

IFB 24-002

## INVITATION FOR BIDS (IFB)

IFB #24-002

### NEW YORK STATE EDUCATION DEPARTMENT

#### **Title: Vehicle Modification Services**

The New York State Education Department (NYSED) Office of Adult Career and Continuing Education Services Vocational Rehabilitation (ACCES-VR) seeks bids from Vehicle Modifiers for vehicle modification services. The scope of each modification will depend on the need of the customer being served by ACCES-VR.

As defined in Section [49 CFR 595.6](#), a Vehicle Modifier is “Any motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger.”

Vehicle Modification is any structural or non-structural modification to a motor vehicle. It can include adaptive equipment, or a product system acquired commercially or off the shelf, modified, that is used to increase, maintain, or improve a customer’s functional capacity to drive safely or to ride as a passenger. Structural motor vehicle modification services are alterations made to a vehicle that alter the structure of the vehicle such as raising the roof, lowering a floor, widening the doors, etc. Nonstructural motor vehicle modifications are the addition of adaptive equipment that does not alter the structure of the vehicle such as pedal blocks, left foot brake and accelerator and wide-angle mirrors.

Vehicle Modification services may be requested as needed, by any of the fifteen [ACCES-VR District Offices](#) located across New York State. The scope of work will be determined by an evaluation of the customer’s need. Vehicle Modifiers awarded a contract as a result of this IFB will be eligible to respond to mini-bid solicitations issued by any of the 15 [ACCES-VR District Offices](#).

Those mini-bids will be awarded to the lowest cost responsive and responsible bid from the Vehicle Modifier that meets the specifications of the mini-bid. NYSED will only pay contractors who are awarded a mini-bid project and successfully complete the project.

NYSED will award multiple contracts pursuant to this IFB. The contracts resulting from this IFB will be for a term anticipated to begin May 1, 2024, and end April 30, 2029.

Service Area: statewide

**Mandatory Requirements:** See Mandatory Requirements section of the IFB.

IFB 24-002

Components contained in IFB #24-002 are as follows:

- 1.) Description of Services To Be Performed
- 2.) Submission
- 3.) Evaluation Criteria and Method of Award
- 4.) Assurances
- 5.) Submission Documents (separate document)
- 6.) Attachment 1- Authorization from ACCES-VR (VR-301)

Questions regarding this request must be submitted by email to [IFB24-002@nysed.gov](mailto:IFB24-002@nysed.gov) no later than the close of business January 25, 2024, and should be identified as either Program or Fiscal. A Questions and Answers Summary will be posted to [ACCES-Procurement Opportunities web page](#) no later than February 8, 2024. The following are the designated contacts for this procurement:

**Program Matters**

Monica Toye-Smith  
[IFB24-002@nysed.gov](mailto:IFB24-002@nysed.gov)

**Fiscal Matters**

Monica Foley  
[IFB24-002@nysed.gov](mailto:IFB24-002@nysed.gov)

Bidders are requested to submit their bids electronically. The following documents should be submitted by email as detailed in the Submission section of the IFB, and must be received at NYSED no later than **February 28, 2024, by 3:00 PM Eastern Time**:

1. Submission Documents labeled **[name of bidder] Submission Documents IFB #24-002**

The email address for all the documentation is [cau@nysed.gov](mailto:cau@nysed.gov).

Instructions for Submitting an Electronic Bid:

1. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable.
2. Submission documents requiring a signature must be signed using one of the methods listed below, and may be submitted in a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:
  - a. handwritten signatures on faxed or scanned documents
  - b. e-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
  - c. stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents
4. Unacceptable forms of e-signatures include:
  - a. a typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person "signing"

IFB 24-002

5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by email the following attestation: "I agree, and it is my intent, to sign this document by [describe the signature solution used] and by electronically submitting this document to [name of recipient individual or entity]. I understand that my signing and submitting this document is the legal equivalent of having placed my handwritten signature on the submitted document and this attestation. I understand and agree that by electronically signing and submitting this document I am affirming to the truth of the information contained therein."
6. In order to ensure the timely receipt of your bid, please use the subject line "BID SUBMISSION IFB 24-002" - failure to appropriately label your bid or submitting a bid to any email address other than the one identified above may result in the bid not being received by the deadline or considered for award.
7. **Bids must be received by 3:00 pm Eastern Time on the due date.**

## **1.) Description of Services to be Performed**

### **Work Statement and Specifications**

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

### **Mandatory Requirements**

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

1. All bidders are required to offer at least one low-tech vehicle modification service, including but not limited to:
  - a. raised tops and/or doors;
  - b. mechanical hand controls and steering devices;
  - c. six-way power transfer seats;
  - d. car top carriers; and
  - e. Wheelchair lifters/loader

and/or

Offer at least one high-tech vehicle modification service, including but not limited to:

- a. remote steering packages;
  - b. lowered floor conversions;
  - c. foot steering;
  - d. low-effort conversions;
  - e. horizontal steering; and
  - f. braking and throttle servo controls.
2. All bidders must submit with their application all current, valid manufacturer certifications for the adaptive equipment and qualifying services they provide, which must be maintained throughout the contract period.
3. All bidders must submit with their application evidence of current liability insurance of the kind described in Section 1 of this IFB, "Description of Services to be Performed" under the heading "Vehicle Modifier Responsibility".

## Background

The New York State Education Department (NYSED) Office of Adult Career and Continuing Education Services Vocational Rehabilitation (ACCES-VR) provides a wide array of vocational rehabilitation services to over 53,000 New Yorkers with disabilities each year. Individuals receiving ACCES-VR services are known as “customers”. One of the vocational rehabilitation services provided by ACCES-VR is vehicle modification.

## Purpose

Vehicle modifications are considered within the scope of "rehabilitation technology" as defined in Section 7(32) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32), which reads in part "the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation." The Rehabilitation Act is located at [The Rehabilitation Act Weblink](#).

The purpose of this IFB is to solicit bids from potential vendors interested in providing vehicle modification services to ACCES-VR. The types and descriptions of vehicle modification activities are taken from ACCES-VR's [Standards for Automotive Adaptive Equipment](#).

**Note:** ACCES-VR's *Standards for Automotive Adaptive Equipment* are expected to be updated and will replace existing standards during the course of contracts awarded as a result of this IFB. Vehicle Modifiers will be required to adhere to current standards.

These standards are applicable to automotive adaptive equipment available as options and vehicle modifications subject to purchase in whole or in part by ACCES-VR on behalf of eligible customers who require adaptive equipment and/or modifications to drive or ride as a passenger.

ACCES-VR makes these purchases to assist eligible customers to meet the employment goal in their Individual Plan for Employment (IPE). Within the parameters of the IPE, the customer's informed choice, and evaluation recommendations, ACCES-VR will determine which purchases will meet the customer's functional needs in the most cost-effective manner.

Only adaptive equipment and/or modifications covered by ACCES-VR's *Standards for Automotive Adaptive Equipment* may be purchased. Adaptive equipment and/or modifications not covered by these standards will require written approval by ACCES-VR prior to authorization of work.

These standards cover devices, mechanisms, and additions to a motor vehicle which are or can be installed in a motor vehicle as an after-market manufacturer purchase item in order to adapt that motor vehicle to permit a physically disabled person to drive it on the public highway, or to permit an individual with a disability to ride as a passenger in a motor vehicle. Such adaptation includes devices and provisions for entering and leaving a motor vehicle, for operating the vehicle or components of the vehicle, and for restraint of drivers and passengers with disabilities and equipment associated with those persons, such as wheelchairs, canes, walkers, etc.

Vehicle modifications may include changes to the existing sub-systems of a motor vehicle in order to effect adaptation for the driver or passenger with a disability. These sub-systems include but are not limited to electrical, mechanical, control and display, and structural components.

There are two general types of vehicle modifications:

Low-Tech vehicle modifications may require (but are not limited to) the following adaptive equipment or modifications:

1. raised tops and/or doors;
2. mechanical hand controls and steering devices;
3. six-way power transfer seats;
4. car top carriers; and
5. Wheelchair lifters/loader.

High-Tech vehicle modifications may require (but are not limited to) the following components to allow the customer to safely operate or occupy a motor vehicle:

1. remote steering packages;
2. lowered floor conversions;
3. foot steering;
4. low-effort conversions;
5. horizontal steering; and
6. braking and throttle servo controls.

Low-tech and high-tech modifications are described in [441.00P Vehicle Modification Policy & Procedure](#).

ACCES-VR will not purchase vehicles. ACCES-VR recommends that customers purchase vehicles from a Franchise dealer or from a dealer who provides a Monroney Label, a reproduction of the original factory window sticker that may be used to avoid inaccurately described factory options on the vehicle. U.S. law requires a window sticker, known as a Monroney Label to be displayed on all new vehicles. These stickers contain mandatory information about the vehicle, including what the vehicle cost when new with the correct factory option packages and the correct factory color. Vehicle modifications, adaptive equipment and automotive equipment for a vehicle may also be provided for a customer who owns or has the use of an appropriate vehicle, as

determined by ACCES-VR. For ACCES-VR to provide this service, the customer must require vehicle modification services to drive or to ride as a passenger to meet the employment goal in their IPE.

**Purchase of a vehicle by the customer that is different than the make and model agreed upon with ACCES-VR may delay or prevent provision of vehicle modification services.** ACCES-VR will only modify the base model of the vehicle- the one that is the least expensive available that is capable of accepting the modifications and adaptive equipment required. ACCES-VR will not purchase standard equipment included on the base model. It is the responsibility of the customer to purchase a vehicle that includes the specifically required automobile equipment per the bid specifications, while ACCES-VR authorizes the vehicle modifications. ACCES-VR may consider manufacturer packages above the base model ONLY when ACCES-VR determines it is a cost-effective means of obtaining what the customer requires to drive or to ride as a passenger safely.

### **Vehicle Modification/ Mini-Bid Process**

The following summary is intended to outline the major steps and roles in the vehicle modification procurement process. The sequence of steps may vary slightly depending on the customer's need.

#### **Evaluation Process**

1. The ACCES-VR counselor and the customer discuss the transportation needs of the driver/passenger and vehicle availability.
2. ACCES-VR authorizes a customer evaluation from a Driver Rehabilitation Specialist (DRS) before proceeding with any customer's vehicle modification service. The Vehicle Modification and Equipment Recommendation Report (VMERR) provides details about the customer's specific disability-related modifications and scope of work required.
3. An ACCES-VR representative or vendor meets with the customer to conduct either a low-technology or high-technology initial assessment. The ACCES-VR representative or vendor will assist the customer to identify the appropriate make, model, and year of vehicle to be modified. If the customer already owns a vehicle, a determination will be made by the ACCES-VR representative or vendor as to whether that vehicle can be modified to meet the customer's needs. The ACCES-VR representative or vendor makes sure that the findings of the VMERR meet the ACCES-VR [Standards for Automotive Adaptive Equipment](#). The ACCES-VR representative or vendor drafts the Vehicle Modification Request for Bid Detail Specifications, which provides details regarding the modification and is used to solicit bids.

### **Mini-Bid Process**

1. The ACCES-VR representative or vendor develops bid specifications for the vehicle modification and provides this information to the ACCES-VR District Office (DO) counselor. The DO Business Office Manager will request bids for all modifications. Bids will be solicited from the five Vehicle Modifiers capable of performing the modification that are in closest proximity to the customer, or from Vehicle Modifiers within 100 miles of the customer, whichever is greater. Vehicle Modifiers are normally given 3 weeks to return their sealed bids. More complex modifications may allow 4 weeks.
2. The DO Business Office Manager conducts the bid opening at the ACCES-VR District Office. Vehicle Modifiers that have bid are permitted to attend the bid opening. The DO Business Office Manager submits all bids to the ACCES-VR representative or vendor, who reviews the bids for responsiveness to specifications and identifies the lowest responsive bid.
3. The DO Business Office Manager sends an email to all Vehicle Modifiers that were solicited for bids to notify them of the bid opening results, identifying each responding Vehicle Modifier and the total amount of their bid. If fewer than three qualified bids are received, the ACCES-VR DO will contact the Vehicle Modifiers that didn't bid to determine the reason for not submitting a bid.
4. For awards under \$15,000, the DO is able to authorize for services immediately. Awards of \$15,000 or more are to be sent to Fiscal and Administrative Services Team (FAST) at Central Office for approval. Awards of \$50,000 or more require additional approval from the Office of the State Comptroller. Once all required approvals are received, the VR counselor will issue the VR-301 Authorization (Attachment 1).

### **Modification Process**

1. The Vehicle Modifier arranges the initial fitting with the customer at the Vehicle Modifier's site in most cases but occasionally the Vehicle Modifier goes to the customer's residence.
2. The Vehicle Modifier can bill for the purchase of parts prior to the completion of the modification. Labor can never be paid prior to project completion, inspection and acceptance by the ACCES-VR representative or vendor.
3. The ACCES-VR representative or vendor monitors the progress of the modifications and addresses any technical issues that may arise and consults with the VR counselor as necessary.
4. The ACCES-VR representative or vendor conducts the final review, which includes the vehicle modification inspection and performance assessment. A deficiency report is issued when a vehicle does not pass inspection; the vehicle is not released. Vehicle Modifiers will correct any deficiencies at no additional cost to



their original bid. When the vehicle inspection is passed, the vehicle is released to the customer.

5. When the final review is satisfactory and the customer's vehicle has been released, the Vehicle Modifier submits the original final voucher and invoices to ACCES-VR. Once the Receipt/Performance Assessment Report is signed by the customer and the ACCES-VR representative or vendor, then the DO Business Office Manager sends the documents to the Fiscal and Administrative Services Team and payment can be processed.

### **Vehicle Modifier Responsibility**

1. **All Vehicle Modifiers with a contract issued pursuant to this IFB will be issued mini-bid solicitations as summarized in the Mini-Bid Process section above.** Individual project bids may only include adaptive equipment the Vehicle Modifier is certified by the adaptive equipment manufacturer to maintain and/or install and must break down equipment and labor costs for each item bid.
2. Vehicle Modifiers must provide complete manufacturers name and model number that can be matched with manufacturers offering through their promotional material. Custom, shop-built modification for a specific line item, (typically mechanical extensions) must briefly describe the method and material. Individual project bids specifying the manufacturer only and no model number or description may delay administrative bid reviews and may be determined to be incomplete or unresponsive.
3. **NO modification work may start without an authorization provided by ACCES-VR,** even if the Office of the State Comptroller has provided approval.
4. Vehicle Modifiers must adhere to the modifications as listed on the contract; no additions can be made to the contract after it has been awarded.
5. Vehicle Modifiers may subcontract certain aspects of the modification (to lower a floor, install a Scott servo system, welding, 4-wheel drive conversion, etc.) with the prior approval of ACCESS VR and in conformity to its certification. The Vehicle Modifier under contract is the prime contractor and is responsible for all the work required. The Vehicle Modifier is fully responsible for the acts or omissions of the subcontractor. All subcontractors on a vehicle modification must receive the prior approval of ACCES-VR.
6. Vehicle Modifiers must be knowledgeable and apply all appropriate standards and regulations when completing vehicle modifications, including but not limited to:
  - a. ACCES-VR's *Standards for Automotive Adaptive Equipment (most current version)*

- b. Federal Motor Vehicle Safety Standards (FMVSS)
  - c. American National Standards Institute (ANSI)/ Rehabilitative Engineering of North America Society (RESNA)
  - d. Society of Automotive Engineers (SAE)
7. Warranty Information - The Vehicle Modifier will only use new adaptive equipment that is warrantied in writing by the manufacturer. The Vehicle Modifier must warranty the installation of adaptive equipment for a period of one-year. This warranty includes the cost of parts, labor, and transport of the vehicle (pickup and delivery). In cases of equipment failure, ACCES-VR will work with the Vehicle Modifier to determine if the failure was due to faulty parts or faulty installation. At no time will the customer be responsible for the cost of any parts, labor, or transport during the warranty period. The Vehicle Modifier is responsible for sending in all warranties for all customers and will send copies to customers where applicable.
  8. It is expected that Vehicle Modifiers will provide warranty work on vehicles they may not have modified but are certified to maintain the adaptive equipment installed, as per reciprocity agreements.
  9. Rebates - Most major automobile manufacturers have a rebate program that reimburses a portion of modification equipment cost. The customer must apply for rebates and assign rebates to ACCES-VR to offset the cost of the modification. Rebates may not be applied to the purchase price of the vehicle.
  10. Insurance - Vehicle Modifiers must carry insurance in an amount not less than \$1,000,000.00, to cover any liabilities incurred in connection with modifications and related services provided to ACCES-VR customers. The insurance liability coverage will include: Completed Operations, General Liability, Garage Keepers Liability, and Garage Keepers Legal Liability. The contractor is prohibited from using the customer's vehicle for any purpose unrelated to the modification of that vehicle. The policy must cover bodily injury and property damage at a minimum. The policy must name NYSED as an additional insured. The policy must provide that NYSED receive a minimum of thirty days prior notice of cancellation. Proof of insurance must be provided with the bid submission. The bidder shall provide evidence of such insurance annually to NYSED. The bidder must also carry Worker's Compensation Insurance and Disability Benefits Insurance on its employees.

## **Requirements of Education Law Section 2-d**

The Contractor agrees to comply with Family Educational Rights and Privacy Act (FERPA) and New York State Education Law § 2-d. The NYS Education Department (NYSED) is required to ensure that all contracts with a third-party contractor that receives

IFB 24-002

PII include a Data Privacy and Security Plan, pursuant to Education Law § 2-d and § 121.6 of the Regulations of the Commissioner of Education. For every contract, the Contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state.

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

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

Bidders should use the templates and instructions in Appendix R to submit the required DPA EXHIBIT 1 - Contractor’s Data Privacy and Security Plan and return it with their bid for review.

### **Accessibility of Web-Based Information and Applications**

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

### **Subcontracting**

Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. Reimbursement for travel is not permitted for services performed under the contract resulting from this IFB. Subcontractors need to be properly certified as required by manufacturers.

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

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and

IFB 24-002

- 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 section 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.

### **Staff Changes**

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

### **Contract Period**

NYSED will award multiple contracts pursuant to this IFB. The contracts resulting from this IFB will be for a term anticipated to begin May 1, 2024, and to end April 30, 2029. This is a periodic recruitment contract. Vendors can be added with the approval of the Office of the State Comptroller. Once a year minimally, an ad will be placed in the [New York State Contract Reporter](#) to publicly notify vendors of a potential contract opportunity. Additional Vehicle Modification contracts will have a termination date of April 30, 2029.

### **Electronic Processing of Payments**

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

## **2.) Submission**

### **Documents to be submitted with the bid**

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

### **Project Submission**

The bid submitted in response to this IFB must include the following documents submitted by email to [cau@nysed.gov](mailto:cau@nysed.gov) in Microsoft Office or editable PDF per the electronic submission procedures outlined above, preferably with all documents attached as the fewest number of files:

#### 1. Submission Documents bearing signatures

The bid must be received by **February 28, 2024, by 3:00 PM** by email to [cau@nysed.gov](mailto:cau@nysed.gov).

Bids 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, identifying the document(s) and citing the appropriate section and page(s) to be reviewed.

Bidders should limit aspects that are to be determined only after the award of a contract. No optional deliverables to be provided at an additional cost should be included and will not be considered. Contractual terms, conditions and assumptions are inappropriate for inclusion in the bid.

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

### **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(s) will be selected. This will be followed by various terms and conditions that reflect the specific needs of this project as well as New York State contract guidelines and requirements.

#### **Criteria for Evaluating Bids**

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

An evaluation committee will complete a review of all bids submitted. The committee will review each bid for compliance with the requirements of the IFB. Bidders should not assume that committee review members will have any previous experience with the bidder. Appropriate description should be included to inform committee members about the bidder’s qualifications and capacity to perform all required deliverables.

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

#### **Method of Award**

All eligible qualifying applicants that are responsive and responsible will receive a contract.

NYSED reserves the right to reject all bids received or cancel this IFB if it is deemed in the best interest of the State.

Eligible qualifying applicants who have completed a high-tech modification in the 2019-2024 contract cycle will receive an estimated \$1,500,000 initial contract. Remaining funds, less any reserved funds, will be distributed equally among all other eligible qualifying applicants. Based on available funding, other eligible qualifying applicants are estimated to receive a \$300,000 initial contract, but this amount could increase or decrease based on the number of eligible bidders and available funding.

When awarded, estimated contract values do not guarantee a minimum funding amount and are not a guarantee of a specific number of referrals by ACCES-VR. Payments are contingent on successful bidding and completion of work. ACCES-VR may amend the contracts of Vehicle Modifiers to increase or decrease estimated contract values as necessary at any time within the contract period. A reserve of funding will be set aside for this purpose.

## **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.

## **Post Selection Procedures**

Upon selection, the successful bidder will receive a proposed contract from NYSED. 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 [IFB24-002@nysed.gov](mailto:IFB24-002@nysed.gov).

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

### **Contract Award Protest Procedures**

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

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.
2. The protest must be filed within ten (10) business days of receipt of a debriefing or disqualification letter. The protest letter must be filed with the Contract Administration Unit by emailing: [IFB24-002@nysed.gov](mailto:IFB24-002@nysed.gov).
3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within ten (10) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.
4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.



## **Vendor Responsibility**

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

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

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

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

### **Subcontractors:**

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

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

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

## **Procurement Lobbying Law**

IFB 24-002

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 – **Monica Toye-Smith**

Contract Administration Unit – **Monica Foley**

### **Consultant Disclosure Legislation**

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

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

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

IFB 24-002

information ***prospectively from the start date of the contract through the end of the contract term.***

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

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

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

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

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

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

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

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

IFB 24-002

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

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

(ii) officers and employees of statewide elected officials;

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

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

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

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

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

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

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

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

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

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

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

## **PROOF OF COVERAGE REQUIREMENTS**

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

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

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

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

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

### **Proof of Disability Benefits Coverage**

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a State contract must submit appropriate proof of coverage to the State contracting entity

issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage:

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

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

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

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

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

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

- [ST-220 CA](#)

IFB 24-002

- [ST-220 TD](#)

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

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

The State of New York Agreement, Appendix A (Standard Clauses for all New York State Contracts), Appendix A-1 (Agency-Specific Clauses), and Appendix R (Data 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 **5.) Submission Documents**, which must be signed by the Chief Administrative Officer. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the NYS Education Department.

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



## STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

### I. Conditions of Agreement

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

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

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

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

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the

## IFB 24-002

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.

## IFB 24-002

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

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

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

### IV. Indemnification

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

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

### V. Property

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

### VI. Safeguards for Services and Confidentiality

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

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

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

**Appendix A**  
**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY**

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
[NYS M/WBE Directory](#)

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

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

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

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

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

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

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

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

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

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

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

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

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

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

(June 2023)



**APPENDIX A-1**  
**AGENCY-SPECIFIC CLAUSES**

Payment and Reporting

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

Terminations

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

Responsibility Provisions

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

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

### Property

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

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

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

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

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

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

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

### Safeguards for Services and Confidentiality

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

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

Certifications

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

Notices

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

Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor’s agents, officers, employees or subcontractors.
- B. If required by the Office of State Comptroller (“OSC”) Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.
- C. The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B is due by May 15th of each year and covers actual employment data performed during the prior period of April 1st to March 31st. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

By mail:                   NYS Office of the State Comptroller  
                                   Bureau of Contracts  
                                   110 State Street, 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 505 W EB  
Albany, NY 12234

By fax: (518) 408-1716

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

Revised 5/23/22

Appendix R  
NEW YORK STATE EDUCATION DEPARTMENT'S  
DATA PRIVACY APPENDIX FOR CONFIDENTIAL DATA  
ARTICLE I: DEFINITIONS

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

1. **Access:** The ability to view or otherwise obtain, but not copy or save, Personal Information arising from the on-site use of an information system or a personal meeting.
2. **Breach:** The unauthorized Access, acquisition, Disclosure or use of Personal Information in a manner not permitted by New York State and federal laws, rules and regulations, or in a manner that compromises its security or privacy, or by or to a person not authorized to acquire, Access, use, or receive it, or a Breach of Contractor's security that leads to the accidental or unlawful alteration, destruction, loss of, Access to or Disclosure of Personal Information.
3. **Disclose or Disclosure:** The intentional or unintentional communication, release, or transfer of Personal Information by any means, including oral, written, or electronic.
4. **Encrypt or Encryption:** The use of an algorithmic process to transform Personal Information into an unusable, unreadable, or indecipherable form in which there is a low probability of assigning meaning without use of a confidential process or key.
5. **NIST Cybersecurity Framework:** The U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1.
6. **Personal Information:** Information concerning a natural person which, because of name, number, personal mark, or another identifier, can be used to identify such natural person.
7. **Release:** Shall have the same meaning as Disclose.
8. **Services:** Services provided by Contractor pursuant to this contract with the NYS Education Department to which this DPA is attached and incorporated.
9. **Subcontractor:** Contractor's non-employee agents, consultants, volunteers including student interns, and/or any natural person or entity funded through this Contract who is engaged in the provision of Services pursuant to an agreement with or at the direction of the Contractor.

ARTICLE II: PRIVACY AND SECURITY OF PERSONAL INFORMATION

1. **Compliance with Law.**

When providing services pursuant to this Contract, Contractor may have Access to or receive disclosed Personal Information that is regulated by one or more New York and federal laws and regulations, among them, but not limited to, the Family Educational Rights and Privacy Act at

12 U.S.C. § 1232g (34 CFR Part 99); Children's Online Privacy Protection Act at 15 U.S.C. §§ 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment at 20 U.S.C. § 1232h (34 CFR Part 98); the Individuals with Disabilities Education Act at 20 U.S.C. § 1400 et seq. (34 CFR Part 300); the New York Education Law at § 2-d (8 NYCRR Part 121); the New York General Business Law at article 39-F, and the New York Personal Privacy Protection Law at Public Officers Law article 6-A. Contractor agrees to maintain the confidentiality and security of Personal Information in accordance with (a) applicable New York, federal and local laws, rules and regulations, and (b) NYSED's Data Privacy and Security Policy. Contractor further agrees that neither the services provided nor the manner in which such Services are provided shall violate New York, federal and/or local laws, rules and regulations, or NYSED's Data Privacy and Security Policy.

**2. Authorized Use.**

Contractor agrees and understands that it has no property, licensing or ownership rights or claims to Personal Information Accessed by or Disclosed to Contractor for the purpose of providing services, and Contractor must not use Personal Information for any purpose other than to provide the Services. Contractor will ensure that its Subcontractors agree and understand that neither the Subcontractor nor Contractor has any property, licensing or ownership rights or claims to Personal Information Accessed by or Disclosed to Subcontractor for the purpose of assisting Contractor in providing Services.

**3. Contractor's Data Privacy and Security Plan.**

Contractor shall adopt and maintain administrative, technical, and physical safeguards, measures, and controls to manage privacy and security risks and protect Personal Information in a manner that complies with New York State, federal and local laws, rules, and regulations and NYSED policies. Contractor shall provide NYSED with a Data Privacy and Security Plan that outlines such safeguards, measures, and controls to comply with (a) the terms of this DPA, (b) all applicable state, federal and local data privacy and security requirements and (c) [NYSED's Data Privacy and Security Policy](#). Contractor's Data Privacy and Security Plan is attached as DPA Exhibit 1.

**4. Right of Review and Audit.**

Upon NYSED's request, Contractor shall provide NYSED with copies of its policies and related procedures that pertain to the protection of Personal Information. In addition, Contractor may be required to undergo an audit of its privacy and security safeguards, measures and controls as it pertains to alignment with the requirements of New York State laws and regulations performed by an independent third party at Contractor's expense, and provide the audit report to NYSED. In lieu of performing an audit, Contractor may provide NYSED with an industry standard independent audit report on

Contractor's privacy and security practices that was issued no more than twelve months before the date NYSED informed contractor that it was required to undergo an audit.

**5. Contractor's Employees and Subcontractors.**

- (a) Contractor shall only provide Access or Disclose Personal Information to Contractor's employees and Subcontractors who need to know the Personal Information to provide the Services and the Access to or Disclosure of Personal Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
- (b) Contractor must ensure that each Subcontractor is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
- (c) Contractor shall examine the data privacy and security measures of its Subcontractors. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall: notify NYSED and remove such Subcontractor's Access to Personal Information; and, as applicable, retrieve all Personal Information received or stored by such Subcontractor and/or ensure that Personal Information has been securely deleted and destroyed in accordance with this DPA. In the event there is an incident in which Personal Information is unlawfully Accessed or Disclosed or compromised by Subcontractor, Contractor shall follow the Data Breach reporting requirements set forth in Section 9 of this DPA.
- (d) Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.
- (e) Other than Contractor's employees and Subcontractors who have a need to know the information, Contractor must not provide Access to or Disclose Personal Information to any other party unless such Disclosure is required by statute, court order or subpoena, and the Contractor notifies NYSED of the court order or subpoena no later than the time the information is Disclosed, in advance of compliance but in any case, provides notice to NYSED no later than the time the Personal Information is Disclosed, unless such disclosure to NYSED is expressly prohibited by the statute, court order or subpoena. Notification shall be made in accordance with the Notice provisions of this Contract and shall also be provided to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.
- (f) Contractor shall ensure that its Subcontractors know that they cannot provide Access to or Disclose Personal Information to any other party unless such Access or Disclosure is required by statute, court order or subpoena. If a



Subcontractor is required to provide Access to or Disclose Personal Information pursuant to a court order or subpoena, the Subcontractor shall, unless prohibited by statute, court order or subpoena, notify Contractor no later than two (2) days before any Personal Information is Accessed or Disclosed. Upon receipt of notice from a Subcontractor, Contractor shall provide notice to NYSED no later than the time that the Subcontractor is scheduled to provide Access or Disclose the Information.

**6. Training.**

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

**7. Data Return and Destruction of Data.**

- (a) Contractor is prohibited from retaining Disclosed Personal Information or continuing to Access Personal Information, including any copy, summary or extract of Personal Information, on any storage medium (including, without limitation, secure data centers and/or cloud-based facilities, and hard copies) beyond the term of this Contract unless such retention is either expressly authorized by this Contract, expressly requested in writing by NYSED for purposes of facilitating the transfer of Personal Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this Contract, Contractor shall transfer the Disclosed Personal Information to NYSED, in a format and manner agreed to by the Parties.
- (b) When the purpose that necessitated Contractor's Access to and/or Disclosure of Personal Information has been completed or Contractor's authority to have Access to Personal Information or retain Disclosed information has expired, Contractor shall ensure that all Personal Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) as well as any and all Personal Information maintained on behalf of Contractor in a secure data center and/or cloud-based facilities that remain in the possession of Contractor or its Subcontractors is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read or reconstructed. Hard copy media must be shredded or destroyed such that Personal Information cannot be read, or otherwise reconstructed, and electronic media must be cleared, purged, or destroyed such that the Personal Information cannot be retrieved. Only the destruction of paper Personal Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.

- (c) Contractor shall provide NYSED with a written certification of the secure deletion and/or destruction of Personal Information held by the Contractor or Subcontractors to this Contract at the address for notifications set forth in this Contract.
- (d) To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified Personal Information (i.e., Personal Information that has had all direct and indirect identifiers removed), Contractor agrees that neither it nor its Subcontractors will attempt to re-identify de-identified Personal Information and/or transfer de-identified Personal Information data to any person or entity, except as provided in subsection (a) of this section.

**8. Encryption.**

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

**9. Commercial or Marketing Use Prohibition.**

Contractor agrees that it will not sell, use, or Disclose Personal Information for a Commercial or Marketing Purpose and that it will contractually prohibit its Subcontractors from the same.

**10. Breach.**

Contractor shall promptly notify NYSED of any Breach of Personal Information, regardless of whether Contractor or Subcontractor suffered the Breach, without delay and in the most expedient way possible, but in no circumstance later than seven (7) calendar days after discovery of the Breach. Notifications shall be made in accordance with the notice provisions of this Contract and shall also be provide to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234 and must include a description of the Breach which includes the date of the incident and the date of discovery; the types of Personal Information affected, and the number of records affected; a description of Contractor's investigation; and the name of a point of contact.

**11. Cooperation with Investigations.**

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

**12. Notification to Individuals.**

Where a Breach of Personal Information occurs that is attributable to Contractor and/or its Subcontractors, Contractor shall pay for or promptly reimburse NYSED the full cost of NYSED's notification to the affected individuals, where applicable. NYSED will be reimbursed by Contractor within 30 days of a demand for payment under this section.

**13. Termination.**

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

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

NYSED has adopted the NIST Cybersecurity Framework as its' standard to protect Personal Information. For contracts where a Contractor may have access to Personal Information, the Contractor must complete the following or provide a plan that materially addresses its requirements, including alignment with the NIST Cybersecurity Framework, which is the standard for educational agency data privacy and security policies in New York state. **While this plan is not required to be posted to NYSED's website, contractors should nevertheless ensure that they do not include information that could compromise the security of their data and data systems.**

1. Outline how you will implement applicable data privacy and security contract requirements over the life of the Contract.
2. Specify the administrative, operational, and technical safeguards and practices that you have in place to protect Personal Information.
3. Address the training received by your employees and any Subcontractors engaged in the provision of services under this Contract on the federal and state laws that govern the confidentiality of Personal Information.
4. Outline contracting processes that ensure that your employees and any Subcontractors are bound by written agreement to the requirements of this Contract, at a minimum.
5. Specify how you will manage any data privacy and security incidents that implicate Personal Information and describe any specific plans you have in place to identify breaches and/or unauthorized disclosures, and to meet your obligations to report incidents to NYSED.
6. Describe how data will be transitioned to NYSED when no longer needed by you to meet your contractual obligations, if applicable.
7. Describe your secure destruction practices and how certification will be provided to NYSED.

8. Outline how your data privacy and security program/practices align with NYSED's Data Privacy and Security Policy.

**Attachment 1**

**Authorization VR-301**



VR-301 (12/20)

**THE UNIVERSITY OF THE STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT**

Office of Adult Career and Continuing Education Services - Vocational Rehabilitation  
(ACCES-VR)

**AUTHORIZATION FOR PURCHASE**

COUNSELOR NAME: \_\_\_\_\_ Authorization #: \_\_\_\_\_ Vendor Number: \_\_\_\_\_

Phone: \_\_\_\_\_ Authorized On: \_\_\_\_\_ Contract Number:  
SED01- -3300200

MAIL TO: \_\_\_\_\_ REMIT TO: \_\_\_\_\_  
|  
|

You are authorized to provide the following services to:

Participant Name: \_\_\_\_\_ Participant ID: \_\_\_\_\_

Address: \_\_\_\_\_

ITEM NUM	DESCRIPTION	BEGIN DATE	END DATE	UNITS	RATE	DOLLAR AMT	COMP AMT	PARTIC AMT	ADJUST AMT
1	850X Van Modifications	8/1/2022	1/8/2023	1.00	\$90,609.00	\$90,609.00	\$0.00	\$0.00	\$90,609.00
<b>Totals</b>						\$90,609.00			

**Special Instructions**

Vendor Copy - Keep For Your Records

