge the hourly rate for time spent in the field, in the laboratory, or otherwise devoted exclusively to the performance of duties assigned to the contractor under this contract. The contractor may charge the hourly rate for travel time to and from the job site. This excludes time spent commuting from a person's residence to the contractor's offices. The vendor will be reimbursed based on the approved hourly rates, up to the number of hours for each deliverable in the approved cost estimate.

Each cost proposal should contain the following elements:

- 1. Bid Form Cost Proposal - Hourly Rates**

Provide a specific hourly rate table for the following titles:

- Program Director
- Assistant Program Director
- Administrative Assistant
- Project Director(s)/Principal Investigator(s)
- Architectural Historian
- CADD Specialist/Drafter
- Crew Chief(s)
- Lab Director
- Field Technician
- Lab Technician
- Researcher
- Office Manager/Clerical

If additional titles are used they also should be listed and rates assigned. The table should provide the direct hourly rates to be utilized over the five-year period of performance. Salaries should be determined based upon the anticipated contract period of April 1, 2017 to March 31, 2022. Separate columns should be used for each year of the contract period.

2. Bid Form Cost Proposal - Sample Task Order

The bidder shall submit a cost estimate for the sample task assignment specifications presented in 5). Submission Documents, **Bid Form Cost Proposal – Sample Task Order**. This cost estimate should be for each year of the 5-year contract period and thorough and consistent with the information provided under **1. Bid Form Cost Proposal - Hourly Rates** above and with the technical approach to the example task assignment specifications. The cost estimate should reflect all labor costs.

The Cost Proposal should be submitted separately from the Technical Proposal and labeled:

Cost Proposal – RFP #16-017 Do Not Open
Label either “Statewide”, “Region A”, “Region B”, or “Region C”

M/WBE Documents

The original copy of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #16-017-M/WBE Documents-Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver

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

Signatures Required

Partial Participation-Partial Request for Waiver

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

Signatures Required

No Participation-Request for Complete Waiver

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

Signatures Required

3.) Evaluation Criteria and Method of Award

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

Criteria for Evaluating Bids

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

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

Minimum technical score

Proposals receiving at least an average of sixty percent (60%) of the points available for the Technical Proposal (a total of 45 out of 75 points) will move on to the next step of the process, scoring of the cost proposal. Proposals with an average score of less than 45 points in the Technical Proposal section will be eliminated from further consideration.

Technical Criteria

(75 Points)

The technical and management proposal will be scored. The major evaluation criteria (including sub-criteria) are listed in descending order of importance. The first and second major criteria are of equal importance.

1. Approach and Scope of Services **(25 points)**
2. Organization and Staffing **(10 points)**
3. Technical Approach to Example Task Order Specifications **(30 points)**
4. Experience **(10 points)**

Financial Criteria

(25 Points)

The Financial Criteria portion of the RFP will be scored based upon the total cost of the Bid Form Cost Proposal - Sample Task Order for the entire five year contract period ending 3/31/22.

- The **financial portion** of the proposal represents **twenty five (25) points** of the overall score and will be awarded points pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.
- The submitted budget will be awarded points pursuant to a formula which awards the highest score of **twenty-five (25) 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 **twenty five (25) points**.
- **NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, all bidders that meet the minimum technical score will be asked to provide a best and final offer. The Contract Administration Unit will recalculate the financial score.**

Method of Award

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

The contract issued pursuant to this proposal will be awarded to the vendor whose aggregate technical and cost score is the highest among all the proposals rated within a particular region (i.e., Statewide, Region A, Region B, and Region C). **If NYSED exercises the right to request best and final offers, the contract must be issued to the vendor with the highest aggregate technical and financial score that results from the best and final offer.**

In the event that more than one proposal obtains the highest aggregate score in a region, 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

RFP #16-017

oversights, or to supply additional information, as it becomes available; (8) prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments; (9) change any of the scheduled dates; (10) waive any requirements that are not material; (11) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (12) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; (13) utilize any and all ideas submitted in the proposals received; (14) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening; (15) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; (16) request best and final offers.

Post Selection Procedures

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

Debriefing Procedures

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

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

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

Contract Award Protest Procedures

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

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

RFP #16-017

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

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

3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

Vendor Responsibility

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

http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm.

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 available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact NYSED or the Office of the State Comptroller's Help Desk for a copy of the paper form.

Subcontractors:

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

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

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

PROCUREMENT LOBBYING LAW

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

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

Designated Contacts for NYSED
Program Office – **John P. Hart**
Contract Administration Unit – **Nell Brady**
M/WBE – **Joan Ramsey**

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.

RFP #16-017

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

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

Form A: <http://www.osc.state.ny.us/agencies/forms/ac3271s.doc>

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

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

Form B: <http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>

For more information, please visit OSC Guide to Financial Operations. <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

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

RFP #16-017

an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

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

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

(ii) officers and employees of statewide elected officials;

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

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

Public Officer's Law Section 73 can be found at [http://www.jcope.ny.gov/about/ethc/PUBLIC OFFICERS LAW 73 JCOPE.pdf](http://www.jcope.ny.gov/about/ethc/PUBLIC_OFFICERS_LAW_73_JCOPE.pdf).

NYSED Substitute Form W-9

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

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

Workers' Compensation Coverage and Debarment

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

Workers' compensation requirements are covered by WCL Section 57, while disability benefits are covered by WCL Section 220(8). The Workers' Compensation Benefits clause in Appendix A – STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS states that in accordance with Section 142 of the State Finance Law, a contract shall be void and of no force and effect unless the

contractor provides and maintains coverage during the life of the contract for the benefit of such employees as are required to be covered by the provisions of the WCL.

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

PROOF OF COVERAGE REQUIREMENTS

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

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

Proof of Workers' Compensation Coverage

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

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

Proof of Disability Benefits Coverage

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

- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or

RFP #16-017

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

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at: <http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>. Alternatively, questions relating to either workers' compensation or disability benefits coverage should be directed to the NYS Workers' Compensation Board, Bureau of Compliance at (518) 486-6307.

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

4.) Assurances

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

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

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

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

Full Participation-No Request for Waiver

Signatures Required

RFP #16-017

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

Partial Participation-Partial Request for Waiver

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

Signature Required

No Participation-Request for Complete Waiver

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

Signature Required

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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

RFP #16-017

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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

Appendix A
STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business

Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwb certification@esd.ny.gov
<https://ny.newycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

Contractor shall comply with the

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

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

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

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

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

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-

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

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

(January 2014)

APPENDIX A-1

Payment and Reporting

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

Terminations

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

Responsibility Provisions

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

Property

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

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

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

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

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

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

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

Safeguards for Services and Confidentiality

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

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

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

Certifications

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

Notices

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

Miscellaneous

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

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

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

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

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

By fax: (518) 408-1716

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

(Revised 10/20/15)

Attachment 1
New York State Map Showing DOT Districts

