

**INVITATION FOR BID (IFB)**

**IFB # 18-004**

**NEW YORK STATE EDUCATION DEPARTMENT**

**Title: Confidential Record Material and Wastepaper Disposal**

The New York State Education Department (NYSED), State Archives, seeks proposals from qualified vendors to dispose of quantities of confidential record material and wastepaper requiring timely and secure destruction as well as non-confidential record material and wastepaper for NYSED, other State government agencies, and interested units of local government, including towns, cities, villages, school districts, etc. in and outside the Capital District area. Service to the entire Capital District, which includes the counties of Albany, Schenectady, Rensselaer, and Saratoga, and at least ten locations outside the Capital District will be mandatory.

NYSED is seeking eligible vendors to submit proposals that meet certain technical requirements and will generate the highest expected monthly revenue to NYSED, based on a contractor's projection of revenues anticipated from the sale of recovered wastepaper material and the contractor's revenue-sharing plan.

The eligible applicants are paper recyclers with demonstrated capacity and experience as described in the Contractor Responsibilities section of this IFB.

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

NYSED will award one contract pursuant to this IFB. The contract(s) resulting from this IFB will be for a term anticipated to begin April 1, 2018 and to end March 31, 2023.

**Service Area:** Statewide

**Components contained in IFB #18-004 are as follows:**

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

Questions regarding the request must be submitted by E-mail to [SARARFP@NYSED.GOV](mailto:SARARFP@NYSED.GOV) no later than the close of business January 17, 2018. Questions regarding this request should be identified as Program or Fiscal. A Questions and Answers Summary will be posted to the [New York State Archives website](#) no later than January 24, 2018. The following are the designated contacts for this procurement:

**Program Matters**

Prudence Backman  
[sararfp@nysed.gov](mailto:sararfp@nysed.gov)

**Fiscal Matters**

Jessica Hartjen  
[sararfp@nysed.gov](mailto:sararfp@nysed.gov)

## IFB #18-004

The following documents must be submitted in separately sealed envelopes, as detailed in the Submission section of the IFB, and be received at NYSED no later than **January 31, 2018 by 3:00 PM**:

1. Submission Documents labeled **Submission Documents - IFB #18-004 Do Not Open**
2. Revenue Proposal labeled **Revenue Proposal –IFB #18-004 Do Not Open**
3. CD-ROM containing the submission documents and revenue proposal submitted using Microsoft Office. Place in a separate envelope labeled **CD-ROM-IFB#18-004 Do Not Open**.

The mailing address for all the above documentation is:

NYS Education Department  
Bureau of Fiscal Management  
Attn: Jessica Hartjen, IFB#18-004  
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.

The New York State Education Department (NYSED) requests proposals to dispose and recycle quantities of confidential record material and wastepaper, requiring timely and secure destruction for NYSED, other State government agencies, and interested units of local government (towns, cities, villages, school districts, etc.) in and outside the Capital District area (Albany, Schenectady, Rensselaer and Saratoga counties). Service must be provided to the entire Capital District, as well as at least ten locations outside the Capital District.

The contractor is only required to pick up tractor-trailer loads of such materials. This may involve pickups from more than one location on the same day. For regular pickup sites, the contractor is required to supply the following at no additional expense, sufficient to meet the needs of the site:

1. Pallets
2. Gondolas,
3. Records storage boxes or locked bins. (Records storage boxes are made of brown, corrugated cardboard, usually double or triple walled, measure approximately 40" x 40" x 40" and fit squarely on a pallet.)
4. Locked bins/cabinets sufficient to fill a tractor trailer load – NYS Department of Taxation and Finance, NYS Education Department State Records Center and Cultural Education Center (Print Shop), as well as other locations as needed.

For smaller loads, the government office has the option of delivering such materials to the contractor, including the use of 3<sup>rd</sup> party delivery service. The NYS Department of Taxation and Finance is not permitted to use a 3<sup>rd</sup> party delivery service. In addition, for smaller sites, the contractor will be required to provide pallets, gondolas, records storage boxes, and/or locked bins/cabinets. The frequency of pickups will depend on the site, but is not expected to exceed twice per week. The sites are outlined in section 1.1 Area of Service.

NYSED also desires to make the services of this contract available to interested units of local government, including towns, cities, villages, school districts, etc. and State government agencies within the Capital District. NYSED desires to recycle said form of waste products by sale in accordance with the terms and conditions contained herein. The information contained in this contract outlines and specifies the requirements a contractor must meet.

### **Requirements:**

#### **1.1 Area of Service**

The Capital District is defined as Albany, Schenectady, Saratoga and Rensselaer Counties. Locations outside the Capital District include Taconic Hills Central School District (Craryville, NY – Columbia County) and other sites identified in Section 2.3 – Service Outside of the Capital District Area.

**Regular Pickup Sites are as follows:**

1. NYS Department of Taxation and Finance
  - Building #8 - Harriman State Office Building Campus, Albany, NY
  - Building #20 – 90 Cohoes Avenue, Green Island, NY
  - Wade Road – 299 Old Niskayuna Road, Latham, NY
  - Building #2 – Rotterdam Industrial Park, Rotterdam, NY
2. NYS Education Department
  - State Record Center, Bldg. #21 – Harriman State Office Building Campus, Albany, NY
  - Cultural Education Center – Print Shop, Albany, NY – Cab and trailer no longer than 53 feet and no higher than 12 feet, 8 inches.
  - Education Building – 89 Washington Avenue, Albany, NY – Cab and trailer no longer than 36 feet (no height restriction)
3. Department of Labor
  - State Office Building Campus, Albany, NY
4. Dept. of Motor Vehicles – Guilderland Center Warehouse

**Smaller Pickup Sites**

1. Office of Parks, Recreation and Historic Preservation - 625 Broadway Albany, NY
2. Department of Corrections and Community Supervision (former Dept. of Parole merged with Corrections)
3. Office of Victim Services (formerly Crime Victims Board) 1 Columbia Circle, Suite 200, Albany, NY
4. Swan Street Building – Albany, NY
5. Office of Temporary and Disability Assistance – 40 N. Pearl St., Albany, NY

**1.2 Mandatory Requirements and Contractor Responsibilities**

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

1. Provide at least three references to document that the contractor has provided wastepaper recycling and marketing activities for at least three years as of January 1, 2018.
2. Provide documentation to demonstrate that the contractor can process an annual volume of 1,000 tons of wastepaper material.
3. Provide documentation the contractor has established contacts with markets for recycled wastepaper products of the type described in this IFB.
4. Meet the following regarding confidential destruction of materials:

- a) Provide pickup service to all locations noted in Section 1.1;
- b) Provide lockable bins in which confidential material will be placed to transport and maintain security of the records they contain
- c) Limit physical access to the confidential shredder equipment and lockable bins by floor to ceiling fencing with adequately sized locking door to allow transport of lockable bins to shredding area;
- d) Ensure floor space surrounding shredder and lockable bins is in compliance with OSHA safety measures;
- e) Provide information on demand to demonstrate compliance with security requirements for staff and will make its facility open to periodic unannounced checks for compliance by State Records Center or agency staff.

5. Provide documentation to comply with the bonding/insurance requirement of \$500,000, as specified in Section 1.6.

All contractor facilities will be subject to a field visit to confirm that all facility requirements in 4(c) and 4(d) above have been met.

### **1.3 Prime Contractor's Responsibility**

If the contractor includes equipment or services provided by other contractors, it shall be mandatory for the contractor to assume responsibility as the prime contractor to the NYSED. Further, NYSED shall consider the prime contractor as the sole point of contact with regard to contractual matters, including payments to NYSED.

### **1.4 Term of Contract**

NYSED is seeking to award this contract for a five (5) year term, anticipated to commence April 1, 2018 and end March 31, 2023.

### **1.5 Temporary Incapacity of Contractor**

In the event the contractor is incapable of performing the service as outlined in this contract, the contractor may use one of the following to ensure continuous confidential destruction:

- a) Use of backup equipment capabilities, either available within the contractor's facility or provided by another contractor (see exception below for the NYS Department of Taxation and Finance);
- b) Use of in-house staff that are trained and equipped to make the necessary repairs;
- c) Contracted maintenance service support, with specific response times that are acceptable to NYSED; or
- d) Other means of confidential destruction that is acceptable to NYSED, such as pulping.

In the event the contractor is unable to provide services required under the contract, the contractor shall reimburse NYSED for any cost incurred by NYSED during the period of incapacity.

Incapacities or service interruptions resulting from force majeure or act of God shall be excepted from this provision.

Materials from the NYS Department of Taxation and Finance cannot be disposed of by another contractor without proper IRS approval received by the Department of Taxation and Finance.

## **1.6 Performance Guarantee by Contractor**

A bond or an insurance policy with appropriate valuable records insurance (the State must be a named insured) issued by a company authorized to do business in the State of New York shall be required of the contractor for the full period of the contract, and any renewal periods. Such bond/insurance shall guarantee that: employees/owners are bonded/insured to the amount of \$500,000 and that the bond/insurance shall cover loss of money or other property for any day where NYSED incurs a cost of disposal, up to a maximum of 30 days, due to the fact that the contractor is incapable of performing the service as outlined in this proposal. Incapacities or service interruptions resulting from force majeure or act of God shall be excepted from this provision. The bond/insurance shall be issued for \$500,000 which shall be payable to the State of New York in case of loss.

If a bond/insurance is not furnished, a deposit of \$500,000 in cash, Cashier's check or bank certified check made payable to the State of New York shall be made on the signing of the contract. This deposit shall be applied to any damages sustained by the State under this agreement.

## **1.7 Commissioner's Representative**

The Commissioner of Education shall be represented by the Manager of the State Records Center in all matters dealing with the administration of the executed contract, State Records Center, State Archives, State Education Department, Building 21, Harriman State Office Campus, Albany, New York 12226-2152, Telephone (518) 457-4801, unless another designation is made in writing to the contractor. Other employees may be designated to deal with and receive routine or operational communications either with the contractor or with any State department or agency utilizing the contract.

## **Section 2 - Confidential Mixed Record Material**

### **2.1 Definition**

#### **Mixed Record Material**

Mixed record material shall be defined as any paper-based record, regardless of physical form, received or created by State departments and agencies, and participating units of local government, including, but not necessarily restricted to obsolete files, documents, ledgers, printed material, cards, computer printout and manila folder material. This includes both material that must be shredded and material that does not require shredding.

#### **Paper Grades**

1. News: Grade 6 - Newspapers for recycling.
2. Corrugated Containers: Grade 11 (OCC) - Corrugated containers for paper recycling have jute, Kraft or test liners.
3. Sorted Office Paper (SOP): Grade 37 - Sorted office paper for recycling is paper generated by offices that has mostly white and colored paper that's free from unbleached fiber and

groundwood. It may also have a small amount of groundwood computer and fax paper materials.

4. Sorted White Ledger (SWL): Grade 40 - Sorted white ledger for recycling consists of uncoated, printed or unprinted shavings, cuttings, guillotined books or sheets of white ledger, writing or bond that's free from groundwood and other paper with related fiber and filler content.

## **Contaminants**

Contaminants are defined as non-recyclable material that includes, but are not limited to the following:

- wastebasket refuse
- books, either hard or soft cover
- periodicals, magazines, newspapers
- plastic or vinyl ID cards and licenses
- computer tapes and diskettes, microfilm, microfiche, audio cassettes
- vinyl and pressboard file guides
- carbon paper
- hanging file folders and frames
- Kraft and expansion folders
- all types of binders
- metal prong fasteners
- view-foils
- toner cartridges
- tyvec (FedEx, ADP) envelopes

## **2.2 Estimated Volume**

Under this contract, the contractor agrees to accept tractor-trailer loads of the mixed record material generated by State departments and agencies and interested units of local government in the Capital District of New York State and to ten locations outside the Capital District. NYSED estimates an average annual volume of 700 tons. It is understood and accepted that the stated annual volume is estimated for general guidance only, and that the contractor shall take the State's actual volume, be it more or less.

## **2.3 Service Outside of the Capital District Area**

In 2016 pickups were made at approximately 10 different locations outside of the Capital District. These locations included:

- Taconic Hills Central School District, Craryville, Columbia County
- Lewis County Department of Social Services, Lowville, Lewis County
- Lewis County Hospital, Lowville, Lewis County
- Hutchings Psychiatric Facility, Syracuse, Onondaga County
- SUNY Cortland, Cortland, Cortland County
- Department of Motor Vehicles, Utica, Oneida County
- Johnstown City School District, Johnstown, Fulton County
- Warren County Records Center, Warrensburg, Warren County

The contractor will be asked to bid a revenue-per-ton figure that reflects all additional costs necessary for the pickup. No additional charges will be paid for service outside of the Capital District.

## **2.4 Pickups**

The contractor shall be responsible for picking up record material from all department and agency locations having suitable loading dock facilities. It is estimated that the number of individual pickups during a month can be expected to average 30 and range from a low of 22 to a high of 48. Most material will be loaded on pallets or skids or will be in gondolas, records storage boxes and/or locked bins. The contractor shall not be required to make pickups on any one day totaling less than two (2) tons from all locations. In the event that an agency location lacks suitable loading dock facilities, the agency shall be responsible for making arrangements for transporting the material to the contractor's facility, providing staff to assist with the loading or directly paying the contractor for the extra handling costs.

## **2.5 Scheduling of Pickups**

The contractor shall schedule pickups of record material so that actual pickups shall be made within 10 business days of the initial request for pickup, between the hours of 8:00 a.m. and 3:30 p.m. on the days designated, Monday through Friday, with legal and official State holidays excluded. Other pickup arrangements, mutually agreed to by the contractor and a particular agency, may be made. In the event a scheduled pickup cannot be made, it shall be the contractor's responsibility to request the rescheduling of the pickup to a mutually convenient time.

## **2.6 Advance Notice Requirements**

State agencies and departments utilizing the services of the contract shall be required to give the contractor a minimum of ten (10) days advance notice of each requested pickup. Such notice shall specify the date and time for effecting the pickup, the estimated volume to be picked up, and the location.

## **2.7 Materials Handling Responsibilities and Pickup Procedures**

It shall normally be the responsibility of the State agency requesting the pickup to move the record material to a designated loading area. At that point, it shall normally be the responsibility of the contractor to load the material on the vehicle using either its own materials handling equipment or equipment provided by the agency. The contractor shall be responsible for providing only a driver to do the loading. Where necessary, agencies shall provide additional staff to assist in the loading. Agencies having materials handling equipment are encouraged to utilize this equipment to expedite loading. All vehicles used for pickup must be totally enclosed to properly secure the contents, and must be equipped with decking sufficiently strong to permit the use of powered materials handling equipment. Pickup of material shall be completed within the time frame specified in Section 2.5.

Occasionally witnessed destruction is required. Typically, a representative of the State agency generating the material shall accompany the contractor's vehicle in a trailing vehicle, to observe its shredding. Shredding shall normally be completed by 3:00 p.m. on the pickup date in order to allow the representative to return to the agency location by no later than 4:30 p.m. Providing transportation for the State representative shall be the responsibility of the State agency. The volume of records requiring witnessed shredding is unknown.



When required by a State agency, the contractor shall provide a signed certification attesting to the complete destruction of the material. The Department of Taxation and Finance must receive a signed certification of destruction for materials.

## **2.8 Destruction Requirements**

All confidential mixed record material shall be handled in such a manner that the informational content of the records is not readily identifiable, and/or cannot be easily reconstructed. This shall be achieved by baling alone, shredding and baling or witnessed shredding and baling. The decision as to which method is satisfactory shall be the decision of the department or agency, based on State and/or Federal regulations or policies.

When required by the State and local agencies utilizing the services of the contract, confidential record material shall be shredded within one business day so that the informational content of the documents is no longer identifiable or reconstructible. Since the Department of Taxation and Finance provided 35% of the paper picked up from January 2016-June 2016, and has historically provided the vast majority of the paper that required shredding, all records that require shredding shall be shredded in the manner required in the most current version of Internal Revenue Service Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies and Entities, Safeguards for Protecting Federal Tax Returns and Return Information (<http://www.irs.gov/pub/irs-pdf/p1075.pdf>), Disposing of Federal Tax Information IRC [Internal Revenue Code] 6103(p)(4)(F), Section 8.3 Destruction Methods. The vendor will be required to meet the most current standard specified by the IRS. Current standards state:

- Shredding precautions: Current IRS standards require that to make reconstruction more difficult, destroy paper using cross cut shredders which produce particles that are 1 mm x 5 mm (0.04 in. x 0.2 in.) in size (or smaller), or pulverize/disintegrate paper materials using disintegrator devices equipped with a 3/32 in. (2.4 mm) security screen. However, when deviating from the IRS's 5/16" requirement, FTI as long as it is in this condition (i.e., strips larger than 5/16"), must be safeguarded until it reaches the stage where it is rendered unreadable.
- Pulping of data should be accomplished only after material has been shredded.

Department of Taxation and Finance material must be picked up and shredded within one business day a minimum of one to two times per week and up to three to four times per week in order to prevent backlogs from developing in the agency. All employees of the contractor that work with Department of Taxation and Finance material must sign the DTF-202, Non-Disclosure form. The volume of shredding varies significantly from month-to-month. For January 2016 – June 2016, the shredding volumes were: January 42 tons, February 26 tons, March 40 tons, April 25 tons, May 38 tons and June 20 tons. The wide variance in volume of material for shredding each month is due to the timing of the file purges conducted by the various units in the Department.

The following provisions from the rules and regulations of the Internal Revenue Service (IRS) pertain ONLY to the shredding of records belonging to the Department of Taxation and Finance. These provisions are included so that the Department of Taxation and Finance does not have to have a staff person witness the destruction of tax records in order to be in compliance with IRS requirements. The provisions are as follows:

### **2.8.1 Disclosure Clauses**

Disclosure of Information – Safeguards

In performance of this contract, the contractor agrees to comply and assume responsibility for compliance by his/her employees with the following requirements:

All work shall be performed under the supervision of the Contractor or the contractor's responsible employees.

Any Federal return or return information made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor shall require prior written approval of the Internal Revenue Service (IRS). Requests to make such inspections or disclosures should be addressed to the IRS Contracting Officer.

Should a person (contractor or subcontractor) or one of his/her employees make any unauthorized inspection(s) or disclosure(s) of confidential tax information, the terms of the Default clause (FAR 52.249-9), incorporated herein by reference, may be invoked, and the person (contractor or subcontractor) will be considered to be in breach of this contract.

### **2.8.2 Disclosure of Information – Criminal/Civil Sanctions**

Each officer or employee of any person (contractor or subcontractor) at any tier to whom Federal returns or return information are or may be disclosed shall be notified annually in writing by the person (contractor or subcontractor) that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person (contractor or subcontractor) shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance or unauthorized disclosure plus in the case of willful disclosure or a disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103 (n) –1.

Each officer or employee of any person (contractor or subcontractor) to whom Federal returns or return information are or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract and that inspection of any such returns or return information for a purpose or to an extent not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person (contractor or subcontractor) shall also notify each such officer and employee that any such unauthorized inspection of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection plus in the case of a willful inspection or an inspection which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established hereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the 22 certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **2.8.3 Disclosure of Information – Inspection**

The Internal Revenue Service shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, the Contracting Officer may require specific measures in cases where the contractor is found to be noncompliant with contract safeguards.

Each agency is responsible for ensuring that all material sent for shredding does in fact require shredding. The contractor may advise the State Records Center of any agency requesting shredding for significant volumes of material not appearing to require this degree of confidentiality.

### **2.9 Elimination of Contaminants from Confidential Material**

During the term of this agreement, NYSED agrees to work with the contractor to improve the quality of confidential wastepaper received from State departments and agencies for disposal and recycling. This effort shall involve a continuing effort to encourage all contract users to remove the worst contaminants from the material before it is sent for disposal. Material considered as non-recyclable contaminants includes, but is not limited to: hanging file folders and frames, Kraft and expansion folders, all types of binders, metal prong fasteners, view-foils, toner cartridges, tyvec (FedEx, ADP) envelopes and items excluded under the definition in section 2.1.

If the contractor identifies specific agencies that regularly attempt to dispose of heavily contaminated material, the State Records Center shall work directly with those agencies to correct the problem. In the event that an agency refuses to cooperate to the extent deemed appropriate, the State Records Center reserves the right to temporarily suspend the agency's right to utilize the contracted recycling services.

It is NYSED's preference that there not be any contamination charges. If the contractor determines that there should be a charge for disposing of contaminated wastepaper, the contractor needs to specify any such costs in the proposal and inform the site involved each time a pickup is scheduled. These costs cannot be offset against the revenue from the individual pickup involved. They can be billed back directly to the agency or office requesting the pickup. (Contamination charges for any given pickup WILL NOT be deducted from NYSED's revenue from pickups.)

## **2.10 Salvaging of Storage Containers**

When requested by an agency, the contractor may agree to salvage and return one cubic foot records storage containers and lids which are in a reusable condition. Requests for the return of used containers should happen only occasionally.

## **2.11 Weighing of Materials**

The actual weight of the confidential record material picked up shall be determined for each separate pickup by subtracting the unloaded weight of the vehicle and the weight of any pallets or other material conveyances from the loaded weight of the vehicle, utilizing an inspected and sealed scale. All weighing expenses shall be borne by the contractor. NYSED reserves the right to witness the confidential destruction of materials and allow the NYS Department of Taxation and Finance and other participating agencies to witness the destruction.

## **2.12 Reporting Requirements**

The contractor shall submit each month a report of material picked up and disposed of during the month (monthly activity report) to the State Records Center, by no later than the fifteenth (15th) working day of the following month. The report should be submitted in electronic and paper form. The electronic form should be sent to the generic State Records Center mailbox ([records@nysed.gov](mailto:records@nysed.gov)).

## **Section 3 - Wastepaper**

### **3.1 Definition**

For the purpose of this IFB, wastepaper is defined as any wastepaper product of uniform type and quality with sufficient value to warrant its separation from normal confidential record material, including, but not necessarily limited to, obsolete forms and letterhead, bond paper, computer printouts, print shop remnants, tabulating card stock, newsprint, and cardboard.

### **3.2 Estimated Volume**

Under the contract executed as a result of this IFB, the contractor agrees to accept tractor-trailer loads of wastepaper, including newsprint, corrugated cardboard, white ledger, office paper, etc., generated by State departments and agencies and/or participating units of local government in the estimated average volume of 9 tons per month. All material collected as part of the OGS 3R's Program is EXCLUDED from coverage. It is understood and accepted that the stated monthly volume is estimated for general guidance only and that the contractor shall take the State's actual volume, be it more or less. While the current volume of material is small, the potential does exist for larger volumes, particularly in those departments and agencies not participating in the OGS 3R's program.

The contractor agrees to voluntarily identify new sources of confidential record material and wastepaper that can be treated as wastepaper, rather than confidential record material.

### **3.3 Pickups, Materials Handling, Destruction and Compensation**

Pickups, materials handling, and compensation to NYSED shall follow the same general procedures as required in Section 2 for confidential mixed record material. Shredding is occasionally required for wastepaper, as will be determined by the agency that is disposing of the wastepaper.

## **Section 4 - Payments and Reports**

### **4.1 Payments and Reports**

#### Reporting Requirements

The contractor shall submit each month a report of material picked up and disposed of during the month (monthly activity report) to the State Records Center, by no later than the fifteenth (15th) working day of the following month. The report should be submitted in electronic and paper form. The electronic form should be sent to the State Records Center generic mailbox (records@nysed.gov).

#### Compensation to NYSED

The contractor shall submit monthly payments to the NYSED for confidential mixed record material, pursuant to the revenue distribution proposal submitted by the contractor and made part of the final contract. Payment shall be submitted to the following address by the fifteenth (15th) working day of the following month. The vendor must subscribe to the Official Board Markets (OBM) New York price (low range). Every revenue payment must accompany a copy of the prior month's first issue of the Official Board Market's (OBM) New York price (low range).

NYS Education Department  
Bureau of Fiscal Management  
P.O. Box 7346  
Albany, NY 12224

A copy of the monthly activity report should accompany the revenue payment.

## **Section 5 - Subcontracting**

### **5.1 Subcontracting Limit**

Subcontracting will be limited to 30% of the total contract value. 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 IFB.

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.

## **Section 6 – Contract Period**

### **6.1 Contract Period**

NYSED will award one contract pursuant to this IFB. The contract(s) resulting from this IFB will be for a term anticipated to begin April 1, 2018 and to end March 31, 2023.

## **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 IFB. 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 IFB. 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 IFB must include the following documents:

1. Submission Documents - Two (2) copies (one bearing an original signature in blue ink)
2. Revenue Proposal—Three (3) copies (one bearing an original signature in blue ink)
3. Microsoft Office (CD format)—One (1) electronic version with the submission documents and revenue proposal. Place the CD-ROM in a separate envelope.

The proposal must be received by **January 31, 2018 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.

### **Revenue Proposal:**

Bidders should submit their revenue proposal by inserting a percentage of the Official Board Market's (OBM) Northeast New York (Low Range) price, rounded to the nearest whole number, for the four (4) grades of paper listed. Below is an example of a completed Revenue Proposal. Note that OMB is now published as Pulp and Paper Week (PPI). NYSED is using the OBM prices from January 2016 for scoring purposes only.

	Percent of OBM Price/Ton		OBM Northeast New York Low- End Price/Ton for Jan. 2016	Budgeted Price/Ton	Weighting Factor (% of total paper volume)	Weighted Price/Ton (rounded to nearest cent)
	Shredded	Non- Shredded				
<b>Capital Region:</b>						
<b>News (6)</b>			\$ 55.00	\$	4.39%	\$
<b>Corrugated Containers (11)</b>			\$ 80.00	\$	1.32%	\$
<b>Sorted Office Paper (37)</b>			\$130.00	\$	84.70%	\$
<b>Sorted White Ledger (40)</b>			\$ 215.00	\$	0.39%	\$
<b>Outside Capital Region:</b>						
<b>News (6)</b>						
<b>Corrugated Containers (11)</b>						
<b>Sorted Office Paper (37)</b>			\$ 130.00	\$	9.20%	\$
<b>Sorted White Ledger (40)</b>						
<b>Total</b>					100.00%	\$

The percentage of OBM in the revenue proposal will be fixed for the entire contract term. Such percentages will be used to determine the revenue payable to NYSED, based on the actual OBM prices from the preceding month. Using the form above, bidders will be required to insert the percent of OBM price per ton and calculate the budgeted price per ton based on the OBM for January 2016. The percentage is multiplied by the OBM price to determine the budgeted price/ton. Then a weighting factor is applied (based on that paper's projected percent of total volume) to that price to determine the weighted price/ton. The total of the weighted price/ton is used to determine the total revenue amount. This amount will be compared to other revenue proposals to determine the financial criteria score.

For each revenue proposal, an original plus two (2) copies of the completed Revenue Proposal must be mailed in a separate envelope labeled IFB #18-004-Revenue Proposal-Do Not Open and must include the following:

1.) Bid Form - Revenue Proposal (Signature Required)

The percent of OBM price per ton should be stated in whole numbers. Calculations based on these percentages should be rounded to the nearest cents.



### 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.

#### Selection Criteria

##### Financial Criteria

The award is based on the bidder that submits the revenue budget with the highest amount of revenue and a site visit to confirm the vendor's capabilities to meet the responsibilities as described in section 1 above.

NYSED reserves the right to request best and final offers.

##### Method of Award

The contract issued pursuant to this proposal will be awarded to the vendor whose revenue component reflects the highest revenue to the State. **If NYSED exercises the right to request best and final offers, the contract must be issued to the vendor with the highest revenue amount that results from the best and final offer.**

In the event of a tie, NYSED will select the winning vendor by drawing a name out of a hat.

##### NYSED's Reservation of Rights

NYSED reserves the right to: (1) reject any or all proposals received in response to the IFB; (2) withdraw the IFB at any time, at the agency's sole discretion; (3) make an award under the IFB in whole or in part; (4) disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB; (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 IFB; (7) prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available; (8) prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB 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 IFB 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.

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### **Post Selection Procedures**

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

### **Debriefing Procedures**

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

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

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

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

### **Contract Award Protest Procedures**

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

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

NYS Education Department

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

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

### **Vendor Responsibility**

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

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

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

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

### **Subcontractors:**

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

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

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

### **Procurement Lobbying Law**

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

Designated Contacts for NYSED  
Program Office – Prudence Backman  
Contract Administration Unit – Jessica Hartjen

### **Public Officer's Law Section 73**

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

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

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

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

(ii) officers and employees of statewide elected officials;

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

(iv) members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who

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receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

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

### **NYSED Substitute Form W-9**

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

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

### **Workers' Compensation Coverage and Debarment**

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

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

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

### **PROOF OF COVERAGE REQUIREMENTS**

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

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

### **Proof of Workers' Compensation Coverage**

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

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

### Proof of Disability Benefits Coverage

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

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

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

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

#### **4.) Assurances**

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

The documents listed below are included in **2.) 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

## STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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



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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

## **Appendix A**

### **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$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](mailto:opa@esd.ny.gov)

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

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

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](#)").

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. Required Web Accessibility of Delivered Documents and Applications. If applicable, all documentation, applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Education Department IT Policy NYSED-WEBACC-001, Web Accessibility Policy, which requires that documents,



web-based information and applications are accessible to persons with disabilities. All delivered documentation and applications must conform to NYSED-WEBACC-001 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSED employee or contractor and the results of such testing must be satisfactory to NYSED before documents and applications will be considered a qualified deliverable under the contract or procurement.

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

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

#### Certifications

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

#### Notices

Any written notice or delivery under any provision of this AGREEMENT shall be deemed to have been properly made if

sent by certified mail, return receipt requested to the address(es) set forth in this Agreement, except as such address(es) may be changed by notice in writing. Notice shall be considered to have been provided as of the date of receipt of the notice by the receiving party.

### Miscellaneous

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

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

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

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

By mail:                   NYS Education Department  
Contract Administration Unit  
Room 503 W EB  
Albany, NY 12234

By fax:                   (518) 408-1716

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

7. Appendix C – Payment and Reporting Schedule
8. Appendix R – Data Security and Privacy Plan (where applicable)
9. Appendix S – Parents’ Bill of Rights for Data Privacy and Security (where applicable)
10. Appendix S-1 - Attachment to Parents’ Bill of Rights (where applicable)
11. Appendix D – Program Workplan

(Revised 6/12/17)

APPENDIX R  
DATA SECURITY AND PRIVACY PLAN PROVISIONS

1. The individually identifiable data provided to or stored by the Contractor pursuant to this agreement (the "Data") are sensitive, requiring appropriate levels of security to prevent unauthorized disclosure or modification. The Contractor shall take all reasonable measures to protect the confidentiality of the Data as required by federal and state laws and regulations applicable to the Contractor. These may include but are not limited to the New York State Social Services Law, Personal Privacy Protection Law and Education Law §2-d; the federal Social Security Act and Family Educational Rights and Privacy Act; internet security laws; and any regulations promulgated thereunder.
2. The Contractor has full and final responsibility for the security of the Data. The Contractor agrees to implement reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of the Data. Such security measures may be reviewed by the State, both through an informal audit of policies and procedures and/or through inspection of security methods used within the Contractor's infrastructure, storage, and other physical security. The Contractor should review its implementation and maintenance of its security review periodically to protect the data in strict compliance with statutory and regulatory requirements.
3. The Contractor's security measures must also include:
  - a. Provision that access to the Data is restricted solely to staff who need such access to carry out the responsibilities of the Contractor under this agreement, and that such staff will not release such Data to any unauthorized party;
  - b. All confidential Data are stored on computer and storage facilities maintained within Contractor's computer networks, behind appropriate firewalls;
  - c. Access to computer applications and Data are managed through appropriate userID/password procedures;
  - d. Contractor's computer network storing the Data is scanned for inappropriate access through an intrusion detection system. NYSED has the right to perform a site visit to review the vendor's security practices if NYSED feels it is necessary;
  - e. That Contractor have a disaster recovery plan that is acceptable to the State;
  - f. Satisfactory redundant and uninterruptible power and fiber infrastructure provisions; and
  - g. A copy of the Contractor's security review evidencing compliance with these requirements must be submitted to NYSED for review and approval within 6 months of the signing of the contract or before the first certification test is performed, whichever occurs first.
4. The Data must be returned to NYSED upon termination or expiration of this Agreement, or at such point that the Data are no longer needed for the purpose referenced in this Agreement, or, at the sole discretion of NYSED, securely destroyed. All hard copies of personally identifiable Data in the possession of the Contractor must be securely destroyed, and all electronic Data must be purged from the network in a manner that does not permit retrieval of the data. The contractor is specifically prohibited from commingling any data from outside sources into the Data received from NYSED, except as specifically authorized by NYSED.
5. If personally identifiable data of students, teachers or building principals will be disclosed to the Contractor by NYSED for purposes of the Contractor providing services to NYSED, the Contractor must comply with the following requirements of Education Law §2-d (Chapter 56, Subpart L of the Laws of 2014) and any implementing regulations:

- a. Any officers or employees of the third party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access;
  - b. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - c. not use the education records for any other purposes than those explicitly authorized in its contract;
  - d. except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:
    - (i) without the prior written consent of the parent or eligible student; or
    - (ii) unless required by statute or court order and the party provides a notice of the disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;
  - e. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody; and
  - f. use encryption technology consistent with Education Law §2-d and any implementing regulations.
6. If requested by NYSED to make any disclosure of aggregated data using the Data provided to or stored by the Contractor, Contractor must ensure that the disclosed aggregated data cannot reasonably be used to identify a particular individual. Aggregated data will be considered identifiable if the disclosure has less than five (5) data elements per cell or the data elements per cell comprise 100% of the subject population.
  7. Contractor agrees that all Data shall remain at all times the property of the State, and may not be used for any purpose other than the purpose outlined in this Agreement without the express written permission of NYSED. The Contractor has no ownership of or licensing rights to the Data except as provided in this Agreement, and Contractor specifically agrees that it will not sell, give or otherwise transfer the Data to any third party without NYSED's express prior approval.
  8. The Contractor must ensure that these confidentiality and security provisions apply to any subcontractor engaged by the Contractor for the work under this agreement. The Contractor shall take full responsibility for the acts and omissions of its subcontractors, and the use of subcontractors shall not impair the rights of NYSED against the Contractor in accordance with this Agreement.
  9. Hardware, software and services acquired by the Contractor under this Agreement may not be used for other activities beyond those described in the scope of the contract unless authorized in advance by NYSED.
  10. Security of Location - Server room will remain a restricted access, locked room with access via security cards. The list of staff with access to the server room will continue to be reviewed quarterly against the number of times each staff actually gained access to the server room.
  11. Breach Notification.
    - a. Contractor that receives student data or teacher or principal data pursuant to a contract or other written agreement with an educational agency shall be required to notify such educational agency of any breach of security resulting in an unauthorized release of such data in accordance with Education Law §2-d and any implementing regulations. Upon such notification, the educational agency shall take appropriate action in accordance with Education Law §2-d and any implementing regulations.
    - b. In the event that the State is required, pursuant to Education Law §2-d(6)(b), to notify one or more parent, eligible student, teacher or principal of an unauthorized release of student data by the Contractor or its assignee, the Contractor shall promptly reimburse the State for the full cost of such notification.

- c. Contractor acknowledges that it may be subject to penalties under Education Law §§2-d(6) and 2-d(7) for unauthorized disclosure of personally identifiable student, teacher or principal data.
- d. Contractor agrees that it will cooperate and promptly comply with any inquiries from the State based upon the State's receipt of a complaint or other information indicating that an improper or unauthorized disclosure of personally identifiable information may have occurred. Contractor will permit on-site examination and inspection, and will provide at its own cost necessary documentation or testimony of any employee, representative or assignee of Contractor relating to the alleged improper disclosure of data.