

REQUEST FOR PROPOSAL (RFP)

RFP Proposal #07-032

NEW YORK STATE EDUCATION DEPARTMENT

Title: Response to Intervention Technical Assistance Center (Rtl-TAC)

The New York State Education Department (NYSED) Office of Vocational and Educational Services for Individuals with Disabilities (VESID), seeks to establish a statewide **Response to Intervention Technical Assistance Center** (Rtl-TAC) to support the development and implementation of high quality Response-to-Intervention (Rtl) programs in school districts around the State. Rtl-TAC will be expected to make research-based information on Rtl available statewide; directly assist school districts identified by VESID as needing technical assistance and professional development to establish Rtl school-based projects; and conduct a review and evaluation of the effectiveness of selected districts' implementation of Rtl programs. Rtl-TAC and its functions will be overseen by VESID.

The **eligible bidders** for the Rtl-TAC contract include private and public institutions of higher education, local educational agencies, not-for-profit organizations, and for-profit organizations.

NYSED encourages the use of minority/women-owned business enterprises as both prime contractors and subcontractors. Please see the section of this RFP for information regarding NYSED's Minority/Women-Owned Business Enterprise Procurement Policy.

The contracts resulting from this RFP will be for five years, July 1, 2008 through June 30, 2013.

Mandatory requirements are: All bidders are required to submit a duly executed Technical Assistance Center Certification with their submission documents.

Components contained in RFP Proposal #07-032 are as follows:

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

Questions regarding the request must be submitted by E-mail to RtlTAC@MAIL.NYSED.GOV no later than the close of business July 17, 2008. Questions regarding this request should be identified as either Program or Fiscal. A Questions and Answers Summary will be posted to <http://www.vesid.nysed.gov/rfp/home.html> no later than July 24, 2008.

Program Matters

Matthew J. Giugno

Fiscal Matters

Richard Duprey

Five (5) copies of each technical proposal (one bearing an original signature) and three (3) copies of each cost proposal (one bearing an original signature) must be received no later than:

Date: August 4, 2008
Time: **3:00 PM**

At: NYS Education Department
Bureau of Fiscal Management
Contract Administration Unit
89 Washington Avenue, Room 505W EB
Albany, NY 12234

(Facsimile copies of the proposals are NOT acceptable)
Submit in a sealed envelope labeled “Bid Proposal - RFP #07-032 Do Not Open”
Submit Cost Proposals in a separate sealed envelope labeled
“Cost Proposal – RFP # 07-032-Do Not Open”

Note: Proposals should be labeled

This information should be on both the sealed envelopes for the Technical & Cost Proposals and the cover of the Technical Proposal.

Issue Date: June 23, 2008

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 (NYS) administrative terms and conditions, as well as terms and conditions required by NYS 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.

Background and Purpose

The New York State Education Department (NYSED), Office of Vocational and Educational Services for Individuals with Disabilities (VESID), Special Education Services, is seeking to establish a Response to Intervention -Technical Assistance Center (Rtl-TAC) in order to support the development and implementation of high quality Response-to-Intervention (Rtl) programs in school districts around the State in grades pre-K through 12.

Rtl is an instructional program provided to students that emphasizes high quality instruction for all students, provides instruction/intervention matched to student needs and uses learning rate over time and level of performance to make important educational decisions about an individual student. Rtl represents an important strategy to close achievement gaps for all students, including students with disabilities and English language learners, by preventing smaller learning problems from becoming insurmountable gaps. It has also been shown to lead to more appropriate identification of and interventions with students with learning disabilities. The Regents policy framework for Rtl includes regulations relating to Sections 117, 100.2 (ii), 200.2 (b) (7) and 200.4 (j) of the Regulations of the Commissioner:

- A. school wide screenings and required services for periodic monitoring of students with low test scores through screenings and on-going assessments of the student's reading and mathematical abilities and skills and, for students making substandard progress required instruction tailored to meet the student's individual needs with increasingly intensive levels of targeted intervention and instruction;
- B. the required components of an Rtl program;
- C. use of Rtl as a Contracts for Excellence allowable program; and
- D. use of Rtl as the process that determines if a student responds to scientific, research-based intervention as a part of the evaluation procedures to identify students with learning disabilities.

The Regulations of the Commissioner of Education define Rtl to include the following minimum required components (CR 100.2 (ii)) :

- A. Appropriate instruction delivered to all students in the general education class by qualified personnel.
- B. Screenings applied to all students in the class to identify those students who are not making academic progress at expected rates.

- C. Instruction matched to student need with increasingly intensive levels of targeted intervention and instruction for students who do not make satisfactory progress in their levels of performance and/or in their rate of learning to meet age or grade level standards.
- D. Repeated assessments of student achievement which should include curriculum based measures to determine if interventions are resulting in student progress toward age or grade level standards.
- E. The application of information about the student's response to intervention to make educational decisions about changes in goals, instruction and/or services and the decision to make a referral for special education programs and/or services.
- F. Written notification to the parents when the student requires an intervention beyond that provided to all students in the general education classroom that provides information about:
 - a. the amount and nature of student performance data that will be collected and the general education services that will be provided;
 - b. strategies for increasing the student's rate of learning; and
 - c. the parents' right to request an evaluation for special education programs and/or services.

Since there are a number of potential models of RtI, NYS's regulations indicate that the school district must select and define the specific structure and components of its RtI program, including, but not limited to:

- A. the criteria for determining the levels of intervention to be provided to students,
- B. the types of interventions,
- C. the amount and nature of student performance data to be collected and
- D. the manner and frequency for progress monitoring.

Each school district implementing an RtI program must take appropriate steps to ensure that staff have the knowledge and skills necessary to implement a RtI program and that such program is implemented consistent with the specific structure and components of the district-selected RtI model.

Priorities and Goals:

The purpose of the RFP is to establish a RtI-TAC to facilitate the development of high quality RtI programs throughout NYS. The primary goals of the RtI-TAC are to:

- A. provide technical assistance and professional development to school districts identified by VESID who are developing and implementing RtI programs;
- B. evaluate the effectiveness of RtI programs implemented by school districts receiving grant funds from VESID to develop such programs; and
- C. make information on RtI available statewide.

Activities and Deliverables that will be supported by Contract Funds:

- A. Compile an annotated bibliography and supporting materials on data-based decision-making as it relates to a RtI program.

- B. Create, pilot, and refine professional development modules related to implementation of a RtI process in participating schools.
- C. Conduct at least 2 professional development sessions per project year relating to RtI to school districts, parents and State funded technical assistance providers (e.g., Special Education Training and Resource Centers; Higher Education Support Center; members of the Higher Education Task Force, Regional School Support Centers). These sessions can be conducted in person, via the web as a webinar or other similar method, including, but not limited to sessions relating to the following areas:
 - a. scientific, research-based (or evidence-based) literacy instruction and intervention;
 - b. progress monitoring of individual students; and
 - c. use of school data to review and revise instructional programs and interventions.
 - d. Develop a web-based resource on a newly created website which contains:
 - i. links to research;
 - ii. TAC developed streaming or other forms of video on RtI and data-based decision-making;
 - iii. TAC developed PowerPoint presentations related to RtI implementation;
 - iv. discussion forums; and
 - v. other relevant information.
- D. Coordinate with the federally-funded National Center on Response Intervention (part of the American Institutes for Research, www.rti4success.org) to promote high quality technical assistance in NYS.
- E. Provide technical assistance and embedded professional development for implementation of RtI programs in VESID selected school districts.
- F. Conduct formative and summative assessment of progress of RtI implementation in the school districts receiving VESID funding to develop RtI programs.

Service Areas

The RtI-TAC will serve the entire State of New York. It is anticipated that the contractor will be responsible to work with 2 school districts per each of the 7 Joint Management Team (JMT) Regions of the State. It is expected that fourteen school districts will be selected. See attached map (page __) for the JMT regions.

Eligible bidders:

Organizations that are eligible to apply for RtI-TAC contract include private and public institutions of higher education, not-for-profit organizations and private for-profit organizations with strong evidence of institutional knowledge and expertise in research based educational programs and services, particularly in RtI programs; literacy acquisition; and provision of professional development and technical assistance.

Consortium bid responses are acceptable. In this case, one of the consortium institutions or organizations must be designated as the lead institution and will be the fiscally responsible agency that provides programmatic and logistical support to this project. Institutions participating as consortium members are not considered sub-contractors.

The bidder institution must identify a qualified lead professional as Director of the project. In the case of a consortium bid response, the lead institution must meet these criteria. The lead agency of a consortium bid response must (1) provide fifty percent (50%) or more annual budgeted services and (2) act as the fiscal agent. Each consortium member must submit an agreement that specifies its responsibilities to the lead agency.

The bid response must identify for each proposed consortium institution or agency that key project staff are:

- A. Knowledgeable about scientific and evidence-based research in educational programs and services, early literacy, and Rtl programs; and
- B. Have expertise in providing professional development and technical assistance which must include examples of written presentation materials (e.g., published journal articles, video and power point presentations) that demonstrate expertise and experience in Rtl or related instructional areas.

Travel Rates

Travel reimbursement rates are limited as follows:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=19558&noc=T.

Reimbursement rates for meals and lodging are limited as follows:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2007&contentType=GSA_BASIC&contentId=17943&queryState=New+York&noc=T

Due to the fact that the fourteen school districts have not been selected as of the date of this RFP, for scoring purposes, bidders are asked to submit travel costs at an estimated ten percent (10%) of the annual budget when determining their cost proposal.

Computer Equipment

Bidders should include in their cost proposals the initial technology costs for limited purchases to support the goals of the project. For example, one notebook or desktop computer per staff and other shared equipment (printers, faxes, etc.) to carry out essential project work. Other office supply equipment can be included as they relate to carrying out the goals of the project. Overall equipment and supplies may not exceed ten percent (10%) of an annual budget.

Indirect Costs

Indirect costs can be broadly defined as central administrative costs and certain other organization-wide costs that are incurred in connection with a project but that cannot readily be identified with the project (e.g., payroll preparation, central purchasing). These funds are used to support the central administrative costs.

Examples of indirect costs are:

- A. costs of operating and maintaining facilities;
- B. general administration and general expenses, such as budgeting, accounting, human resources, legal, and purchasing; and
- C. centralized services, such as motor pools and information systems; and Personnel and accounting administration.

In most cases the restricted indirect cost rate for each agency is set by NYSED using the methodology approved by the U. S. Department of Education. The indirect cost rate shall not exceed 8%. School districts and BOCES are limited to their approved restricted indirect cost rate for the 2008-2009 State Fiscal Year.

Payment and Reporting

The contractor will be required to submit quarterly and annual progress reports to NYSED. Quarterly payments will be made to the vendor once the quarterly progress reports are reviewed and project initiatives and outcomes are determined to be adequate. Failure to submit the required progress reports may result in the suspension of future payments.

Any items in the proposed budget deemed to be non-allowable or inappropriate will be eliminated.

All services will be reimbursed on a payment for service delivered basis.

Contract Period

The contracts resulting from this RFP will be for five years, November 1, 2008 through October 31, 2013, subject to, and contingent upon, the appropriation and availability of funds.

At the end of any contract term otherwise provided for herein, if a replacement contract has not yet been approved in accordance with State law, any contract awarded hereunder may be extended unilaterally by the State, upon notice to the contractor, at the same terms and conditions, including all contract pricing, for a period of one month. Additionally, this extension may be for a period of up to three months with the concurrence of the contractor. However, any extension will terminate immediately upon approval of the replacement contract except where a period for transition of contractors has been previously provided for.

NYSED/VESID retains the right to adjust the renewal amount based upon the availability of funds.

Subcontracting Limit

Up to 25% subcontracting will be allowed. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. NYSED reserves the right of approval of all subcontractors. In the event that it is determined that a subcontractor fails to meet with the approval of NYSED for cause, NYSED retains the right to request that the subcontractor be replaced. If the vendor fails to assign an acceptable subcontractor, then NYSED reserves the right to disqualify the bidder from further consideration for this award. Institutions participating as consortium members are not considered sub-contractors for purposes of this part.

For bidders making a consortium bid response, the 25% subcontracting maximum applies to the budget of each member of the consortium.

Consultant / Staff Changes

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

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 NYSED in response to this RFP. NYSED 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 NYSED. Any sub-contractor is also bound by these terms. The submission will become the basis on which NYSED will judge the respondent's ability to perform the required services as laid out in the RFP. This will be followed by various terms and conditions that reflect the specific needs of this project.

Project Submission:

Each proposal submitted in response to this RFP should contain five (5) copies of the Technical Proposal (one bearing an original signature) and three (3) copies of the Cost Proposal (one bearing an original signature).

The bidder should describe how it will:

1. staff the project, ensuring that a minimum of .2 FTE are allocated to either a Project Director or Principal Investigator who is responsible for the overall management of the project. In the case of a consortium bid response, each institutional member of the consortium must designate the percentage of time allocated to the Rtl-TAC; each member of the consortium is responsible to the lead bidder for all work completed pursuant to this contract. Other staff assigned to the Rtl-TAC must also be identified by the FTE assigned to contractual activities.
2. The bidder organization, or consortium, must ensure that sufficient time is designated to serve the identified schools and the scope of work necessary to fulfill the requirements of the contract, including support and secretarial staff.
3. In the proposal, indicate the projected amount of time the bidder will be providing staff development and technical assistance to each of the 14 potential schools that will receive grant support connected to the Rtl-TAC. This will be an average projection and should be based on the number of days per month of service to each school.
4. Compile and disseminate research based information on Rtl, including data-based decision making (to be hosted on a website chosen by NYSED);
5. Ensure that project staff are familiar with the requirements of NCLB and IDEA, and similar State Laws and Regulations, and infuse these requirements into all project activities

6. Provide technical assistance to VESID identified schools, including but not limited to professional development for school staff on:
 - 6.1.1. research-based (or evidence based) literacy instruction and intervention;
 - 6.1.2. progress monitoring of individual students; and
 - 6.1.3. use of school data to inform instructional programs and interventions;
7. Conduct an evaluation of selected school districts' implementation of Rtl programs;
8. Establish a web-based support system to make Rtl information and resources available statewide;
9. Periodically conduct professional development sessions to NYSED staff and its supported professional development network providers; and
10. Conduct formative and summative assessments of the Rtl-TAC project.

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

Technical Proposal: 70 Points

Each Technical Proposal submitted in response to this RFP must be organized in a binder and clearly labeled with tabs by individual sections in the following order:

1. Project Description (25 Points)
2. Plan of Operation (25 Points)
3. Agency Experience and Expertise (20 Points)

Cost Proposal: 30 Points

The Bid Form is contained in section 5.) SUBMISSION DOCUMENTS.

The budget must list positions by title, hourly rate or salary, estimated hours, and cost. All budget items must be allowable, specific in detail and justified.

The bidder must include:

1. Bid Form – Cost Proposal (Detailed Budget for Year One: November 1, 2008 – October 31, 2009)
2. Proposed Budgets for each Budget Year
3. Five Year Budget Summary
4. A budget justification in narrative form that explains in sufficient detail how the specific funds requested in the budget document will be used to implement the proposed activities (*No Points*).

The financial criteria will be based on the 5-year budget total.

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 NYS contract guidelines and requirements.

Criteria for Evaluating Bids

Proposals receiving at least sixty percent (60%) of the points available for the Technical Proposal (a total of 42 out of 70 points) will move to the next step of the process. Proposals with a score of less than 42 points in the Technical Proposal section will be eliminated from further consideration.

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

The technical portion of the proposal will be reviewed and rated by a panel of NYSED program staff according to the following criteria:

Technical Criteria 70 Points

Project Description (25 Points):

The complete project description and supporting materials will be reviewed to determine the overall consistency of the proposal to the stated purpose and objectives of the RFP. The appropriateness of the qualifications of key personnel and the adequacy of the resources of the bidder will be reviewed to determine the bidder’s ability to implement the activities described in the bid.

1. A cohesive and comprehensive description of the approaches to be taken that address the information identified in the “Background and Purpose” and “Priorities sections of the RFP. **(5 points)**
2. Clear, obtainable and measurable objectives against which progress and success can be measured. **(5 points)**
3. Activities that will be conducted to ensure objectives are met. **(15 points)**
 - 3.1. Activities must sufficiently describe how the bidder will:
 - 3.2. compile and disseminate (including electronic means) research materials and other resources that address Rtl. **(2 points)**
 - 3.3. identify the technical assistance and professional development needed by the VESID identified school districts. **(2 points)**
 - 3.4. make professional development and technical assistance available statewide and provide effective and efficient embedded professional development to VESID identified school districts. **(6 points)**
 - 3.5. establish timelines and agreements with VESID identified school districts to provide professional development and technical assistance. **(2 points)**
4. evaluate the professional development provided and results of Rtl programs developed and implemented by each of the VESID identified school districts. **(2 points)**

5. coordinate with the federally funded National Center on Rtl. (1 point)

Plan of Operation (25 Points):

Each proposal must provide activities that will result in the expected outcomes described in the “Priorities and Goals” section. The bidder’s plan of operation will be evaluated based on the comprehensiveness of the bidder’s plan to achieve NYSED’s anticipated results for each of the activities, and how well the plan of operation provides:

1. A description of product/service deliverables including activities and strategies to ensure project deliverables are achievable. (2 points)
2. A management plan that ensures effective administration of the project, including the responsibilities of key personnel and adequate staffing to ensure achievement of objectives. (2 points)
3. A plan to use resources and personnel effectively to achieve each objective. (2 points)
4. A description of strategies to keep VESID staff apprised of project progress. (2 points)
5. A detailed work plan for each project year that reflects a relationship between the project priorities, objectives, activities and deliverables. (8 points)
6. Proposed timelines that are reasonable, tied to the work plan and that ensure the objectives of the project and the services/deliverables will be completed as outlined in this RFP. (5 points)
7. An evaluation plan that adequately measures project objectives, details strategies for midcourse corrections, if necessary, and ensures the attainment of the priority goals. (4 points)

Agency Experience and Expertise (Narrative and Resumes) (20 points)

Narratives and resumes must describe and clearly demonstrate agency experience and expertise in the following areas (14 points):

1. Management of similar projects (2 points)
2. Project coordination (2 points)
3. Provision of professional development and technical assistance on research-based instructional programs to schools (2 points)
4. Developing Rtl programs in schools (2 points)
5. Research-based instructional programs, particularly in the area of reading. (2 points)
6. Related State and federal requirements. (2 points)
7. Program evaluation. (2 points)

The following information must be included (6 points):

1. Job descriptions and resumes of key personnel. (2 points)
2. A summary of the time that each person will commit to the project and a description of how it is adequate to complete the activities in a timely and effective manner. (2 points)
3. A description of the organization's viability to complete the proposed activities. (1 point)
4. Two letters of support for the bidder agency. (1 point)

Financial Criteria

Three (3) copies of the cost proposal should be submitted in a separate envelope labeled "**Cost Proposal – RFP#07-032 Do Not Open**".

Although a budget narrative is requested, no points will be given for this narrative.

The proposed budget should outline the use of funds. Each budget will be reviewed to determine the extent to which the budget is adequate to support the project, and that the costs are reasonable in relation to the objectives of the Rtl-TAC.

The financial criteria will be based on the 5-year budget total.

1. The **financial portion** of the proposal represents **thirty (30)** points of the overall score and will be awarded points pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.
2. The agency reserves the right to request best and final offers.
3. The submitted budget will be awarded points pursuant to a formula which awards the highest score of **thirty (30)** points to the budget that reflects the lowest overall cost. The remaining budgets will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of **thirty (30)** points.

Method of Award

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

The contracts issued pursuant to this proposal will be awarded to the vendor whose aggregate technical and cost score is the highest among all the proposals rated, as follows:

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

NYSED reserves the right to reject all proposals received or cancel this RFP if it is in the best interest of NYSED.

Post Selection Procedures

Upon selection, the successful bidder will enter into negotiations for a contract with NYSED. The contents of this RFP, any subsequent correspondence related to final contract negotiations, and such other stipulations as agreed upon may be made a part of the final contract developed 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.

New York State Education Department's Minority/ Women-Owned Business Enterprise Procurements Policy

It is the policy of the New York State Education Department to provide certified minority or women-owned business enterprises and small business enterprises with equal opportunity to Department procurements. Article 15-A of the NYS Executive Law, and Section 163 (6) of the NYS Finance Law were enacted to promote fairness in, and greater access to, the procurement process. The Board of Regents and the Commissioner are committed to a workforce that is representative of the many communities we serve, and to business practices which likewise reflect this commitment. Integral to the achievement of these goals is the increased utilization of women and minority-owned enterprises (M/WBEs) as vendors of the goods and services purchased/contracted by the Department. In doing so, we will further support our mission "To raise the knowledge, skill and opportunity of all the people in New York.

Every Department employee involved in the procurement process is responsible for ensuring both compliance with the above referenced laws and the maximum possible use of M/WBEs consistent with procedures developed jointly by the Office of Fiscal Management and the Office for Diversity, Ethics and Access.

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, the Department 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.

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

For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website: <http://www.osc.state.ny.us/vendrep/templates.htm> or will receive it with the award letter.

Note: Bidders must acknowledge whether they filed their questionnaire online by checking the appropriate box on the Response Sheet for Bids (5.) Submission Documents).

Procurement Lobbying Law

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

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

Designated Contacts for NYSED: Matthew Giugno and Richard Duprey

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](#) - see link below). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information ***prospectively from the start date of the contract through the end of the contract term***.

Form A: <http://www.osc.state.ny.us/agencies/gbull/g226forma.doc>

Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to **report annually** on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to the Department of Civil Service. State

Consultant Services Contractor's Annual Employment Report ([Form B](#) - see link below) is to be used to report the information for all procurement contracts above \$15,000. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, ***Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).***

Form B: <http://www.osc.state.ny.us/agencies/gbull/g226formb.doc>

For more information, please visit the OSC web site for G-Bulletin 226 at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

Public Officer's Law Section 73 - Restrictions on the Activities of Current and Former State Officers and Employees

All current and former State employees are prohibited from submitting a bid proposal, as such would violate 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.

All other bidders are prohibited from submitting a bid proposal if they employ or subcontract with a current or former State employee, as defined below in Public Officer's Law 73(i):

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

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

(ii) officers and employees of statewide elected officials;

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

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

Public Officer's Law Section 73 can be found at <http://www.dos.state.ny.us/ethc/POL73.html>.

4.) Assurances

Appendix A – Standard Clause for all New York State Contracts **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.

Appendix A – Standard Clause for all New York State Contracts, contains the following two (2) certifications:

MacBride Certification

(Signature Required - the form is included in 5.) Submission Documents)

Certification-Omnibus Procurement Act of 1992

(Signature Required - the form is included in 5.) Submission Documents)

Appendix A-1 – NYSED Contract Clauses

Affirmative Action and Minority/Women Owned Business Enterprise Policy

Certification Regarding Lobbying; Debarment and Suspension; and Drug-Free Workplace Requirements

(Signature Required - the form is included in 5.) Submission Documents)

ATTACHMENTS

- A. State of New York Agreement?
- B. Appendix A – Standard Clause for all New York State Contracts
- C. Appendix A-1 - Agency Specific Clauses

The above 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.

- D. JMT Regional Map

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall

by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office 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 State Finance Law §165. (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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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
30 South Pearl St -- 2nd Floor
Albany, New York 12245

Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

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

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

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

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

June, 2006

APPENDIX A-1

Payment and Reporting

- A. In the event that Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.
- B. Variations in each budget category not exceeding ten percent (10%) or One Thousand Dollars (\$1,000.00) of such category, whichever is greater, may be approved by the Commissioner of Education. Any such variations shall be reflected in the final expenditure report and filed in the Office of the State Comptroller.

Terminations

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

Property

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

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

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

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

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

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

- C. Upon termination of this agreement, the State in its discretion may elect to take title and may assert its right to possession of any non-expendable assets upon thirty (30) days prior written notice by certified mail to the Contractor. The State's option to elect to take title shall be triggered by the termination of this agreement or by the State's rejection of continued

use of non-expendable assets by the Contractor as set forth herein. The State upon obtaining such non-expendable assets may arrange for their further use in the public interest as it in its discretion may decide.

- D. The terms and conditions set forth herein regarding non-expendable assets shall survive the expiration or termination, for whatever reason, of this agreement.

Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this Agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.
- B. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- C. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.
- D. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- E. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State Management/Confidential employees.
- F. No fees shall be charged by the Contractor for training provided under this agreement.
- G. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- H. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.
- I. The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement.

Certifications

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

Notices

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

Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
- B. If required by the Office of State Comptroller ("OSC") Bulletin G-226 and State Finance Law §§ 8 and 163, Contractor agrees to submit an initial planned employment data report on Form A and an annual employment report on Form B. State will furnish Form A and Form B to Contractor if required.

The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B will be submitted each year the contract is in effect and will detail actual employment data for the most recently concluded State fiscal year (April 1 – March 31). The first report will be filed no later than May 15, 2009. Thereafter, Form B will be filed no later than May 15th of each succeeding year. 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
Alfred E. Smith Office Building
Albany, NY 12239
Office of Counsel

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.

