# REQUEST FOR PROPOSALS (RFP)

**RFP # 26-001**

**NEW YORK STATE EDUCATION DEPARTMENT**

## Title: Funding for Public High School Equivalency (HSE) Test Administration

The New York State Education Department (NYSED) High School Equivalency (HSE) office is seeking proposals for the Funding for Public High School Equivalency (HSE) Test Administration i.e., descriptive applications that respond to the questions asked, from approved HSE test centers that seek to receive reimbursement for administering the state’s HSE exam. The terms - proposal and application - will be used interchangeably throughout this request for proposals (RFP).

The HSE exam, which is the GED® Test, is provided to age-eligible state residents at approved HSE test centers. NYSED contracts with GED Testing Service (GEDTS) for the development, delivery and scoring of the GED. While there is no charge to test takers, there are limitations on how frequently individual subject tests can be repeated if failed. To be eligible to apply for test reimbursement under this RFP, HSE test centers must be delivering the GED to eligible state residents in public settings and approved alternate sites.

The goal of this RFP is to allocate and distribute public funds to not-for-profit test centers, i.e., approved vendors that administer the HSE exam to the public. The funding distributed under this RFP may not fully compensate all test centers administering the GED Test but rather will at least partially support the cost of testing. Most vendors dedicate additional agency resources to HSE testing that align with their organizational mission. All vendors are either educational institutions, including school districts, BOCES, and colleges, or community agencies. The list of eligible applicants can be found in the *Official Public HSE Test Center Eligibility Criteria*section of this RFP**.**

The contract period is January 1, 2026 through December 31, 2028.

The test center should calculate an informed projection of testing to be delivered over the next three-year contract period based on the current frequency and quantity of testing. Alternate additional sites may be included such as testing provided in alternate (secure) settings by public HSE test centers.

The Regional Adult Education Network (RAEN) will serve as the statewide system for organizing test centers and distributing reimbursement funds allocated for delivering the GED Test. There are seven geographic regions of the state represented by the RAENs: New York City, Long Island, Hudson Valley, Capital/North Country, Central/Southern Tier, Finger Lakes, and West.

Public test centers must be located within the geographic boundaries of the RAEN under which they are applying. NYSED will award at least one contract(s) within each RAEN pursuant to this RFP. The contract(s) resulting from this RFP will be for a three-calendar year period, anticipated to begin January 1, 2026, and continue through December 31, 2028. Contracts awarded will be for the purpose of reimbursing test centers for administering the GED to the public and may include additional alternate approved public, private, or correctional sites that operate under the same organization as the main testing site described in the proposal. Contract amounts awarded will be commensurate with the demonstrated need for public testing as conveyed by prior public testing delivered. Preference will be given to test centers that deliver the GED utilizing computer-based testing (CBT). Paper-based testing (PBT) is largely reserved for incarcerated settings where CBT cannot be provided or as an approved testing accommodation. Only test centers that offer CBT may apply to this RFP. Test centers that deliver PBT only are not eligible to apply. There is no subcontracting allowed under this RFP.

NYSED will award multiplecontracts pursuant to this RFP. The contracts resulting from this RFP will be for a term anticipated to begin January 1, 2026 and to end December 31, 2028.

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

**Components contained in RFP #26-001** **are as follows:**

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

Questions regarding the request must be submitted via [online form](https://nysedcau.highq.com/nysedcau/renderSmartForm.action?formId=c2735f64-7a7b-491c-be2a-bffafe815ad4) no later than the close of business May 23, 2025. A Questions and Answers Summary will be posted to [NYSED’s Procurement website](https://www.acces.nysed.gov/procurement) no later than June 6, 2025. The following are the designated contacts for this procurement:

Program Matters: Ruth Singer

Fiscal Matters: Tara Wildove

Bidders are requested to submit their bids electronically. The following documents, as detailed in the Submission section of this RFP, must be received via [online form](https://nysedcau.highq.com/nysedcau/renderSmartForm.action?formId=663e254e-7122-4150-9b89-4eb7e1220253) no later than **June 27, 2025**:

1. Submission Documents labeled **<name of bidder>** **Submission Documents RFP 26-001**
2. Technical Proposal labeled **<name of bidder>** **Technical Proposal RFP 26-001**

Instructions for Submitting an Electronic Bid:

1. The technical proposal documents should be submitted in Microsoft Office. PDF files that are editable and Optical Character Recognition (OCR) searchable are acceptable. Please do not submit the technical proposal as a scanned PDF.
2. Submission documents requiring a signature must be signed using one of the methods listed below and may be submitted as a Microsoft Office, PDF, or JPG document. A scanned PDF is acceptable for these documents.
3. The following forms of e-signatures are acceptable:
   1. handwritten signatures on faxed or scanned documents
   2. e-signatures that have been authenticated by a third-party digital software, such as DocuSign and Adobe Sign
   3. stored copies of the images of signatures that are placed on a document by copying and pasting or otherwise inserting them into the documents
4. Unacceptable forms of e-signatures include:
   1. a typed name, including a signature created by selecting a script or calligraphy font for the typed name of the person “signing”
5. To identify the signer and indicate that the signer understood and intended to agree to the terms of the signed document, the signer will sign beside or provide by email the following attestation: “I agree, and it is my intent, to sign this document by <describe the signature solution used> and by electronically submitting this document to <name of recipient individual or entity>. I understand that my signing and submitting this document is the legal equivalent of having placed my handwritten signature on the submitted document and this attestation. I understand and agree that by electronically signing and submitting this document I am affirming to the truth of the information contained therein.”
6. To ensure receipt of your bid, please ensure that the RFP number and title listed on page 1 are accurately entered into the fields “Procurement No” and “Procurement Title/Name” on the [online form](https://nysedcau.highq.com/nysedcau/renderSmartForm.action?formId=663e254e-7122-4150-9b89-4eb7e1220253). Failure to include this information may result in the bid not being received by the deadline or considered for award.

## 1.) Description of Services to be Performed

### Work Statement and Specifications

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

**Mandatory Requirements**

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

All NYSED HSE Test Centers must be approved to administer the GED® Test, as outlined by the NYSED High School Equivalency Office and GEDTS/Pearson VUE prior to submitting a proposal in response to this RFP:

1. [Information for Entities Seeking Approval to Become a NYS HSE Test Center](http://www.acces.nysed.gov/hse/information-entities-seeking-approval-become-tasc-test-center)

1. [GEDTS Become a Test Center](https://ged.com/educators_admins/test_admin/become_a_center/)

### Background

**Overview of the NYS HSE Exam and Test Delivery**

NYSED contracts for the development, delivery and scoring of the state’s HSE exam and approves HSE test centers to engage with the test vendor to administer the exams. NYSED contracted with GED Testing Service (GEDTS) to deliver the GED® Test beginning in January 2022. Prior to readopting the GED Test -- a paper-based version of the GED was used from the 1940s through 2013 -- the Test Assessing Secondary Completion (TASC) served as the state’s HSE exam from 2014-2021, when it was discontinued by the vendor.

The GED Test comprises four subject tests: Reasoning Through Language Arts (RLA), i.e., reading and writing; Mathematical Reasoning; Science; and Social Studies. All subject tests are available in English and Spanish; however, the RLA must be taken and passed in English for the HSE diploma to be issued with an English language designation.

The GED is administered in 43 states and internationally and provides a normed and standardized exam that assesses the academic skills and knowledge typically acquired during a four-year high school education program in New York State. Pearson VUE is the contracted vendor for GEDTS that delivers CBT. GEDTS oversees all aspects of PBT. PBT is primarily used in correctional settings where test takers are incarcerated and cannot access computers. Test takers with disabilities who seek testing accommodations may also be eligible for PBT but must apply for and submit the required documentation when requesting PBT as an approved accommodation.

The TASC comprised five subject tests -- Reading; Writing; Mathematics; Science; and Social Studies. Passing scores on TASC subject tests, and passing GED scores from 2002 – 2013, can be used toward meeting HSE diploma requirements. If only the TASC reading or writing was taken and passed, the RLA must be taken, as it comprises both reading and writing.

The number of TASC subject tests delivered in 2019 is used as a proxy for calculating the approximate number of subject tests required when full implementation of GED testing has been achieved. In 2019, HSE testing was fully implemented prior to the shuttering of test centers during the COVID pandemic in 2020-21. The TASC was subsequently discontinued in December of 2021. To account for the reduction in the number of subject tests comprising a full battery -- five with the TASC and four for the GED -- the number of subject tests eligible for funding under this RFP is calculated at 80 percent of comparable subject tests delivered in 2019. This data is presented in Chart 1.

Public test centers post CBT appointments using the Pearson VUE online scheduling system. As noted, PBT is primarily limited to correctional settings and as an option for an approved testing accommodation. As there were major technology changes needed to switch from the TASC to the GED, many test centers encountered significant challenges during the transition. The challenge was especially acute because the majority of TASC subject tests were delivered through PBT. Only test centers that administer the GED to the public using CBT as their delivery mode are eligible to apply for this RFP. Agencies which only provide PBT to the public are not eligible to apply.

**Official Public HSE Test Center Eligibility Criteria**

NYSED approved HSE test centers operate in public or non-public settings, including school districts; Boards of Cooperative Educational Services (BOCES); community colleges; community-based organizations (CBO); juvenile secure settings; county jails; and state prisons. These entities serve as HSE test centers with the approval of NYSED HSE office and GEDTS/Pearson VUE. This RFP is only applicable to CBT approved test centers serving the public at no cost to the test taker.

The entities listed below are eligible to apply to this RFP if they are approved by Pearson VUE to operate public CBT sites. Their applications may also include a request for reimbursement for testing delivered at approved private sites, such as county jails and/or other private mobile testing sites; however, private testing cannot account for more than 25 percent of total test delivery. Any additional sites approved during the duration of the contract will not increase the original award amount or public testing requirement. Further, while there may be a need for a public CBT site to occasionally deliver PBT in a private setting, test centers that deliver public PBT only are not eligible to apply to this RFP.

1. School districts
2. BOCES
3. Community-Based Organizations (CBO)
4. Literacy programs
5. Not-for-profit organizations, including post-secondary educational institutions
6. Educational Opportunity Centers (EOC)
7. Libraries
8. Public housing authorities
9. Other non-profit agencies and organizations.

**Test Center Operating Requirements**

Only test centers approved by the NYSED HSE Office, and which comply with GEDTS and Pearson VUE training and implementation requirements, may administer the GED Test.

* NYSED information on becoming an HSE test center: [Information for Entities Seeking Approval to Become a NYS HSE Test Center](http://www.acces.nysed.gov/hse/information-entities-seeking-approval-become-tasc-test-center)
* GEDTS/Pearson VUE information on certification to administer the GED: [Become a Test Center](https://ged.com/educators_admins/test_admin/become_a_center/)

NYSED requires specific assurances that HSE test centers comply with the Americans with Disabilities Act (ADA) of 1990 as demonstrated through documented support identified in the Pearson VUE test center facility requirements.

**Suitable Physical Facilities**

Test centers must have their physical facilities and technical specifications approved by GEDTS and/or Pearson VUE prior to administering the GED. Test centers are responsible for maintaining the management and oversight of a high-quality testing program that ensures access for all qualified testing candidates, including those with approved testing accommodations, and maintains the integrity of the GED Test and its administration. The enacted *Pearson VUE Authorized Test Center Agreement affirms* test centers’ willingness and ability to meet requirements and comply with stated policies.

* Quiet, clean, climate-controlled, well-lit testing room(s).
* Convenient location for test takers, ideally accessible using public transportation.
* Restrooms with working plumbing (toilets and sinks) located near testing room(s).
* Approved computer workstations appropriate for adults, with adequate spaced seating and enough room for test takers to work.
* Accessibility for test takers with physical or other disabilities.
* An environment free of distractions/interruptions, i.e., electronic devices, external noise.
* No disruptive activities such as concerts, ballgames, etc. should be occurring near the site while the test is being administered. The corridors should not be busy with people traffic.

Test centers providing CBT testing to the public must post their appointments online using Pearson VUE’s scheduling system. Public test centers may also be reimbursed for delivering testing at approved additional private sites, including mobile testing sites and county jails. Bidding organizations which only operate PBT sites are not eligible to apply for reimbursement under this contract.

### Project Description

It is a NYSED priority to ensure that public HSE testing is available throughout the state. The projected distribution of annual funding for test center reimbursement was calculated using a statewide structure for delivering adult education services through the Regional Adult Education Network (RAEN).

There are seven RAENs: Capital/North Country; Central/Southern Tier; Finger Lakes; West; Long Island; Hudson Valley; and New York City. Applications for this RFP should be submitted based on the test center’s location within the RAEN as Figure 1 below delineates. Applicants should also identify the county within the designated RAEN where the test center is located. NYSED may award multiple test center contracts within a single RAEN, depending on the need. If applicants have test centers in an area served by more than one RAEN, they must apply separately for sites located within each RAEN. Figure 1 also delineates the counties within the geographic area of each RAEN, as well as each of the five counties within New York City. The funds allocated to the RAENs are demonstrated in Chart 1.

**Figure 1: NYSED Regional Adult Education Networks (RAEN) by County**RAEN Map


If multiple applications are received for the same RAEN, proposals will be rank ordered according to their scores on the evaluation rubric and awards will be made to the highest scoring applicants, proportionate to the proposed amount of testing to be delivered as evidenced by responses in the technical proposal and historical testing data.

NYSED reserves the right to shift funds among the RAENs, if the proposals submitted do not fully encompass the totality of the funds projected for that RAEN. Refer to Method of Award for more information.

As was previously explained, TASC subtest delivery data from 2019 was used as a proxy for equating an approximate number of GED subject tests needed. There were 133,636 TASC subtests delivered in 2019 and using an 80 percent multiplier, this equates to about 106,908 GED subject tests. Of these, 85,891 subtests were delivered at sites eligible for reimbursement, i.e., serving the public. The percentage of subject tests delivered by RAEN was used to determine available funding if the annual allocation remains at $1,650,000. Chart 1 shows the distribution of the subject tests eligible for reimbursement.

**Chart 1: HSE Subject Tests Eligible for Public Test Center Reimbursement by Geographic Area of the Regional Adult Education Network (RAEN)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Geographic Region - RAEN** | **# Subject Tests Eligible for Reimbursement by RAEN** | **% of Statewide Subject Tests Eligible for Reimbursement by RAEN** | **Funds Available to Support HSE Testing**  **by RAEN** |
| Capital/North Country | 4,712 | 5.49% | $90,585 |
| Central/Southern Tier | 5,538 | 6.45% | $106,425 |
| Finger Lakes | 2,962 | 3.45% | $56,760 |
| Hudson Valley | 5,907 | 6.88% | $113,520 |
| Long Island | 5,018 | 5.84% | $96,360 |
| New York City | 57,084\* | 66.46% | $1,096,590\* |
| West | 4,670 | 5.44% | $89,760 |
| TOTAL | 85,891\*\* | 100% | $1,650,000 |
| \*Detail for NYC by County (from chart above) | | | |
| Bronx | 7,501 | 14.96% | $164,050 |
| Kings | 20,527 | 33.09% | $362,862 |
| New York | 12,960 | 21.59% | $236,754 |
| Queens | 14,581 | 28.02% | $307,264 |
| Richmond | 1,515 | 2.34% | $25,660 |
| TOTAL (NYC) | 57,084 | 100% | $1,096,590 |
|  | | | |
| \*\*NYSED utilized testing volume from 2019 to calculate these values as this was the most recent testing year where testing capacity was maximized. In 2019 a full battery included 5 subtests, currently a full battery includes 4 subtests, for this reason the NYSED HSE Office applied a coefficient of ".8" to the total number of subtests provided to account for this discrepancy. Testing provided in DOCCS and other private settings was deducted as state incarcerated facilities do not serve the public which is a condition of this RFP. There were 107,364 subject tests eligible for reimbursement, 107,364 x .80 = 85,891, the approximate number of subject tests that may be eligible for reimbursement. | | | |

### Test Center Reimbursement: Payment and Reports

Test centers awarded a contract may submit for reimbursement for subject tests at the rates shown below. There will be a $15 reimbursement rate for each subject test delivered to a test taker regardless of the subtest or length of the exam. Test centers will also be reimbursed at an adjusted rate if candidates are approved for additional time through GEDTS accommodations.

Test centers must adhere to the number of seats permitted in the approved testing room(s) and comply with the minimum mandated staff to test taker ratio of 1:15. As testing appointments continue to be needed across that state, it is an expectation that test centers try to maximize the number of subject tests scheduled and available to the public.

Most public test centers typically see an attendance rate of approximately 75%. To assist in offsetting administrative costs associated with this (lack of) attendance issue, test centers may submit for a $5 reimbursement for subject tests designated as “No Shows” in the GED online system. A “No-Show” is defined as a test taker who either does not show for their scheduled appointment or does not cancel their test within 24-hour of their scheduled appointment. No-show appointments are clearly defined on the student activity report within GED Manager and must be included in the required reporting submitted to NYSED. This reporting is further defined below under the Contract Funding Reimbursement Process.

Finally, an additional daily operational fee of $80 will be provided for test events with eight or fewer subtests delivered during a single day. This supplemental daily operational rate will assist small and rural test centers, including mobile testing, and approved accommodations testing in a limited setting. The $80 daily rate will only be available to test centers that offer GED testing exclusively. It is not available to Pearson VUE sites that offer multiple types of exams in addition to the GED test, unless testing with accommodations results in this configuration.

|  |  |
| --- | --- |
| **Reimbursement Rates** |  |
| Standard Subject Test Delivery | $            15.00 |
| X1.25 Additional Time Accommodation | $            18.75 |
| X1.5 Additional Time Accommodation | $            22.50 |
| X2.0 Additional Time Accommodation | $            30.00 |
| Subtest Test Rate for No Show | $              5.00 |
| Daily Operational Rate (for 8 or fewer subject tests delivered) | $            80.00 |

**Contract Funding Reimbursement Process**

Test centers must adhere to the following detailed procedures when submitting for test administration reimbursement.

* Maintain detailed records of monthly testing activity. All test center coordinators must have a GED Manager account to run summary rosters. The “Student Activity Report” in GED Manager will be used to create test taker summary reports for justifying reimbursement requests. Summary rosters must be prepared and submitted in concert with a standard voucher. The standard voucher serves as the official invoice for requesting reimbursement for test administration.
* Forms and instructions for submitting documents digitally can be found on the [NYSED HSE website](https://www.acces.nysed.gov/hse/test-center-forms).
* Test taker summary rosters and standard vouchers are submitted electronically to the NYSED HSE office. Test center coordinators, and/or their designee(s), will be provided a designated link to access a secure SharePoint submission site using the submitter’s professional email, with access provisioned through the [HSETC@NYSED.GOV](mailto:HSETC@NYSED.GOV) inbox.
* Submit summary roster and standard voucher within 30 days after the end of any month when/if at least one test administration occurred. Payment for invoices not submitted in a timely manner will be delayed and may not be reimbursed.
* Reimbursement requests, as described above, received more than 90 days after the end of the contract year, i.e., calendar year, will not be processed.

**Qualifications of the Test Center Staff and Staffing Ratios**

Test center staff must be approved by the NYSED HSE office prior to engaging with GEDTS and Pearson VUE. Please see: [Test Center Staff Appointment Form](http://www.acces.nysed.gov/common/acces/files/hse/staffappointmentform.pdf)

A Test Center Coordinator must be employed for each setting. This position is responsible for overseeing the program and serving as the program lead, i.e., primary contact, signs the legal contract with Pearson VUE and/or GEDTS, and is certified to deliver the GED Test. A minimum of a four-year degree is required by NYSED. The title used for this position by Pearson VUE is Chief Test Administrator, and it is called, Chief Examiner by GEDTS.

In addition to the Test Center Coordinator, Test Center Examiner/s must also be approved by the NYSED HSE office, GEDTS and Pearson VUE, to deliver the GED. While the maximum ratio of test takers to staff is 15:1, it is advisable to have more than one approved staff administering exams as unforeseen situations can occur. If test centers cannot accommodate 15 test takers in a single setting, the ratio of test takers to staff would be lower, whereas additional staff are required for more than 15 test takers.

It is a conflict of interest for adult education preparation program staff who work directly with students preparing for the GED to also administer the test.

**Staff Changes**

The contractor will seek to 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. A staff appointment form can be found at: [Test Center Staff Appointment Form](http://www.acces.nysed.gov/common/acces/files/hse/staffappointmentform.pdf)

**Full Testing Support Services**

The following measures should be implemented:

* Provide testing support services to all test takers.
* Offer convenient testing schedules that are frequent enough to meet community needs.
* Have an established emergency plan for handling any testing interruptions and irregularities.
* Provide information, guidance, and services regarding testing accommodations approved by GEDTS.
* Advise and support candidates to make informed decisions about testing, remediation, and transitioning to post-secondary education.
* Demonstrate a commitment to the value of the HSE testing program.
* Keep detailed records.

**Test Security and Document Submission**

Test centers are required to maintain compliance with all NYSED HSE office and GEDTS and Pearson VUE policies and practices, including submitting testing rosters to the HSE Office, as instructed. The following measures should be taken:

* Establish a clear process by which the test center will engage with GEDTS and Pearson VUE
* Fully comply with all policies outlined in the [PVTC Technical Requirements](https://home.pearsonvue.com/Documents/Test-center/__utma=50386879.1969982360.1505497528.1514905970.1514914785.32&__utmb=50386879.10.10.1514914785&__utmc=50386879&__utmx=-&__utmz)
* Comply with process for submitting the test taker summary rosters to the HSE office through a secure digital upload.
* Fully cooperate with GEDTS, Pearson VUE and NYSED in any instances of test irregularity or where testing integrity was compromised.

**Scheduling**

The following measures should be implemented:

* The testing schedule will meet the needs of the local community.
* The test center will post all public testing appointments through the Pearson VUE scheduling system.
* The test center may be asked to post additional appointments to meet demand.
* Schedules should be posted by the 15th of the month prior to testing to allow test takers time to prepare for their appointments.
* Posting test dates two to three months in advance is advantageous for planning purposes.
* Test centers must provide accommodations approved and requested by GEDTS. They must provide reasonable justification if they are not able to deliver the accommodation.
* The time frame during which the test center is open for testing must be sufficient to allow for standard and extended time testing, if approved as an accommodation.

Testing appointments posted throughout the three-year contract period should reflect the testing proposed in this application. Specifically, the frequency of testing, the number of sessions per year and days and times scheduled. Test centers should inform the HSE Office of any circumstances that would considerably modify the amount of scheduled testing. If test centers opt to provide more testing than funds awarded under this contract permit, they are encouraged to do so using alternate funds.

**Population to be Served and Age Eligibility of Testing Applicants**

The NYSED regulatory requirements for test taker residency and age eligibility can be found [here](https://www.acces.nysed.gov/hse/eligibility-requirements-take-ged%C2%AE-test).

Candidates under age 19 must demonstrate their age eligibility to test prior to being approved to take the GED. Specifically, test takers must have met Maximum Compulsory School Attendance Age (MCSAA) prior to testing. MCSSA is reached on July 1st of the school year immediately following the year during which a student can legally withdraw from school. Education Law section 3205 (3) authorizes the board of education to determine the MCSAA for their school district as either 16 or 17 years of age.

Alternative High School Equivalency Preparation (AHSEP) Programs, which serve students up to age 22, are approved annually by the NYSED Student Support Services office. AHSEP Programs are operated by public schools, BOCES or the NYS Office of Children and Family Services on behalf of age eligible students in secure settings. A student’s enrollment in an AHSEP program (referred to as the Options program by GEDTS) must have their program enrollment and age eligibility to test affirmed by the AHSEP Program Manager in the student’s account using GED Manager.

A test taker under age 19, who is not enrolled in an AHSEP Program, will access the required age eligibility form when they create their GED account. The form must be printed, completed, and mailed to the NYSED HSE office, as per the instructions of the form.

Test takers may require support in registering for the GED, scheduling their exams, and physically getting to the test center. The HSE population of test takers includes those needing public transportation to access the test center, as well as those who need supplemental services, such as help in arranging childcare and/or working through other obstacles to be available to test.

**Administration of the GED in Spanish**

Test takers will have the option of scheduling their GED in English or Spanish during the test scheduling process. Geographic regions with a high percentage of Spanish speaking candidates may have a need to deliver the GED in Spanish. It is preferred, but not required, that test center staff have Spanish proficiency when administering tests in Spanish.

Passing subject tests in Spanish will result in an HSE diploma being issued with a Spanish language designation. The RLA subject test must be taken and passed in English for the HSE diploma to be issued with an English language designation.

**Testing Accommodations for Individuals with Disabilities**

As the state’s HSE exam vendor, GEDTS is responsible for reviewing, approving, and ensuring the delivery of testing accommodations for applicants with a physical, mental, sensory, and/or cognitive disability or impairment that affects their ability to take the GED under standard conditions.

Candidates are responsible for submitting testing accommodation requests, accompanied by the appropriate documentation of their disability(ies) from a qualified professional, through the online GED registration system. GEDTS endeavors to fully comply with federal and applicable state laws providing protection to individuals with disabilities including the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act of 2008 and is committed to supporting full access to the GED for individuals with disabilities who request testing accommodations.

The GED Test design includes accessible formats and allowable resources and provides the assistive technology needed by test takers approved for these accommodations. Approved testing accommodations provided to candidates include, but are not limited to:

1. Extended testing time, e.g., 25%, 50%, or 100% additional time (reflected in reimbursement)
2. Extra breaks
3. A paper version of the test for examinees approved for paper-based testing (PBT)
4. An audio version of the test – provided through Jobs Access with Speech (JAWS) screen reading technology integrated into the computer test driver
5. Presentation in an appropriate font size as determined by the examinee using a Zoom Text
6. Braille
7. Talking calculator for visually impaired test takers provided by GEDTS, upon request
8. Sign language interpreter
9. Separate room where documentation supports the need, not only quiet, small group setting

Some accommodations requests are classroom management techniques for effective test delivery. Specifically, repeating and/or rewording test directions for clarity is good practice, but not an accommodation.

Also, the required 15:1 test taker to staff ratio and quiet setting constitutes a small group test environment. A separate testing room will not be approved if a quiet setting and small group are requested.

However, a scribe and/or reader can be approved if a physical condition prohibits the test taker from reading or responding to questions on their own. In a case where a separate, private room is required the arrangement for the approved accommodation will be coordinated by the GEDTS Accommodations Team, in concert with the test taker and the test center.

### Requirements of Education Law Section 2-d

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

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 RFP, the terms of which are incorporated herein by reference, and shall also be part of the Contract.

### Accessibility of Web-Based Information and Applications

Any documents, web-based information and applications, or programming delivered pursuant to this contract or procurement, will comply with New York State Education Department Web Accessibility Policy, [NYSED-WEBACC-001](https://www.nysed.gov/webaccess/nysed-web-accessibility-policy), as such policy may be amended, modified or superseded. The policy 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](https://www.nysed.gov/webaccess/nysed-web-accessibility-policy) as determined by quality assurance testing. Such quality assurance testing will be conducted by a NYSED employee or contractor, and the results of such testing must be satisfactory to NYSED before web-based information and applications will be considered an acceptable deliverable under the contract or procurement.

### Contract Period

NYSED will award multiple contracts pursuant to this RFP. The contracts resulting from this RFP will be for a term anticipated to begin January 1, 2026 and to end December 31, 2028.

### 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 this proposal

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

### Project Submission

The proposal submitted in response to this RFP must include the following documents submitted via the [online form](https://nysedcau.highq.com/nysedcau/renderSmartForm.action?formId=663e254e-7122-4150-9b89-4eb7e1220253) in Microsoft Office or editable PDF per the electronic proposal submission procedures outlined above, preferably with each of the following sets of documents uploaded as a single file:

1. Submission Documents/Certifications bearing signatures

2. Technical Proposal/Narrative and Workplan

**The proposal must be received by the due date.**

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

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

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

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

### Technical Proposal (100 points)

The completed Technical Proposal should be labeled **<name of bidder>** **Technical Proposal – RFP 26-001** and include the following:

**a) HSE Test Center Location(s)** **and Support Services………...………… 5 points**

* Identify the RAEN in which the applicant will operate a test center or test centers. Provide the names and GEDTS Test Center ID and addresses for each public HSE test center and any additional alternate approved sites.
* Provide a description of the test center’s support services to test takers which address adherence to required criteria outlined under “Full Testing Support Services.”

**b) Program Coordination……………………………………………………...20 points**

Describe how the applicant will establish, or has established, a connection with the community it serves, including local HSE test preparation programs located within the RAEN.

* Describe how the HSE test center(s) will share and/or advertise information about HSE testing to the public within the RAEN.
* Describe the test taker that your test center will primarily serve, Include specific student populations. Additionally, include any prep programs that will regularly refer candidates to your test center(s).
* Describe the test center’s ability to provide reasonable accommodations approved by GEDTS in terms of staff, space, and time.
* Does the test center have the capacity to accommodate a one-to-one separate testing room?

**c) Computer-Based Testing …………………………………………….……15 points**

* How many computers are approved for administering the GED Test at one time?
* Is your test center currently working at your organization’s intended full capacity? If not, describe plans to increase the volume of CBT testing and include additional computer hardware required and staffing capacity.
* What percentage of your testing do you anticipate will be available to the general public?

**d) Supplemental Services………………………………………………………5 points**

* For each test center identified in (a) above, describe the sites’ public transportation access. Include the approximate distance of test center(s) from public transportation access points.
* Describe any supplemental services, including bilingual staff, referral for childcare, transportation, test preparation, etc.
* What measures will be taken to try and prevent “No Shows?”

**e)** **HSE Test Center Staff and Test Administration Experience………….20 points**

* Provide a list of all staff who are approved to deliver testing by NYSED and certified to administer the GED Test by GEDTS and/or Pearson VUE. Include the position held by each staff member, their email address, and the date of their last NYSED HSE required annual training.
* Have all staff who assist in delivering the GED completed all required trainings and assessments by NYSED HSE office, Pearson VUE (for CBT) and GEDTS (PBT for alternate secure settings)?
* Include a plan that ensures the minimum staff to test taker ratio (1:15) will be maintained during test administration. Include the applicant’s ability to provide technical support during CBT administration.
* Identify the staff person, including their name, title, and email address, within your organization who will be signing the NYS Standard Voucher which will be required for reimbursement.

**f) Availability and Frequency of Testing…………………………………….20 points**

* Provide a schedule of proposed CBT subject tests to be offered during 2026 and projections for the two subsequent contract years for all public test centers, if anticipated testing for 2027 and 2008 varies substantially from 2026. The schedule must include the number of days each month that testing will be delivered and the anticipated hours for each date of testing.
* Is testing offered weekly?
* Is testing offered at least 2x per month?
* Is testing offered evenings, at least once per quarter (6 pm – 11 pm)?
* Is weekend testing offered at least once per quarter?

**g) Award Calculation Information Included………...………10 points**

The information requested below will be used to determine the amount of the financial award that each eligible proposal will receive. The amount of the award will reflect the maximum number of subject tests to be administered during each calendar year, based on the size of the testing center as well as the availability and frequency of test delivery.

Proposals must respond to all fields below to ensure the financial award for test reimbursement adequately addresses a testing center’s anticipated test delivery. NYSED reserves the right to base the financial award on the quantity of historical testing in each RAEN, if the proposal does not adequately substantiate the need for funds through the responses provided in the charts below.

* If your test center was fully operational in quarter 4 of 2024 and/or quarter 1 of 2025, please utilize GED Manager to confirm the number of subject tests delivered. Proposals which operate multiple CBT sites should provide total subtests delivered for each site.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Test Center Number(s): |  | Subtest Total: |  |  |

* Provide an estimate of the total number of CBT subject tests to be delivered for each of the funded calendar years that the RFP encompasses. This information should be consistent with the data conveyed in the bullet above, otherwise you will have the opportunity to explain this discrepancy below. Provide anticipated totals for all CBT test centers that are operational.

|  |  |
| --- | --- |
| 2026 |  |
| 2027 |  |
| 2028 |  |

* Provide projected values as justification for the total number of subject tests proposed. **Submit a separate chart for each approved CBT site and indicate the site name and number on each chart.**

|  |  |
| --- | --- |
| **Test Center Site Name and Number:** | |
| Number of computers available for testing approved by Pearson VUE for test delivery |  |
| Maximum number of hours that testing will be offered per month |  |
| Number of months per year that testing will be offered |  |
| Total number of dates within the first calendar year that testing will be delivered. |  |
| Is your test center a Pearson VUE test center\* that offers other exams, or a GED only test center? If other exams are offered, how many in total? |  |
| Estimate the percentage of total test events (a test event is one day) that will serve 8 or fewer subject tests. |  |

\*Pearson VUE test centers which are not GED only test centers will not be awarded a financial award based on their overall testing capacity and availability. The calculation of award will be based on all other responses, including anticipated subtest delivery and historical test delivery.

* If the number of anticipated subject tests to be delivered in 2026 differs considerably from 2027 and 2028, explain why.
* If the proposed number of subject tests to be delivered in 2026 - 2028 varies significantly from historical year’s testing, explain the discrepancy.
* For test centers approved to deliver PBT testing in additional sites, i.e., secure settings, how many PBT subject tests do you anticipate delivering during the first calendar year of the contract?

**h) Test Security and Document Submission****………………………………5 points**

* Explain how the test center effectively engages with Pearson VUE (CBT) and/or GEDTS (PBT for additional sites/secure settings).
* Describe how the test center will address any instances of test irregularity or address situations where testing integrity is compromised.
* The HSE Office requires a secure digital submission. Confirm your ability to safely store and submit digital 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 will be selected. This will be followed by various terms and conditions that reflect the specific needs of this project as well as New York State contract guidelines and requirements.

### Criteria for Evaluating Bids

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

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

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

**Technical Criteria (100 Points)**

1. **HSE Test Center(s) Location and Support Services.…………….…......................…5 points**

**b) Program Coordination…………………………………………………….........................20 points**

**c) Computer-Based Testing……………………………………………………....................15 points**

**d) Supplemental Services………………………………………………….…........................5 points**

**e) HSE Test Center Staff and Test Administration Experience……….…....................20 points**

**f) Availability and Frequency of Testing………………………………….....................…20 points**

**g)** **Award Calculation Information…………………………………….…...........................10 points**

**h) Test Security and Document Submission…………………………………....................5 points**

### Method of Award

The Technical Proposal submitted in support of the application will be evaluated and rated by a review team according to the criteria listed above. The amount of the award will reflect the maximum number of subject tests to be administered during each calendar year, as well as the availability and frequency of test delivery. All proposals will be allocated an additional 10% of their calculated award, to account for the delivery of accommodation testing.

The review team will calculate an average score as the final proposal score. Applicants within the same RAEN, or NYC county, will be rank ordered by their final score with funds awarded to the highest scoring applicants commensurate with the amount of testing proposed to be delivered or the amount of HSE testing delivered historically if there is a significant difference and discrepancies are not fully explained and justified. While it is anticipated that proposed testing will be equal to or greater than historical testing, the review team will factor large discrepancies into their final scores.

If after all eligible proposals have been proportionately awarded funds and the preliminary distribution of projected awards in the RAEN or NYC county includes unallocated funds, excess funds will be pooled and redistributed to other geographic regions if/where projected awards exhaust available funds. All pooled funds will be redistributed proportionally based on the percent of subject tests delivered, as conveyed in Chart 1. NYSED may exercise the option to proportionally reallocate funds to other geographic regions where eligible awards, based on the quantity and availability of testing, could not be fully funded.

### NYSED’s Reservation of Rights

NYSED reserves the right to: (1) reject any or all proposals received in response to the RFP; (2) withdraw the RFP at any time, at the agency’s sole discretion; (3) make an award under the RFP in whole or in part; (4) disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP; (5) seek clarifications of proposals; (6) use proposal information obtained through site visits, management interviews and the state’s investigation of a bidder’s qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency’s request for clarifying information in the course of evaluation and/or selection under the RFP; (7) prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available; (8) prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments; (9) change any of the scheduled dates; (10) waive any requirements that are not material; (11) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (12) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; (13) utilize any and all ideas submitted in the proposals received; (14) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening; (15) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer’s proposal and/or to determine an offerer’s compliance with the requirements of the solicitation; (16) request best and final offers.

### Post Selection Procedures

Upon selection, the successful bidders will receive a proposed contract from NYSED. The contents of this RFP, any subsequent correspondence during the proposal evaluation period, and such other stipulations as agreed upon may be made a part of the final contract prepared by NYSED. Successful bidders may be subject to audit and should ensure that adequate controls are in place to document the allowable activities and expenditure of State funds.

### Debriefing Procedures

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

1. All unsuccessful bidders may request a debriefing within fifteen (15) calendar days of receiving notice from NYSED of non-award. Bidders may submit a request for debriefing through the [online form](https://nysedcau.highq.com/nysedcau/renderSmartForm.action?formId=cd414bce-5822-4744-91df-d4f321cb4d3b).
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 via [online form](https://nysedcau.highq.com/nysedcau/renderSmartForm.action?formId=ac36072d-62e2-4373-a0ba-48da64a4a7f3).
3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED’s Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel’s Office will provide the bidder with written notification of the review team’s decision within ten (10) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

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

### Vendor Responsibility

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller (OSC), NYSED must make an affirmative responsibility determination. The factors to be considered include legal authority to do business in New York State; integrity; capacity – both organizational and financial; and previous performance. Before an award of $100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a [Vendor Responsibility Questionnaire](https://www.osc.state.ny.us/state-vendors/vendrep/file-your-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](https://www.osc.state.ny.us/state-vendors/vendrep/vendor-responsibility-documentation) can be viewed at the Office of the State Comptroller’s website.

NYSEDrecommends 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](https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system) or go directly to the [VendRep System on the Office of the State Comptroller's website](https://onlineservices.osc.state.ny.us/).

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the [Office of the State Comptroller’s Help Desk](https://www.osc.state.ny.us/online-services/get-help) 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](https://www.osc.state.ny.us/state-vendors/vendrep/vendor-responsibility-forms) or may contact NYSED or the Office of the State Comptroller’s Help Desk for a copy of the paper form.

**Subcontractors:**

**There are no subcontractors allowed under this RFP.**

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

### Procurement Lobbying Law

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

**Designated Contacts for NYSED**

Program Office – Ruth Singer

Contract Administration Unit – Tara Wildove

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

[Form A](https://www.osc.state.ny.us/agencies/forms/ac3271s.doc) 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](https://www.osc.state.ny.us/agencies/forms/ac3272s.doc) is available on OSC’s website.

For more information, please visit [OSC Guide to Financial Operations.](https://web.osc.state.ny.us/agencies/guide/MyWebHelp/Default.htm)

### Public Officer’s Law Section 73

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

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

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

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

(ii) officers and employees of statewide elected officials;

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

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

Review [Public Officer’s Law Section 73](https://ethics.ny.gov/system/files/documents/2022/07/2022-celg_pol-73_reformatted.pdf).

### NYSED Substitute Form W-9

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

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

**Workers’ Compensation Coverage**

New York State Workers’ Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State.

**PROOF OF COVERAGE REQUIREMENTS**

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**

NYSED must ensure all awardees/contractors who are required to carry workers’ compensation insurance have an active policy. NYSED must obtain **one** of the following forms before a contract can be approved:

* **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 and Paid Family Leave Benefits Coverage**

NYSED must ensure all awardees/contractors who are required to carry Disability and Paid Family Leave benefits insurance have an active policy. NYSED must obtain **one** of the following forms before a contract can be approved:

* **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](https://www.wcb.ny.gov/content/main/Employers/lp_permits-licenses-contracts.jsp).

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 with 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](https://www.tax.ny.gov/pdf/publications/sales/pub223.pdf) website. Forms are available through these links:

• [ST-220 CA](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

• [ST-220 TD](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

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

## 4.) Assurances

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

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

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

## STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

**Appendix A**

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, 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](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fny.newnycontracts.com%2FFrontEnd%2Fsearchcertifieddirectory.asp&data=05%7C01%7CBradley.Allen%40ogs.ny.gov%7C07e93ddbe7724c0737a408db5793a42e%7Cf46cb8ea79004d108ceb80e8c1c81ee7%7C0%7C0%7C638200063847647689%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=1QagyzmFXhFPSsIsYt57VrXQpxA4Tw6kD6PHIqJx7wM%3D&reserved=0)

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](https://ogs.ny.gov/iran-divestment-act-2012)”).

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

1. 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.

1. 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

1. 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

1. 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.
2. 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.
3. 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.
4. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
5. 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.
6. 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.
7. No fees shall be charged by the Contractor for training provided under this agreement.
8. 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.
9. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
10. 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

1. 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.
2. Contractor certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
3. Contractor certifies that no governmental entity has made a finding of non-responsibility regarding the Contractor in the previous four years.
4. 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.
5. 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).
6. 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

1. 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.
2. 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.
3. The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B is due by May 15th of each year and covers actual employment data performed during the prior period of April 1st to March 31st. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

By mail: NYS Office of the State Comptroller

Bureau of Contracts

110 State Street, 11th Floor

Albany, NY 12236

Attn: Consultant Reporting

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

Reports to DCS are to be transmitted as follows:

By mail: NYS Department of Civil Service

Office of Counsel

Alfred E. Smith Office Building

Albany, NY 12239

Reports to NYSED are to be transmitted as follows:

By mail: NYS Education Department

Contract Administration Unit

Room 505 W EB

Albany, NY 12234

By fax: (518) 408-1716

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

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

1. Appendix A - Standard Clauses for all State Contracts

2. State of New York Agreement

3. Appendix A-1 - Agency Specific Clauses

4. Appendix X - Sample Modification Agreement Form (where applicable)

5. Appendix A-3 - Minority/Women-owned Business Enterprise Requirements (where applicable)

6. Appendix B - Budget

7. Appendix C - Payment and Reporting Schedule

8. Appendix R – Security and Privacy Mandates (where applicable)

9. Appendix D - Program WorkPlan

Revised 5/23/22

Appendix R

NEW YORK STATE EDUCATION DEPARTMENT’S

DATA PRIVACY APPENDIX FOR GRANT CONTRACTS

ARTICLE I: DEFINITIONS

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

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

ARTICLE II: PRIVACY AND SECURITY OF PERSONAL INFORMATION

1. **Compliance with Law.**

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

1. **Data Privacy and Security**.
   1. Contractor agrees and understands that Contractor has no property, licensing, or ownership rights or claims to Personal Information Accessed by or Disclosed to Contractor for the purpose of providing Services, and Contractor shall not use Personal Information for any purpose other than to provide Services. Contractor will ensure that its Subcontractors agree and understand that neither the Subcontractor nor Contractor has any property, licensing or ownership rights or claims to Personal Information received or Accessed by or Disclosed to Subcontractor for the purpose of assisting Contractor in providing Services.
   2. Contractor shall adopt and maintain reasonable safeguards to protect the security, confidentiality, and integrity of Personal Information in a manner that complies with General Business Law section 899-bb and other applicable New York State, federal and local laws, rules and regulations.
   3. Upon NYSED’s request, Contractor may be required to undergo an audit of its privacy and security safeguards, measures, and controls, or in lieu of performing an audit, provide NYSED with an industry standard independent audit report on Contractor’s privacy and security practices that is no more than twelve months old.
2. **Contractor’s Employees and Subcontractors**.
   1. Access to or Disclosure of Personal Information shall only be provided to Contractor’s employees and Subcontractors who need to know the Personal Information to provide the Services and such Access and/or Disclosure of Personal Information shall be limited to the extent necessary to provide such Services. Contractor shall ensure that all such employees and Subcontractors comply with the terms of this DPA.
   2. Contractor must ensure that each Subcontractor performing Services where the Subcontractor will have Access to and/or receive Disclosed Personal Information is contractually bound by a written agreement that includes confidentiality and data security obligations equivalent to, consistent with, and no less protective than, those found in this DPA.
   3. Contractor shall examine the data privacy and security measures of its Subcontractors. If at any point a Subcontractor fails to materially comply with the requirements of this DPA, Contractor shall (i) notify NYSED, (ii) as applicable, remove such Subcontractor’s Access to Personal Information; and (iii) as applicable, retrieve all Personal Information received or stored by such Subcontractor and/or ensure that such Personal Information has been securely deleted or securely destroyed in accordance with this DPA. In the event there is an incident in which Personal Information held, possessed, or stored by the Subcontractor is compromised, unlawfully Accessed, or unlawfully Disclosed, Contractor shall follow the Data Breach reporting requirements set forth in Section 5 of this DPA.
   4. Contractor shall take full responsibility for the acts and omissions of its employees and Subcontractors.
   5. Other than Contractor’s employees and Subcontractors who have a need to know the Personal Information, Contractor must not provide Access to or Disclose Personal Information to any other party unless such Disclosure is required by statute, court order or subpoena, and Contractor notifies NYSED of the court order or subpoena no later than the time the Personal Information is Disclosed, unless such Disclosure to NYSED is expressly prohibited by the statute, court order or subpoena. Notification shall be made in accordance with the Notice provisions of this Contract and shall also be provided to the Office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234.
   6. Contractor shall ensure that its Subcontractors know that they cannot provide Access to or Disclose Personal Information to any other party unless such Disclosure is required by statute, court order or subpoena. If a Subcontractor is required to provide Access to or Disclose Personal Information pursuant to a court order or subpoena, the Subcontractor shall, unless prohibited by statute, court order or subpoena, notify Contractor no later than two (2) days before any Personal Information is Disclosed. Upon receipt of notice from a Subcontractor, Contractor shall provide notice to NYSED no later than the time that the Subcontractor is scheduled to provide Access to or Disclose the Personal Information.
   7. Contactor shall ensure that all its employees and Subcontractors who will receive Personal Information will be trained on the federal and state laws governing confidentiality of such data prior to receipt.
3. **Data Return and Destruction of Data**.
   1. Contractor is prohibited from retaining Disclosed Personal Information or continuing to Access Personal Information, including any copy, summary or extract of Personal Information, on any storage medium (including, without limitation, hard copies, and storage in secure data centers and/or cloud-based facilities) beyond the term of the this Contract unless such retention is expressly authorized by the this Contract, necessary for purpose of facilitating the transfer of Personal Information to NYSED, or expressly required by law. As applicable, upon expiration or termination of this Contract, Contractor shall transfer Personal Information to NYSED in a format agreed to by the Parties.
   2. When the purpose that necessitated Contractor’s Access to and/or Disclosure of Personal Information has been completed or Contractor’s authority to have Access to Personal Information and/or retain Disclosed Personal Information has expired, Contractor shall ensure that, as applicable, (1) all privileges providing Access to Personal Information are revoked, and (2) all Personal Information (including without limitation, all hard copies, archived copies, electronic versions, electronic imaging of hard copies) retained by Contractor and/or its Subcontractors, including all Personal Information maintained on behalf of Contractor or its Subcontractors in a secure data center and/or cloud-based facilities is securely deleted and/or destroyed in a manner that does not allow it to be retrieved or retrievable, read, or reconstructed. Hard copy media must be shredded or destroyed such that Personal Information cannot be read, or otherwise reconstructed, and electronic media must be securely cleared, purged, or destroyed such that the Personal Information cannot be retrieved, read, or reconstructed. When Personal Information is held in paper form, destruction of such Personal Information, and not redaction, will satisfy the requirements for data destruction. Redaction is specifically excluded as a means of data destruction.
   3. Upon request by NYSED, Contractor may be required to provide NYSED with a written certification of (1) revocation of Access to Personal Information granted by Contractor and/or its Subcontractors, and (2) the secure deletion and/or secure destruction of Personal Information held by the Contractor or Subcontractors, at the address for notifications set forth in this Contract.
   4. To the extent that Contractor and/or its Subcontractors continue to be in possession of any de-identified data (i.e., data that has had all direct and indirect identifiers removed), Contractor agrees that it will not attempt to re-identify de-identified data and/or transfer de-identified data to any person or entity, except as provided in subsection (a) of this section and that it will prohibit its Subcontractors from the same.
4. **Breach**.
   1. Contractor shall promptly notify NYSED of any Breach of Personal Information, regardless of whether the Contractor or a Subcontractor suffered the Breach, without delay and in the most expedient way possible, but in no circumstance later than seven (7) calendar days after discovery of the Breach. Notifications shall be made in accordance with the notice provisions of this contract and shall also be provide to the office of the Chief Privacy Officer, NYS Education Department, 89 Washington Avenue, Albany, New York 12234 and must include a description of the Breach that identifies the date of the incident, the date of discovery, the types of Personal Information affected and the number of records affected; a description of Contractor’s investigation; and the name of a point of contact.
   2. Contractor and its Subcontractors will cooperate with NYSED, and law enforcement where necessary, in any investigations into a Breach. Any costs incidental to the required cooperation or participation of the Contractor or its Subcontractors will be the sole responsibility of the Contractor if such Breach is attributable to Contractor or its Subcontractors.
   3. Contractor shall promptly notify the affected individuals of any Breach, regardless of whether Contractor or a Subcontractor suffered the Breach. Such notice shall be made using one of the methods prescribed by § 899-aa (5) of the New York General Business Law. If Contractor requires information from NYSED to perform such notifications, Contractor shall reimburse NYSED for the cost of assembling and providing such information to Contractor.
5. **Termination**.

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