

REQUEST FOR PROPOSAL (RFP)

RFP #DS-07

Education Data Portal: Data Dashboard Solutions



NEW YORK STATE EDUCATION DEPARTMENT

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Education Data Portal: Data Dashboard Solutions

The New York State Education Department (NYSED) Office of Information Reporting Services is seeking proposals for Education Data Portal: Data Dashboard Solutions.

Subcontracting (exclusive of subcontracted hosting services) will be limited to forty percent (40%) of the annual contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprises (M/WBE) participation goals for this RFP. Please see the section on NYSED's Minority/Women-Owned Business Enterprise (M/WBE) Compliance Requirements.

NYSED is issuing concurrently a separate RFP, for Education Data Portal: Content Management and System Services. The same vendor cannot be a prime contractor on both contracts, although a vendor can be a prime contractor on one and a subcontractor on the other, or a subcontractor on both. All roles depicted with an asterisk in the "Proposed EDP Management Structure" diagram in Section 1.3 must be provided by the prime contractor on the Content Management and System Services contract.

NYSED will make up to three (3) awards pursuant to this RFP. The contract(s) resulting from this RFP will be for a three-year term with two optional one-year extensions.

Service Area: Office of Information Reporting Services.

Mandatory Requirements: See Section 2.2 of the RFP.

MANDATORY BIDDERS' CONFERENCE

A mandatory bidders' conference will be held on May 11, 2012 at the New York State Education Department, Room 5 A/B, 89 Washington Avenue, Albany, NY 12234 from 1:30 pm to 4:30 pm ET. All interested bidders must attend this conference to be eligible to submit a bid. All bids received from entities that were not in attendance at this conference will be treated as nonresponsive and disqualified from the review process.

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

- Description Of Services To Be Performed
- Proposal Format, Content, and Submission
- Evaluation Criteria and Method of Award
- Administrative Specifications
- Submission Documents
- Attachments

Questions regarding the request must be submitted by E-mail to edpDataDashboards@mail.nysed.gov no later than the close of business May 18, 2012. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A

Questions and Answers Summary will be posted to <http://usny.nysed.gov/rttt/rfp/ds-07/> no later than May 25, 2012.

Program Matters

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Schedule of Key Events:

Event	Timeline
RFP Release Date	April 20, 2012
Letter of Intent	May 4, 2012
Mandatory Bidder’s Conference (in Albany)	May 11, 2012 @ 1:30 PM ET
Optional SLC Bidder’s Conference (via web conference)	May 16, 2012 @ 12:30 PM ET
Question Submittal Deadline (Questions may include proposed exceptions to the Terms and Conditions)	May 18, 2012 @ 5:00 PM ET
Question Response Release	May 25, 2012
Proposals Due	June 19, 2012 @ 3:00 PM ET
Proposal Evaluation Begins	June 20, 2012
Technical Presentations	July 23, 24, 25, 2012
Recommendation & Designation	August 3, 2012
Contract Finalization	August 6, 2012 – September 6, 2012
Contract Execution	September 15, 2012
Work Begins	November 1, 2012

Letter of Intent

All interested bidders should submit a Letter of Intent (see Section 5.10). The Letter of Intent should be submitted electronically to edpDataDashboards@mal.nysed.gov and submitted by May 4, 2012.

The following documents must be submitted in separately sealed envelopes, as detailed in the Section 2 - Proposal Format, Contents and Submission, and be received at NYSED no later than June 19, 2012 **by 3:00 PM:**

- **Technical Proposal labeled** “Technical Proposal - RFP #DS-07 Do Not Open”
- **Cost Proposal labeled** “Cost Proposal - RFP #DS-07 Do Not Open” (See Section 5.8)

- **M/WBE Documents labeled “M/WBE Documents - RFP #DS-07 Do Not Open”**

Note: A copy of the technical, cost, and M/WBE proposals must also be submitted in Microsoft Word/Excel on CD-ROM. Please include it in a separate envelope labeled **“CD-ROM – RFP#DS-07 Do Not Open”**.

All proposals should be delivered via a method that requires a signature from NYSED upon receipt. The mailing address for all the above documentation is:

NYS Education Department
Bureau of Fiscal Management
Attn: Lynn Caruso, RFP#DS-07
Contract Administration Unit
89 Washington Avenue, Room 505W EB
Albany, NY 12234

(Facsimile copies of the proposals are NOT acceptable.)

1 DESCRIPTION OF EDP PROGRAM AND SERVICES TO BE PERFORMED

1.1 Overview of the Education Data Portal (EDP) Program

1.1.1 Program Summary

The New York State Education Department (NYSED) is seeking to procure products and services to develop, test, deploy, and support an Education Data Portal (EDP).

The goals of the EDP program are to:

- Make student data available to New York’s educators, students, and students’ families to support instruction and student learning.
- Make curriculum and instructional resources available to New York’s educators and families to support instructional improvement and professional development.
- Create sustainable and open technology that promotes innovation, flexibility, and choice and enables local education agencies (LEAs)¹, schools, and regional organizations to develop or procure additional applications or new functionality more rapidly and at reduced cost.
- Leverage emerging technology interoperability standards for education applications to remove barriers to innovation and scaling of successful tools for personalizing learning.

NYSED is seeking to support at least three primary use cases through the EDP procurements:

- Educators use data (including locally-defined data loaded to a shared Statewide data store) to help identify student educational needs and have integrated access to aligned State-provided and user-generated curriculum and instructional resources. Access between Data Dashboards and curriculum and instructional resources should be provided within the EDP single sign-on environment by means of intuitive navigation, access to integrated search functions, and, desired but not required, embedded recommendation engines.
- Parents (or guardians) view their child’s data and have a common framework within which to structure communications with educators.
- Students enrolled in grade six and above access data elements available to educators and parents as part of their preparations for college and career readiness.

1.1.2 Summary of RFPs and Implementation Approach

NYSED will leverage existing and planned assets, in addition to new contracts awarded via two RFPs, to acquire the technology, products, and services required to successfully deploy and support the EDP. The two EDP procurements are:

- **EDP Data Dashboard Solutions RFP**: The EDP Data Dashboard Solutions procurement (this RFP) is a request for third-party hosted software

¹ For purposes of this RFP, and as defined in the Glossary (see section 7), a local education agency or LEA shall include a school district, charter school or BOCES.

applications for presenting educators, students, and families with timely and relevant data that support instruction and student learning, within the EDP single sign-on environment. It is NYSED's intent to award contracts to as many as three (3) Data Dashboard solutions vendors and to enable Local Education Agencies (LEAs) or schools to select their preferred local solution from among the awarded contracts.

- **EDP Content Management and System Services RFP:** (see RFP #DS-08 EDP Content Management and System Services) The EDP Content Management and System Services RFP includes all of the services needed to develop, test, deploy, and support the EDP that are **not** included in the Data Dashboards RFP. The EDP Content Management and System Services RFP includes development of Content Management and Collaboration tools, an integrated portal solution, as well as overarching EDP project management, integration, support, help desk, and other professional services.
- **The same vendor cannot be a prime contractor on both contracts, although a vendor can be a prime contractor on one and a subcontractor on the other, or a subcontractor on both. All roles depicted with an asterisk in the “Proposed EDP Management Structure” diagram in Section 1.3 must be provided by the prime contractor on the Content Management and System Services contract.**

Key existing or planned assets that will be leveraged for the EDP include:

- **Shared Learning Collaborative (SLC):**(<http://slcedu.org/>) NYSED believes that the EDP goals can be best met by collaborating with multiple states to ensure interoperability, reusability, and security of some of the core technology components required. New York, along with Colorado, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, and North Carolina, are Phase I and II states participating in the SLC, which is a not-for-profit corporation organized to develop and implement technology services that will be available to all states and districts, such as the Shared Learning Infrastructure (SLI). The SLI is a shared data store and set of web services that will support the implementation of the Common Core State Standards and help states and districts provide teachers with the instructional data and tools they need to make personalized learning the norm in every classroom. NYSED will leverage the data store and web and identity management services of the SLI in implementation of the EDP. It is expected that all data to be displayed by the Data Dashboards will be sourced through the SLI using its standard interfaces and services. It is expected that the Content, Collaboration, and Portal functionality provided by the Content Management and System Services vendor will leverage available SLI web services, including the identity management services.
- **New York State's Student Information Repository System (SIRS):** (<http://www.p12.nysed.gov/irs/sirs/>) NYSED operates a robust Statewide data collection and repository system that ingests data from schools Statewide via Regional Information Centers (RICs) and large school districts. The SIRS

team is currently undertaking improvements to collect additional domains of data, including course- and section-level enrollment and teacher-student linkage data, and to increase capacity for daily refreshes. Attendance data will be added during the 2012-13 school year; suspensions and other behavioral incidents will be added during the 2013-14 school year. Baseline data will be supplied daily to the SLI from SIRS and may be supplemented with additional data loaded to the SLI directly from RICs or LEAs.

- **NYSED's Federated Identity Management System:** NYSED is piloting a federated approach for identity management and authentication of educators and administrators Statewide. NYSED anticipates piloting the approach with parents/guardians and students by the 2012-13 school year. EDP applications will access NYSED's identity management and authentication systems through interface with SLI, including SLI roles (see Attachment 6.1 for SLI identity management information).
- **EngageNY.org:** (www.EngageNY.org) NYSED currently operates a public website through which it provides State-sourced curricular, video, and other content. Beginning in the spring through the fall 2012, EngageNY.org will be re-built with Drupal and enhanced for the publication of New York's Common Core curriculum modules (see RFP at <http://usny.nysed.gov/rttt/rfp/sa-03/home.html>) and videos of effective teaching practices (see RFP at <http://usny.nysed.gov/rttt/rfp/gt-15/home.html>) during the 2012-13 school year. During the implementation of the EDP, it is expected that the existing EngageNY.org site will be maintained and all existing functionality will be migrated into the EDP Content and Collaboration tools (these tasks will be accomplished through the EDP Content Management and System Services contract).

By leveraging Statewide identity and access management and the SLI, NYSED's EDP will:

- Standardize data integration, authorization, and access protocols so that authorized vendor partners can build tool options for LEAs and schools to use as part of their daily practice;
- Support LEAs by procuring an initial set of data tools through the Data Dashboard Solutions RFP;
- Ensure the security and privacy of student and other educational data;
- Enable the display of State and local instructional data.

EDP users, who are organized into schools, districts, and other groupings/communities of users, will be provided with a role-specific landing page following login to the system. Through single sign-on functionality, users will have access within the system to authorized applications selected or procured by their school, LEA, Regional entity, or NYSED. A shared header/footer and modular approach deployed from within the portal environment will allow newly authorized applications to appear as they become available.

All applications deployed within EDP will consume and display a common header that includes application and other navigational controls, as well as an integrated search

box. EDP aims to provide users with intuitive click-through navigation across EDP applications and access to related resources via integrated search results. The goal is to enable straightforward navigation between the locally selected Data Dashboard tool, future tools, and aligned curriculum and instructional resources. During a single login session, educators will be able to identify student needs based on their Data Dashboards and find relevant Common Core-aligned curriculum and instructional resources through integrated search, intuitive navigation pathways, and, desired but not required, recommendation engines.

1.1.3 Content Management and System Services Procurement Objectives

DISCLAIMER: The information in this section is provided as context for the benefit of those responding to the Data Dashboard Solutions RFP (i.e. this RFP). The information in this section will be superseded by the contents of the Content Management and System Services RFP #DS-08 and may not be relied upon in any way by potential respondents to that RFP.

Content and Collaboration Functionality: EDP will provide access to NYSED-sourced curricular and instructional content through a to-be-enhanced version of its EngageNY.org website. As additional curricular and assessment content are acquired and published, NYSED expects to integrate EngageNY.org with the federated identity management system currently under pilot. User login and appropriate permissions will be required to access some content and collaboration spaces or to upload user-generated content. EDP users will be able to create and curate their own content; upload and share resources, and have discussions with colleagues in their school, district, or user-defined groups; find new content aligned to their profile (grades, subjects, interests); and be notified automatically of updates to the system. Schools, districts and clusters of schools and districts, such as networks within the New York City Department of Education (NYCDOE), and network teams throughout New York State (see <http://usny.nysed.gov/rttt/ntinstitute/home.html>), as well as Boards of Cooperative Educational Services (BOCES; see www.boces.org) and RICs (see <http://www.boces.org/wps/portal/BOCESofNYS/About/WhatIsARIC>), will be able to manage their own libraries of instructional resources.

Machine Readable Metadata: EDP content will be tagged using the Learning Resource Metadata Initiative (LRMI), www.lrmi.net, mark-up protocol, and Common Core State Standards (CCSS) will be referenced using the Common Core Taxonomy provided by the National Governor’s Association (NGA) and the Council of Chief State School Officers (CCSSO), available in spring/summer 2012 at www.corestandards.org. EDP will provide enhanced search and other functionality by sending, receiving, and leveraging content metadata (including tags and ratings) to and from the Learning Registry (www.learningregistry.org). See Attachment 6.1 and the “SLC Pilot Phase Project Documents” link at <http://slcedu.org/technology/technical-specifications> for a summary of the LRMI and Learning Registry initiatives.

Portal and Search: EDP will provide a portal architecture compatible with the SLI portal specifications, ideally leveraging the SLC portal code. See Attachment 6.1 and the “SLC Pilot Phase Project Documents” link at <http://slcedu.org/technology/technical->

[specifications](#) for a summary of the SLC portal and integration approaches. The portal architecture will include a shared header for consumption by all EDP applications, including the Data Dashboard solutions. The shared header and portal will include dynamic or configurable navigation to enable users to navigate between the applications selected for use by the user's organization. Integrated search functionality will be accessible from the header and may be embedded throughout EDP applications.

Overarching EDP Project Services: As described in the "Minimum Time On-Site" table in Section 1.3.3, the vendor selected through the EDP Content Management and System Services RFP process will locate its project team staff at NYSED's Albany offices to coordinate the overarching project services and work streams that span across multiple procurements, solutions, and NYSED teams. Preliminarily, these work streams have been identified as:

- **Data Flow:** SIRS to SLI to EDP applications, LEA/RIC to SLI to EDP applications
- **Help Desk / Technical Support** for all EDP functionality
- **Identity Management and Access Control Integration** across all EDP components
- **Implementation, Configuration, and Testing** of all EDP components
- **Training and Documentation:** Integrated training and documentation for all EDP functionality
- **Selection and License Management Processes** for Data Dashboard solutions
- **Content Integration**

The Overarching Project Services for the above preliminary work streams will include:

- Project Management, coordination, issue tracking, escalation and resolution across the above-identified work streams including defining and tracking all deliverables and dependencies across the EDP, regardless of procurement or source;
- Development of a license management process and supporting survey or selection tool that enables LEA, network, or school selection of the local Data Dashboard solution and provides extracts of the selection data for SLI access control, NYSED contract management, and Data Dashboard vendor invoicing to NYSED predicated on LEA selection tallies;
- Migration of the current and planned EngageNY.org website functionality and content onto the EDP Content Management and Collaboration system.
- Ongoing hosting, maintenance, and operation of the existing EngageNY.org website beginning with the start date of the contract;
- Usability analysis of the existing EngageNY.org website during requirements review; ongoing usability and usage analysis following build for possible time and materials-based feature enhancements;
- Loading of all State-provided curriculum/instructional content in the Content Management (including EngageNY.org) and Collaboration software modules;
- Importing of selected communities and content from NYCDOE's Achievement Reporting and Innovation System (ARIS) Connect system;
- Leveraging the SLC Learning Registry node and publishing specified events to the Learning Registry;

- Deploying enhanced Search functionality that leverages available indexes from the Learning Registry or SLC;
- Quality Assurance and Systems Testing of all required EDP functionality, including applications within the scope of the EDP Content Management and System Services procurement (Portal, Content Management, and Collaboration applications), and applications outside the scope of that procurement (e.g., vendor Data Dashboard solutions);
- Assistance with User Acceptance Test case development, test scripts, and process management of all required EDP functionality;
- Deployment of training materials, documentation and turn-key training sessions (to RICs, BOCES, Networks, Big 5) covering all applications within the scope of the EDP Program. Sessions will be facilitated workshops focused on embedding tool use to support existing SEA and LEA initiatives;
- Set up and testing of help desks, with integrated support/ticket tracking processes across Tier 1 to 3 for all applications within the scope of the EDP program;
- The deployment of tools and processes to log, track, and report on escalated issues across all vendors, NYSED, Regional Information Centers, and LEAs during development, test, and operation.

1.1.4 Data Dashboards Procurement Objectives

NYSED is committed to increasing LEA options and choice by contracting with up to three vendors to provide integrated educator/parent/student Data Dashboard solutions that display student biographical, enrollment, achievement, and other relevant data in attractive and compelling ways. The solutions must ensure that personally identifiable student data are displayed only to users with the appropriate access permissions, as determined by SLI roles in federation with NYSED identity and access management systems.

Educator Data Views and Early Warning Indicators: EDP data displays will include district, school, grade, and classroom level aggregate and drill-through views for all educators supporting New York’s K-12 LEA-enrolled students (see Attachment 6.7 for educator and enrollment counts), including student demographic, enrollment, attendance, assessment, early warning indicators, and other data as described in the Requirements Table (Attachment 6.2). Detailed Student Profile views will also be available for each student, individually. All data displayed in these views will be sourced via the SLI.

Parent and Guardian Data Views: EDP will display student profile data to parents and guardians of all New York’s K-12 enrolled students (See Attachment 6.7 for enrollment counts). This view will support multiple language translations or translation guides and provide embedded contextual help and end-user documentation to explain data elements and displays to families. See the Requirements Table (Attachment 6.2) for detailed requirements. All data displayed in these views will be sourced via the SLI.

Student Data Views and Higher Education Record Exchange: EDP will provide access to student profile data for those students in grades six through twelve (see Attachment 6.7 for enrollment counts) and will enable the authorized student or

parent/guardian to transmit a copy of their profile data to New York's public higher education institutions. See the Requirements Table (Attachment 6.2) for detailed requirements. All data displayed in these views will be sourced via the SLI.

Learning Progression and Mastery: Although not required, Data Dashboard vendors are strongly encouraged to design and offer Learning Maps or intuitive representations of progress through the Common Core State Standards for individual students or groups of students. The SLC has committed to provide open Learning Map technology and a reference implementation that may be leveraged for this purpose.

Recommendation Engines and/or Suggested Links: Data Dashboard vendors are encouraged to design and offer recommendation engines or other mechanisms for suggesting links to useful resources while users are viewing data. Recommended content should prioritize aligned EDP resources. Access to the EDP's Learning Registry feed will be provided.

1.1.5 Shared Learning Collaborative and Shared Learning Infrastructure

NYSED intends to leverage the work of the SLC as a core component of its procurement, development, and implementation strategy. The SLC is investing in a technology infrastructure and set of services called the Shared Learning Infrastructure (SLI), through which states and school districts can more easily provide educational information to application developers in a secure manner. The SLI enables states and school districts to make a one-time reusable investment, rather than individual redundant investments with multiple application vendors. Additional information about the SLI technology can be found at the SLC website at <http://slcedu.org/technology/technical-specifications>.

In addition, the SLC plans to leverage new options for accessing instructional resources that can be made available when curriculum content are marked up with Common Core-aligned meta-data through common protocols such as the Learning Resource Metadata Initiative (LRMI), www.lrmi.net, and such meta-data are published, received, and indexed through the Learning Registry (www.learningregistry.org) for enhanced search and recommendation engine purposes.

These SLC services, coupled with a set of New York-specific Data Dashboards and a New York-specific content management and collaboration solution, provide the context for NYSED's comprehensive approach to the EDP. The illustration in Section 1.2.3 - Envisioned Solutions Architecture, provides an overview of the intended outlook for NYSED and the integrations with the SLC/SLI².

As indicated below, the EDP will access the following SLC services (see Attachment 6.1 and the "SLC Pilot Phase Project Documents" link at <http://slcedu.org/technology/technical-specifications> for a summary of the SLC infrastructure technical and integration specifications). The SLC will provide a bidders conference and bidder support to vendors who plan to respond to NYSED's two EDP RFPs):

² If, for any reason, the SLC fails to implement the SLI, it will be NYSED's responsibility to provide an equivalent infrastructure with which vendors will be expected to integrate.

(1) Data ingestion and validation

Data will be sent to the SLI by NYSED, Regional Information Centers, or directly by LEAs. Data Dashboard vendors must support data integration through web service and batch uploads from the SLI data store. Data in the SLI can be considered valid for reporting purposes.

(2) Core, custom, and other data stores

The SLI will contain data in core and custom data stores. The core data store is modeled on the Common Education Data Standards (CEDs, <http://nces.ed.gov/programs/ceds/>), as instantiated by the Ed-Fi data standard (<http://www.ed-fi.org/>).

Vendors providing EDP Data Dashboard services will pull all student biographical, enrollment (including district, school, class, and assigned teachers and principals), program, and achievement data (e.g., State summative assessments, or local interim/benchmark assessments) from the SLI data store. (See Attachment 6.1 and the “SLC Background – EdFi Data Specifications” link at <http://slcedu.org/technology/technical-specifications> for additional information on the data contained in the SLI.).

Classroom assessment data for use in Learning Maps will be pulled from the SLI, with a Learning Map data store providing the Common-Core student progression “nodes” on the map and the relationship between the nodes for use in learning map representations.

Curriculum and instructional content resources, as well as educator collaboration data, will be stored in a dedicated data store as part of the Content Management and System Services Solution RFP. Content meta-data will be published in a Learning Registry data store (see <http://www.learningregistry.org>).

(3) Secure Web services and APIs

Data transferred to and from the SLI and authorized applications, or to and from the Learning Map data store and authorized applications, will use the SLI API and web services.

The SLC API specifications are in vendor comment phase during the first quarter of 2012. Final API specifications are targeted to be posted on the SLC website (see <http://www.slcedu.org>) on April 30, 2012. The associated sandbox environment and software development kit (SDK) will be available in June 2012.

(4) User authentication and authorization

State-wide identity and access management data will be sourced to the SLI directly and through federation with NYSED. Authorized applications will rely upon the SLI for user authentication and authorization information (See Attachment 6.1).

(5) License/Application Management

The Content Management and System Services vendor will deploy an external survey tool to allow authorized representatives in LEAs (or schools in NYC) to

select Data Dashboard applications from the list of Data Dashboard contract vendors. Once LEAs (or schools in NYC) have made their selections, the Content Management and System Services vendor, with approval from NYSED, will feed this information to the SLI for application authorization purposes (see Attachment 6.1 for identity management specifications) and to NYSED for vendor invoicing.

(6) Portal code

The SLI will publish initial portal code that provides navigational access to multiple authorized applications for authenticated users, and a shared header/footer to be consumed by all authorized applications.

Data Dashboard vendor products are expected to consume the shared header/footer through one of three ways (see Attachment 6.1):

- (1) as “full-window applications” for applications created specifically for the SLI that can access the SLI portal header/footer HTML;
- (2) applications that comply with Web Services for Remote Portlets (WSRP) standard 1.0 or 2.0 can be embedded as a portlet on a page that includes the header and footer; or
- (3) applications that do not implement the WSRP standards can be embedded on a page with the header/footer as an iframe.

Note: Applications in iframes do not reliably support the browser’s back, forward, and page refresh buttons. NYSED does not recommend using iframes for complex web applications that require page-to-page navigation. Some iframe functionality may be restricted due to security rules.

Applications developed as part of the Content Management and System Services Solution RFP will be expected to run within a portal session but will implement a native header/footer that replicates the portal header/footer.

(7) Customizable reporting dashboards

The SLI will support an initial list of deployed apps, including a customizable reporting dashboard for educators that may be leveraged by vendors responding to the Data Dashboard Solutions RFP. This open license educator dashboard will be available in Alpha release in June 2012 and Version 1 release in December 2012.

(8) Learning maps

Vendors responding to the Data Dashboard Solutions RFP are encouraged to provide, as part of their dashboard product, access to Learning Maps, or a graphical representation of student progression along learning objectives aligned to the Common Core State Standards. To support this work, the SLC, or its partners, will provide, beginning in May 2012, access to a Learning Map authoring tools and exemplary visualizations that can be custom developed by the responding vendor, and a standard taxonomy of the Common Core endorsed by the National Governor’s Association (NGA) and the Council of Chief State

School Officers (CCSSO) (see www.corestandards.org, beginning in spring/summer 2012).

(9) Learning Resource Meta-data Initiative (LRMI) and Common Core Taxonomy

LRMI is a protocol for marking up educational content with relevant meta-data, including the Common Core taxonomy. Draft LRMI specifications, and a timeline for full deployment, can be found at www.lrmi.net. The NGA/CCSSO authoritative Common Core taxonomy can be found at www.corestandards.org, beginning in spring/summer 2012. All content deployed within the EDP will conform to these standards.

(10) Learning Registry and Enhanced Search

Learning Registry (www.learningregistry.org) is a network and protocol for sharing meta-data. The SLC will build a Learning Registry instance and an index accessible to search engines. EDP will leverage the SLC Learning Registry instance, publish a meta-data feed, and deploy enhanced Search functionality that accesses the SLC index.

It is within this context that bids are requested for this procurement. Support for development work will include SLC published standards (see Attachment 6.1), a development sandbox, a software development kit, and other SLC vendor support for those responding to this RFP.

Since at least eight other states (Colorado, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, and North Carolina) will be participating in the SLC, vendors may wish to explore alignment between the work being requested in this procurement and the needs of customers in those other states.

1.2 Required Solution

1.2.1 Overview

The purpose of this RFP is to award up to three contracts (an initial three-year term and up to two one-year extensions) to vendors of Data Dashboard solutions suitable for the K-12 school community (e.g., educators, students, parents) in New York State. The solutions will be integrated to the SLI infrastructure.

NYSED will provide funding for at least the first three years of contract services. Following a vendor development and product demonstration period (Year 1), LEAs (and schools in NYC) will choose a single dashboard solution to be deployed within their district (or school in NYC) during Year 2 of the contract. This LEA selection and deployment cycle will be repeated in the summer prior to Year 3 of the contract (i.e., LEA selections may be different for Year 3 vs. Year 2). In Years 4-5, upon extension of the State contract, if Statewide funding is no longer available, LEAs will have the option to continue to purchase Data Dashboard services, under the terms of this contract and following annual periods of re-evaluation and Data Dashboard selection. The two one-year extensions will depend, in part, on LEA feedback and the number of LEAs selecting each of the vendors' Data Dashboard services. NYSED reserves the right to extend less than all of the vendor contracts.

NYSED is seeking to support at least three primary use cases through the Data Dashboard Solutions procurement:

- Educators use data to help identify student educational needs and have integrated access to aligned State-provided and user-generated curriculum and instructional resources. Access between data dashboards and curriculum and instructional resources should be provided within the EDP single sign-on environment by means of intuitive navigation, access to integrated search functions, and, desired but not required, embedded recommendation engines.
- Parents (or guardians) view their child's data and have a common framework within which to structure communications with educators.
- Students enrolled in grade six and above access data elements available to educators and parents as part of their preparations for college and career readiness.

The core modules desired in the procurement are an Educator Dashboard (and desired but not required Learning Map and Recommendation Engine), Parent Dashboard, Student Dashboard, and an Early Warning System, the detailed requirements for which are outlined in Attachment 6.2. Although NYSED is only interested in providing the four modules outlined above, NYSED recognizes that most products may span beyond these boundaries. NYSED is seeking proposals for the core functionality and services included in this solicitation. Responders may choose to include value-added features with their response, without incremental costs. The products will be made available to users via the NYSED EDP, once integrated with the SLI.

The procurement must include Hosting/ASP services (defined for the purposes of this RFP as an entity that manages and distributes software-based services and solutions to customers across a wide-area network from a central data center) supporting these functions. Successful proposals must include integration services, end-user and technical documentation, training materials, translation or translation guides of parent end-user documentation and/or dashboard screens into up to nine languages (Arabic, Bengali, Mandarin Chinese, French, Haitian-Creole, Korean, Russian, Spanish, Urdu), turn-key training/support for the provider of Help Desk and training/Professional Development Services (i.e. the contractor selected as a result of the RFP #DS-08 EDP Content Management and System Services), and Tier 3 support for the life of the contract.

As described above, any data to be displayed by the Data Dashboard solution must be sourced through the SLI. Data to be specified at specification time, such as Early Warning System flags, Common Core-aligned assessment data, and grade book data, captured by the Data Dashboard solution should be written back and stored in the SLI and/or be available for export in an interoperable format. The EDP components should share data internally using master data management concepts (i.e., draw data for EDP transactional data structures from the authoritative source system, not allow updates to data for which EDP is not the authoritative data source, send data for which EDP is the authoritative source to other systems, including the SLI, through data movement architecture).

Assumptions for Proposals

Changes to New York State Assessments

Throughout all years of the proposed contract, vendors should build into their pricing model currently anticipated changes in New York's assessment program, as described below.

In January 2011, the New York State Board of Regents approved and adopted the New York State P-12 Common Core Learning Standards, which encompass the Common Core State Standards in their entirety.

Starting in school year 2012-13, all curriculum, instruction and assessments in ELA and Math through 8th grade will be aligned to the Common Core. Regents' exams in Algebra 1, Geometry and English will be aligned to the Common Core beginning in Spring 2014, and Algebra 2 in Spring 2015. All social studies and science examinations, as well as the New York State Alternate Assessment (NYSAA) and New York State English as a Second Language Achievement Test (NYSESLAT), will be redesigned to incorporate the Common Core learning standards as appropriate.

New York is a Governing State in the Partnership for the Assessment of College and Career Readiness (PARCC, see www.parcconline.org). Assuming PARCC assessments are adopted by the Board of Regents, New York will transition to PARCC in school year 2014-15.

New York is also a Lead State in the development of the Next Generation Science Standards (NGSS). The NGSS are on target for finalization and release in early 2013. Should the Board of Regents choose to adopt these standards, this will have a direct impact on the redesign of all New York science assessments.

Given these assessment transitions, vendors should display assessment information in Data Dashboards in accord with the New York State standards to which assessments are aligned, depending on testing program, as well as to the Common Core, and any additional revised standards (e.g., NGSS for Science).

For assessments aligned to the Common Core, assessment views should allow users to organize information in accord to the structure inherent in the Common Core. For example, in Math, users should have the option to organize information according to Priority Standards, Cluster, Domain and Mathematical Practices. In ELA, users should have the option to organize information according to Anchor Standards, Reading Standards for Literary Texts, Reading Standards for Informational Text, Writing Standards, etc.

Finally, New York is contemplating adding additional assessments (e.g., Grade 6-8 science and social studies; Grade 9-11 English language arts).

Once these assessment changes occur, Data Dashboard products will need to be modified to update parent and educator documentation, including any included parent

walk-through functionality and educator Web links to reference materials to help users understand how to interpret the scores.

Usage Estimates

Attachment 6.7 provides counts of student enrollment, classroom teachers, and other educators by district and school. Vendors shall propose a per-student license (as described in Section 2.3, Cost Proposal) that includes, for each LEA, unlimited access by the student (grade 6 and above), his or her parent/guardians (regardless of student grade), and his or her teachers/principals/educators (regardless of student grade). Although vendors retain sole responsibility for the modeling of these bids based on their experience in the field and the SLA requirements outlined in Attachment 6.3, NYSED generally assumes that teachers will access this information regularly (e.g., several times per week), and parents and students will access this information occasionally (e.g., several times per school year). Over the course of this contract, NYSED will only make student dashboards available for students in grades 6 and above. Parent and teacher/other educator access will be provided based on the per-student license fee of all students, regardless of grade.

Proposals may also include third-party tools or other enhancements that add value to or distinguish a proposed solution. Any or all components (integration services, end-user and technical documentation, training materials, turn-key training, Tier 3 support, hosting services and/or third-party Tools) may be included as a subcontracted service, but the primary proposers will be responsible for the performance of the entire integrated system, including subcontracted services.

1.2.2 High Level Timeline

Event	Timeline
Data Dashboard Procurement	April 2012 – October 2012
Product Integration and Testing	October 2012 – April 2013
Year 1 LEA Product Selection	April 2013 – September 2013
Year 1 Launch (Year 2 of Contract)	October 2013
Year 1 Product Evaluations	October 2013 – March 2014
Year 2 LEA Product Selection	April 2014 – September 2014
Year 2 Launch (Year 3 of Contract)	October 2014

1.2.3 Envisioned Solutions Architecture

NYSED envisions the EDP to be a core tool for all LEAs and schools, providing support for many types of views and content/instructional resources to allow effective data-driven decision-making for students, teacher and parents.

To support this vision, the solution architecture must have the following characteristics:

- Accessibility of data and content anywhere and anytime by students, parents, teachers, and other educators at home, school, and via mobile devices.
- Scalability to accommodate NYSED students (grades 6 and above), parents (of all students, regardless of grade), and teachers/principals/other educators (of all

students, regardless of grade) as described by the estimated enrollment model included in Attachment 6.7.

- Extensibility of functionality in the system environment.
- Extensibility of the technology architecture to support integration with the SLI.
- Interoperability with SLI to support access management, access control, and data exchange.
- Adhere to New York State Cyber Security Policy P03-002 (see <http://www.dhSES.ny.gov/ocs/resources/documents/Cyber-Security-Policy-P03-002-V3.4.pdf>).
- System usability, including, but not limited to, adherence to the New York State Information Technology Policy P08-005, Accessibility of Web-Based Information and Applications (see <http://www.cio.ny.gov/policy/NYS-P08-005.pdf>).

The vendor’s proposal shall address the key areas described in this envisioned solution architecture and the included functional requirements (see Attachment 6.2 Detailed Requirements). The following diagram provides a graphical view of the envisioned solution architecture for EDP.

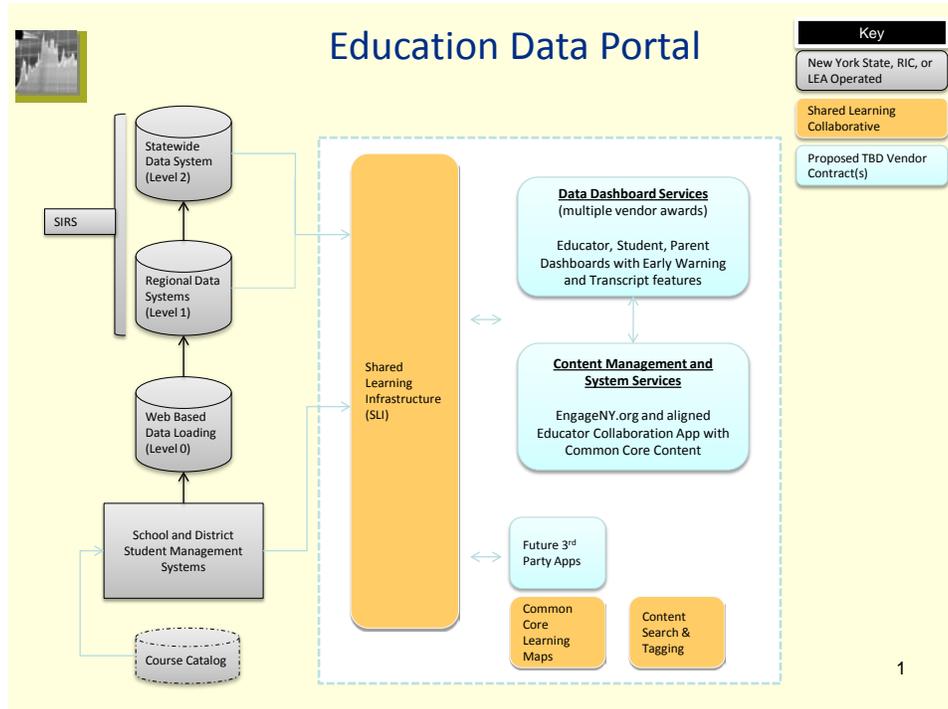


Figure 1. Solution Architecture

Data Dashboard vendors must have a highly scalable and extensible architecture that will grow, if necessary, to meet the needs of New York’s students, parents, and educators.

Additionally, all solutions must support:

- *Application clustering/acceleration*—offers a framework to cluster application components for both failover and load balancing setup that helps to scale based on need, as well as increase uptime of services.

- *Caching*—offers a framework to cluster application components to share runtime data, as well as data caching mechanism for increased performance. Sharing runtime data like HTTP session data assists clustered components to take over from the point of crash seamlessly, without impacting the user experience.
- *Event logging*—offers a centralized logging framework, assists developers, quality assurance, support teams, and operations teams to troubleshoot issues, as well as track flow of data within a business transaction, and ability to track/audit user operations done via the exposed user interfaces.
- *Security/SSO*—offers a secure (SSL) mechanism to let customers access the services via various interface options.
- *Role based access control (RBAC)*—offers a flexible RBAC framework, supports views for educators, parents, students, and roll up data for administrators. The system must restrict, in a timely manner, access based on changes in association with a student.
- *Notification engine*—offers a flexible event publish/subscribe with the ability for users to define various channels of notification.
- Interacts with a rich API layer (see the SLI API documentation in Attachment 6.1) for service creation, orchestration, access, and management. Some of the services are exposed as Web services for external application integration.
- All procured technologies should be integrated with the SLI/NYSED identity management solution, including directory and federated SAML identity information.

1.2.3.1 Role-Based Access Control (RBAC)

The SLI identity management system will consider four primary dimensions in assigning roles with the permissions to be consumed by EDP applications:

- 1) Roles (e.g., system administrator, content administrator, local administrator, group/community moderator, teacher, other educator, principal, other administrator, parent/guardian, student, public);
- 2) Permissions based on “group/organization” location (e.g., classroom; school; district; cluster of schools/districts, including RIC, BOCES, network; other group/community);
- 3) Data permissions (e.g., aggregate data only, student-level data);
- 4) Permissions based on relationships between among, course/section, and educators assigned to the organization (e.g., a Network Administrator with student-level data permissions will be able to view student level data for any students enrolled into a network school).

For example, a teacher may have student-level data permissions for his or her assigned classroom, but aggregate-only data permissions for his or her assigned school and district.

Similarly, a principal may have student-level data permissions for his or her assigned school, but aggregate-only data permissions for his or her assigned district.

A regional network leader, such as an employee of NYCDOE, or a BOCES or a RIC (“other administrator” role), may have aggregate-only data permissions for the schools or districts in his or her network, but may have student-level permissions for a particular school or class in which he or she is facilitating intensive support in data driven decision-making.

1.2.3.2 Single Sign-On

Vendor solutions must support single sign-on (SSO) to access the SLI Authentication system and address internal API authentication. The system is expected to interface with SLI identity access management systems. The specification and details to integrate with the system are provided in Attachment 6.1.

1.2.3.3 Data Integration

Data Dashboard vendors must support data integration through Web service and batch uploads from the SLI data store. If Data Dashboard data elements are SLI-compatible but not populated in the SLI (e.g., not loaded to the SLI by NYSED or LEAs), vendors may build data input or import mechanisms, at no cost to NYSED, that load the data directly from LEAs and schools to the SLI; the data are then consumed via the SLI in the Dashboard solution. Data Dashboard vendors may source data for proposed Data Dashboard services directly from LEAs and schools, at no cost to NYSED, only if they have exhausted, as certified in writing by NYSED, every other reasonable attempt to do so through the SLI. Any use of the custom data features of the SLI must be accompanied by an open specification of the data elements.

The SLI will provide the capabilities for NYSED and its LEAs to define access to different applications based on role and agreed upon rights. Data Dashboard vendors will need to integrate with the SLI to gather the necessary data associated with a user and consume and update this information on a frequent and regular basis.

The Data Dashboard tools are intended to primarily serve as presenters of data. If the applications foster the collection of additional data from users for value-add purposes, and/or if these data are authoritative (i.e., there is no other source system for this information), the vendor will be required to write these data back for storage in the SLI’s core or custom entities, unless otherwise agree to in writing by NYSED. Data that would require write back include, but are not limited to, Early Warning indicator flags, Common Core-aligned assessment data not sourced by NYSED, and grade book data. Data not written back to the SLI, as agreed to in writing by NYSED, will need to be made available for export in an interoperable format.

See Attachment 6.1—for detailed data integration specifications.

1.2.3.4 Data Dashboard Solution Selection Process

NYSED will allow LEAs and, in the case of New York City, schools, to select, prior to Year 2 and again prior to Year 3 of the contract, the Data Dashboard solution which best suits their needs. The Content Management and Systems Services vendor will manage and support the process of collecting information regarding which Data Dashboard solution LEAs are registered to use and enabling the necessary access controls via technology provided by the SLI. In order to assist LEAs (or schools in New

York City) with the Data Dashboard selection process, Data Dashboard solution vendors are expected to have a demonstration version of their systems ready for end users by spring/summer 2013. It is acceptable for Data Dashboard demonstration versions to be instances of vendor products, sourced with anonymous data from the SLI sandbox development environment. At the time of demonstration, Data Dashboard solution vendors are expected to have ready sufficient end user documentation and other marketing materials that have already been reviewed and approved by NYSED.

Prior to Year 2 and again prior to Year 3 of the contract, the demonstration process will involve a mandatory Statewide webinar and at least twelve (12) subsequent regional live demonstration events to be held in various locations throughout the State (e.g., Western New York Regional Information Center (RIC), Monroe / EduTech RIC, Central New York RIC, Mohawk RIC, Greater Southern Tier / South Central RIC, Franklin-Essex-Hamilton BOCES, Northeastern RIC, Mid-Hudson RIC, Lower Hudson RIC, New York City, Nassau RIC, Suffolk RIC). All vendors are required to participate in these webinar and regional demonstration events.

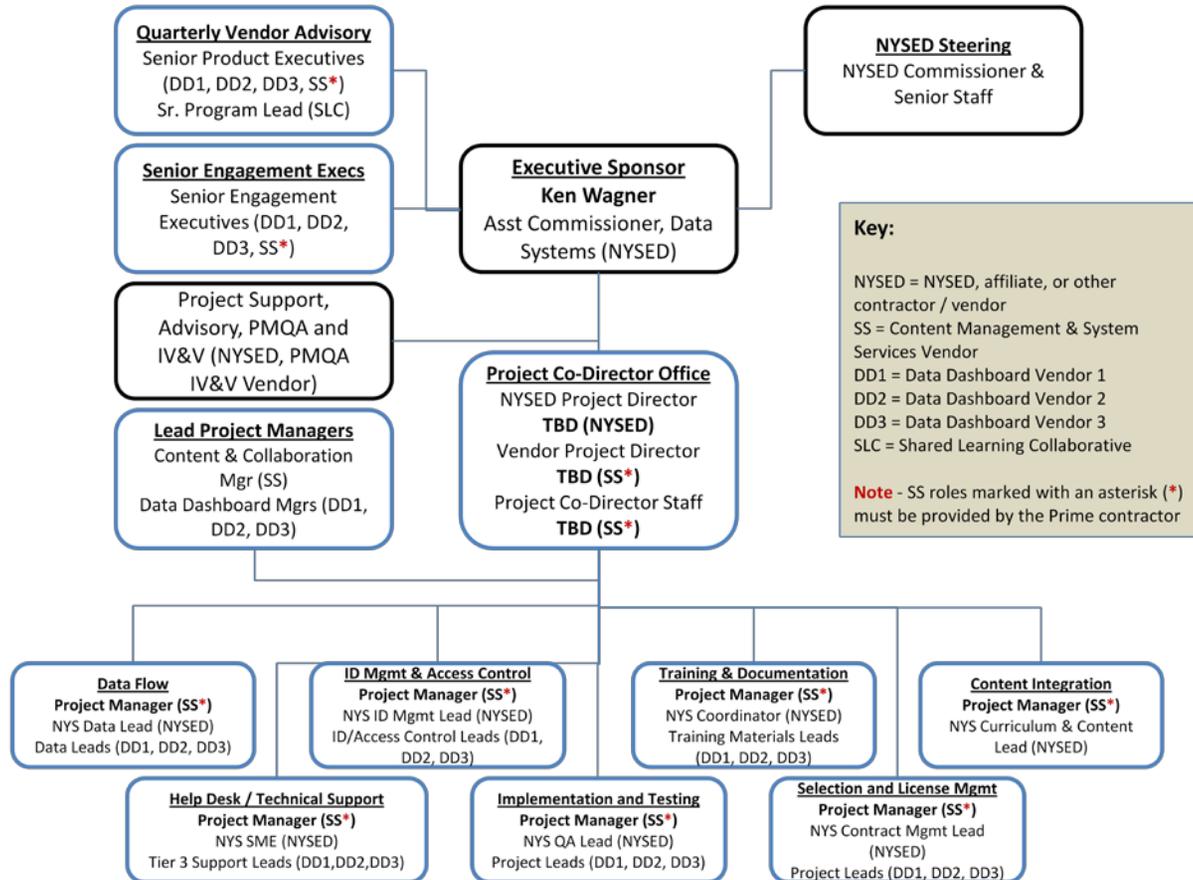
Additional marketing outreach by Data Dashboard vendors will be permitted during a defined period to be specified by NYSED. Data Dashboard vendors must provide school, district, and network personnel with the one-click electronic means to opt-out of all future outreach.

During Years 1, 2, and 3 of the contract, it is not permissible for vendors to offer LEAs or schools **any** financial incentives that could be perceived as intended to encourage a LEA (or school in New York city) to select a vendor Data Dashboard solution.

1.3 Proposed Education Data Portal Management Structure

The diagram below of the proposed project management structure indicates how the Data Dashboard vendor staff will interface with the overall structure:

Proposed EDP Management Structure



1.3.1 Definition of Project Roles

Role	Definition
<i>NYSED Steering Committee</i>	Comprised of the NYSED Commissioner and Senior Staff.
<i>Executive Sponsor</i>	Ken Wagner, Assistant Commissioner, Data Systems
<i>Quarterly Vendor Advisory</i>	Comprised of Senior Product Executives for DD1, DD2, DD3, and SS* and Sr. Program Lead for the SLC (single point of contact for the EDP project)
<i>Senior Engagement Executives</i>	Senior Engagement Executives for DD1, DD2, DD3, and SS*
<i>Project Support and Advisory</i>	Comprised on NYSED Senior Manager, Functional Leads, and Subject Matter Experts
<i>PMQA and IV&V</i>	See 1.3.4 below
<i>Project Co-Director Office</i>	The project will be co-led by a NYSED Project Director and a Project Director from the winner of the Content Management and System Services RFP*. This duo will leverage shared resources (i.e. Co-Director Staff such as: Project Scheduler, Risk Manager, Budget Manager, Business Analysts, etc.)
<i>Lead Project Managers</i>	The Content and Collaboration solution will be managed (end-to-end) by a Lead Project Manager from the SS vendor*. Similarly, each of the Data Dashboard Solution vendors will provide a Lead Project Manager.
<i>Project Managers (Data Flow, ID Management, Implementation and</i>	Each of the seven work streams will be led by a Project Manager from the winner of the

<i>Testing, Selection and License Management, Training and Documentation, Content Integration, Help Desk and Technical Support) (SS)</i>	Content Management and System Services RFP*.
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Note – Content Management and System Services (SS) roles marked with an asterisk (*) must be provided by the Prime contractor.

1.3.2 Work Streams

As indicated above the project will be managed through a number of “work streams” across each phase of the project.

<u>Work Stream</u>	<u>Description</u>	<u>NYSED Management Team</u>	<u>Content Management and System Services Vendor Management Team</u>	<u>Data Dashboard Vendor(s) Team(s)</u>
Data Flow	Manage the flow of data from SEAs and LEAs to the SLI and then to the respective vendor applications	Provide SEA data feed to SLI; Oversight of vendor access to SLI data.	Manage overall work stream; Integration of Portal and Content system to SLI	Consume data from SLI for Data Dashboard products; optionally, but at no cost to NYSED, facilitate LEA loading or entry of additional data sets to SLI.
Help Desk and Technical Support	Provision of help desk and technical support	Oversight & Requirements Ownership	Manage overall work stream; Develop Help Desk strategy & protocols across EDP Provide Tier 1 and 2 support for all EDP applications: Provide Tier 1, 2, and 3 support for Content Management solution	Provide Tier 3 support for Data Dashboard solutions; Provide training materials for Tier 1 & 2 support
Identity Management and Access Control Integration	Ensure compliance with NYSED’s/SLI’s Identity Management process, protocol and security measures, including single sign-on across all EDP components	Provide Federated Identity Management Plan and Infrastructure (leveraging SLI); Oversight	Manage overall work stream for all EDP; Integrate Content Management, collaboration, and Portal solutions with NYSED/SLI solution	Integrate Data Dashboard solution with NYSED/SLI solution
Implementation,	Specification, Configuration,	Oversight and Requirements	Manage overall work stream, including	Testing of Data Dashboard

Configuration, and Testing	Customization, and Testing, including UAT and ongoing usability analyses.	Management; UAT	ensuring deliverable sign-off; systems testing; unit testing of content management, collaboration, and portal solutions	solution
Training and Documentation	Develop training materials, end user, and technical documentation. Provide facilitated sessions for training and integration into existing change efforts and SEA, Network, and LEA level	Requirements; Coordination with Statewide efforts; Oversight	Manage overall work stream for EDP; Provide training and “train-the-trainer” sessions focused on embedding tool use to support existing SEA and LEA initiatives; Provide end-user and technical documentation for Content Management, Collaboration, and Portal solution	Provide “train-the-trainer” training to Content Management and System Services vendor; Provide end-user documentation for Data Dashboard solution
Selection/ Licensing	Deliver vendor demonstrations (“road show”) and marketing; Facilitate LEA selection; Manage licenses and ensure proper invoicing	Requirements; Contract Management; Oversight	Manage work stream for all EDP; Provide LEA/school product selection tool; Provide product selections to SLI for access control and Contract Management	Deliver vendor demos of Data Dashboard solution(s); Integrate with licensing system
Content Integration	Convert all existing EngageNY content to EDP Content Management solution. Tag, Load, and Curate additional scheduled content to EDP	Requirements; Contract Management; Oversight	Ensure that all content contained in EngageNY v1.5 displays correctly within EngageNY v2.0; Import selected content and data from the NYCDOE ARIS Connect system; Tag, load, and curate additional NYSED content during the contract term.	None

1.3.3 Data Dashboard Contractor Roles and Responsibilities

The selected vendor (“vendor”) will be responsible for supporting all activities associated with design, validation and implementation of its Data Dashboard solution, and will also be responsible for maintenance and support and warranties for the installed systems through the term of the agreement.

The Content Management and System Services vendor will be responsible for managing the entire EDP project across work streams and communicating work stream status - i.e. progress towards milestones/deliverables, detailed inventory of issues and risks, and key decision points - to the Project Co-Director Office. If a Data Dashboard Solutions vendor fails meet its responsibilities, the Content Management and System Services vendor will document and communicate this issue to the Project Co-Director Office.

The Data Dashboard vendor is required to provide a full-time project manager and appropriate staffing to achieve the work identified in the RFP as organized per these work streams. The State anticipates a need for a significant on-site presence. It is expected that vendor staff be on site at the New York State Education Department, 89 Washington Avenue, Albany NY 12234, in accordance with the following schedule:

MINIMUM Time On Site								
Year 1 (Implementation)							Year 2	Year 3
	Project Initiation and Planning	Requirements Analysis	Design	Development	Integration and Testing	Implementation	Operations and Maintenance	Operations and Maintenance
Key Staff & Staff Assigned to Co-Directors' Office	80% on site	80% on site	80% on site	40% on site	80% on site	80% on site	One day per month	One day per month
Work Stream Leads	80% on site	60% on site	60% on site	40% on site	80% on site	80% on site	One day per month	One day per month

The Data Dashboard vendor is required to designate a Senior Engagement Executive to serve as the vendor’s executive sponsor and senior escalation point internally. This should be a senior executive with profit and loss (P&L) responsibility for the project to whom the project leader will report.

The Data Dashboard vendor is required to designate its Senior Product Executive (e.g., Vice President of Product Development, Chief Product Officer, etc.) and make him or her available up to one half day per quarter to participate in an advisory group to NYSED. The goal is to bring together the leadership of the Data Dashboard products and other providers (e.g., the Content Management and System Services vendor,

representatives of the SLC, etc.) to advise NYSED on key policy, usability, and technical infrastructure issues in order to enable the best possible solutions for educators, students, and families. The Senior Product Executive and Senior Engagement Executive may be the same person.

The roles and responsibilities of these Key Project Staff are described in more detail in Section 4.13.1. Continuity of Key Project Staff is very important to NYSED, and vendors must comply with the provisions of Section 4.13.1 Contractor Staff, A. Staffing Changes of Key Project Staff.

1.3.4 Project Monitoring and Quality Assurance

The State, at its sole discretion, may contract separately with professional services organization(s) to provide Project Monitoring and Quality Assurance (PMQA) Services and/or Independent Validation and Verification (IV&V) services for the initiative. The PMQA and/or IV&V contractor will be responsible for identifying issues, assisting NYSED in its coordination of its EDP vendor contracts, identifying risks and bringing them to the attention of the governance bodies, and management of inter-agency coordination. The selected Data Dashboard vendors are expected to fully cooperate with the PMQA and/or IV&V contractor.

1.4 Required Implementation and Support Services

This section describes the implementation and service support activities that will be performed by the vendor once under contract.

The vendor is mandated to perform product implementation and support services as described in the subsections below.

1.4.1 Project Initiation, Planning, and Management

The vendor shall develop a detailed work breakdown structure (WBS), implementation plan, and schedule outlining the key phases, tasks, activities, dependencies, budgeted hours, assigned resources, and deliverables for the project. The schedule shall also clearly define the estimated resource hours associated with each element of the WBS.

The vendor shall also update the staffing plan provided in Attachment 6.6 of its technical proposal. During the course of the project, the Vendor shall participate in status meetings and provide written status reports to NYSED.

The vendor's Project Manager shall maintain and update the implementation plan and project schedule throughout the life-cycle of the project and provide NYSED with updated versions of the staffing plan and project schedule as needed.

As part of the ongoing management of the project, the Vendor shall develop a risk management plan identifying potential project risks and mitigation strategies. The Vendor shall also identify, track, and manage project issues and develop an issue resolution process.

ID	Requirement	Deliverable
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ID	Requirement	Deliverable
1.	The Vendor shall refine its proposed project plans as needed consistent with agreements made during contract negotiation. The plan should address: <ul style="list-style-type: none"> • Work Breakdown Structure (WBS) • Project Schedule • Quality Management • Risk Management • Change Management • Acceptance Management • Issue Management and Escalation • Communication • Implementation/Transition (including migration plans) • Training 	Project Plan
2.	The Vendor shall amend as needed its proposed staffing plan (Attachment 6.6) that identifies individual resources assigned to each of the project activities.	Staffing Plan

Table 1, Project Initiation and Planning Phase Requirements

1.4.2 Detailed Requirements Definition

NYSED has developed initial functional and technical requirements (see Attachment 6.2). The vendor will validate these and update the requirements as needed. This involves activities associated with the definition and assessment of user requirements that are used to determine detailed specifications for application design, configuration, and development.

ID	Requirement	Deliverable
3.	The Vendor shall update the detailed requirements.	Updated Detailed Requirements

Table 2, Detailed Requirements Definition Requirements

1.4.3 Design Specification

Design specification services that meet NYSED and SLI technical architectural standards.

ID	Requirement	Deliverable
4.	The Vendor shall translate the detailed requirements into a design specification, including technical architecture specification, user Interface (e.g., “wire frames”) and functional specifications, and data interface specifications.	Design Specification

Table 3, Design Specification Requirements

1.4.4 System Construction

System Construction services are the activities associated with the programming, development, scripting, configuring, or customizing of Product modules.

ID	Requirement	Deliverable
5.	The Vendor shall deliver a validated system in the Pre-Production environment. This shall include: <ul style="list-style-type: none"> • ingestion of NYSED/LEA data from the SLI • interface with the SLI API • Integration to the SLI and NYSED Identity Management System (including State and NYC federation), RBAC System, and application licensing system 	Validated Pre-Production System

Table 4, System Construction Requirements

1.4.5 Integration and Testing

Integration and testing services are the activities associated with the confirmation that the individual program components work together properly and, as a whole, perform their specified functions. This includes platform interfaces to the SLI and others as required.

Provide testing services related to EDP component integration including the development of automated system test scripts to validate that:

- data flow correctly from the SLI to the Data Dashboard
- user roles are performing properly
- authentication performs properly
- portal integration with Data Dashboard performs properly
- system navigation performs properly
- Dashboard demos and selection perform properly
- system Views perform properly
- end-user documentation and screens are translated properly
- search performs properly

An environment for integration testing outside of the production environment must be available once EDP is launched.

ID	Requirement	Deliverable
6.	The Vendor shall document test plans defining: <ul style="list-style-type: none"> • the overall strategy for validating the functionality of the system • the approach to ensure test coverage of each requirement • the individual test cases that will be performed to execute the testing strategy • the environments in which the tests will be conducted 	Test Plans

ID	Requirement	Deliverable
7.	The test plans shall include: <ul style="list-style-type: none"> • testing objectives • scope of testing (both what is in and what is out of scope) • responsibilities (who will be performing the test) • testing approach • testing sequence • defect reporting and criteria 	Test Plans
8.	The test case descriptions shall be traced to requirements and include: <ul style="list-style-type: none"> • test data needed to execute the tests • preconditions required prior to the start of test • criteria for suspending and resuming testing • expected test results 	Test Case Descriptions
9.	The Vendor shall design and create User Acceptance Test (UAT) scripts for NYSED approval or modification. Upon NYSED request, additional specific UAT scripts will be created.	User Acceptance Test Scripts
10.	The Vendor will subcontract with an industry-recognized security firm (agreeable to NYSED) for a security audit of the code base consistent with the requirements of the New York State Office of Cyber Security applicable to State agency information technology projects, with any material findings and recommendations corrected at no additional cost. The Vendor's security measures are subject to review and approval by NYSED, both through an informal audit of policies and procedures and/or through inspection of security methods used within the researchers' infrastructure, storage, and other physical security.	Code Base Audit

Table 5, Integration and Testing Requirements

1.4.6 Usability Analysis

The Vendor shall conduct a usability analysis prior to the "demo" release. The analysis should include at least 10 end-users who must represent all relevant roles, and measure the 'ease-of-use' for an end-user and accessibility requirements. The Vendor will define the type of usability test(s) to be deployed, which will be subject to NYSED approval. The Vendor shall share the results of the usability analysis and an implementation plan to incorporate the identified findings. If the Vendor identifies a finding as not worthy of implementation, it must be accompanied by a justification. All "non-worthy" items will be reviewed and signed-off by NYSED as part of the acceptance criteria.

ID	Requirement	Deliverable
11.	The Vendor shall develop and deploy usability tests, including accessibility requirements.	Usability Tests

ID	Requirement	Deliverable
12.	The Vendor shall conduct an analysis of the usability test results and provide an implementation plan for incorporating the results into the system.	Usability Test Results and Implementation Plan

Table 6, Usability Analysis Requirements

1.4.7 Documentation

Documentation services are the activities associated with developing, revising, maintaining, reproducing, and distributing information in hard copy and electronic form. Documentation related to the Data Dashboard Services includes:

ID	Requirement	Deliverable
13.	The Vendor shall develop end-user system documentation using an NYSED-owned wiki tool. End-user roles will include educators, parents, and students.	End-user System Documentation
14.	The Vendor shall develop technical system documentation using an NYSED-owned wiki tool.	Technical System Documentation
15.	The Vendor shall deliver updates to the end-user and technical system documentation described above for the Demo release, the full production release and any subsequent releases offered by the Vendor.	Documentation Updates

Table 7, Documentation Requirements

1.4.8 Application Warranty Services

The Vendor shall provide staff support on-site, as needed for 60 days following full system acceptance. Vendor will repair code developed by Vendor during the warranty period (see 4.13.5, part H below), at no charge to NYSED, provided that:

- the problem results in a Severity 1, 2, or 3 Level problem (see Attachment 6.4 Maintenance and Support Services); and
- the root cause analysis indicates the problem was introduced solely by code or configuration created by Vendor.

ID	Requirement	Deliverable
16.	The Vendor shall provide staff support on-site for 60 days.	On-site Support
17.	The Vendor shall comply with the terms described in Attachment 6.4 Maintenance and Support Services.	Warrantied Maintenance and Support Services

Table 8, Application Warranty Requirements

1.4.9 Application Maintenance and Technical Support Services

Application maintenance services are the activities associated with repairing defects and developing minor functional enhancements for the production application programs and system modules that are put into production. Application maintenance services are defined in Attachment 6.4 Maintenance and Support Services.

The Content Management and System Services vendor shall provide overall EDP help desk and technical support, including developing a help desk strategy and protocols across the entire EDP (all products and services for all vendors included in Data Dashboard Services contracts and all products and services included in the Content Management and System Services contract), subject to approval of NYSED, and managing the overall help desk work stream across the entire EDP.

The Content Management and System Services vendor shall provide Tier 1, 2 and 3 support for the products for which they are responsible and Tier 1 and 2 support for Data Dashboard contract products (for all Data Dashboard solutions). Data Dashboard vendors are responsible for providing the necessary training and materials for the Content Management and System Services vendor to perform this responsibility.

Although the Data Dashboard vendors are responsible for providing Tier 3 support for their associated products and services, the Content Management and System Services vendor is responsible for integrating and coordinating this Tier 3 support within the overall help desk and technical support service structure.

ID	Requirement	Deliverable
18.	The Vendor shall comply with the terms described in Attachment 6.4 Maintenance and Support Services.	Technical Support

Table 9, Application Maintenance and Technical Support Requirements

1.4.10 Training and Documentation

The Vendor shall provide training services as described below.

ID	Requirement	Deliverable
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ID	Requirement	Deliverable
19.	<p>The Vendor shall attend planning sessions with NYSED and the Content Management and System Services vendor to plan for the development of (a) end-user documentation, (b) help desk materials and strategy, and (c) training/professional development materials and strategy. Sessions will be held as follows:</p> <ul style="list-style-type: none"> • Initial session – to be held in Albany, duration up to five (5) days • Follow-on sessions – three additional one (1) day sessions in Albany, approximately every six months through end of Year 2 (12 days total) • NYSED will provide meeting space 	Planning Sessions
20.	<p>The Vendor shall provide product training to the Content Management and System Services vendor for (a) data dashboard functionality, (b) end-user documentation, and (c) help desk materials and strategy and training/professional development materials and strategy (the Data Dashboard vendors will provide electronic copies of all materials to the Content Management and System Services vendor):</p> <ul style="list-style-type: none"> • Initial session – to be held in Albany, duration up to five (5) days • Follow-on sessions – three additional one (1) day sessions to be held in Albany, approximately every six months through end of Year 2 (4 days total) • Training sessions will accommodate up to 30 people per session • NYSED will provide training facilities (room, PCs, Internet connectivity, projector, etc.) 	Product Training
21.	The Vendor shall develop and deploy using a NYSED-owned wiki tool an end-user training manual.	End-user Training Manual
22.	The Vendor shall develop and deploy using a NYSED owned wiki tool technical system training manual.	System Training Manual

Table 10, Training and Documentation Requirements

1.4.11 Hosting

NYSED is seeking a hosted solution that complies with the requirements defined in Attachment 6.3 Hosting Services. A shared, multi-tenant hosting solution is permissible. Such solutions will be expected to comply with the Federal Risk and Authorization Management Program (FedRAMP) requirements as developed by the Federal Cloud Computing Initiative (FCCI) at the US General Services Administration (GSA) (<http://www.gsa.gov/portal/category/102371>). FedRAMP security controls and enhancements have been selected from the NIST SP 800-53 Revision 3 catalog of controls. FedRAMP, which is expected to be fully operational by Year 1 launch in September 2013, requires that cloud computing services and systems offered by Cloud Service Providers (CSP) meet specified security requirements. CSPs will be required to use qualified, accredited Third Party Assessment Organizations to perform independent assessments on their

service and systems. Data shall be hosted within the continental United States (government-only shared hosting is preferable). The vendor may propose to provide hosting services itself, or may propose the use of a subcontractor. Subcontracted hosting services do not count toward the subcontracting limit of forty percent (40%) of the contract budget.

ID	Requirement	Deliverable
23.	The Vendor shall comply with the terms described in Attachment 6.3 Hosting Services.	Hosting Services
24.	The Vendor shall provide a site and system security plan.	Site and System Security Plan
25.	The Vendor shall provide a backup and disaster recovery plan.	Backup and Disaster Recovery Plan

Table 11, Hosting Requirements

1.4.12 Product Demonstrations

Prior to Year 2 and again prior to Year 3 of the contract, the demonstration process will involve a mandatory Statewide webinar and at least twelve (12) subsequent regional live demonstration events to be held in various locations throughout the State (e.g., Western New York Regional Information Center (RIC), Monroe / EduTech RIC, Central New York RIC, Mohawk RIC, Greater Southern Tier / South Central RIC, Franklin-Essex-Hamilton BOCES, Northeastern RIC, Mid-Hudson RIC, Lower Hudson RIC, New York City, Nassau RIC, Suffolk RIC). All vendors are required to participate in these webinar and regional demonstration events.

ID	Requirement	Deliverable
26.	The Vendor shall provide a Statewide product demonstration (via webinar).	Statewide Product Demonstration
27.	The Vendor shall provide at least twelve (12) regional live product demonstrations.	Regional Product Demonstrations

Table 12, Product Demonstration Requirements

2 PROPOSAL FORMAT, CONTENTS AND SUBMISSION

2.1 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 New York State Education Department in response to this RFP. 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.

2.2 Minimum Qualifications

The eligible bidder must agree to the minimum qualifications found below and must submit the Minimum Qualifications Certification Form located in Section 5.7, signed by an authorized person.

Inability to meet the minimum qualifications set forth in this RFP will result in the rejection of a proposal as non-responsive.

A bidder may meet the minimum qualifications through the primary bidder's qualifications or the qualifications of its subcontracting team. The qualifications of all members of the bidder's team are applicable for the purposes of meeting **at least three out of four** of the qualifications described below. The technical proposal must contain information to support the claimed qualifications, as noted in the Minimum Qualifications Certification Form.

Minimum Qualification 1

The bidder must have been responsible for at least three product implementations of a K-12 education software application within the last three years.

Minimum Qualification 2

The bidder must have been responsible for at least three product implementations of a data dashboard or presentation application within the last three years. If your implementations counted in Minimum Qualification 1 included a data dashboard or presentation system, you may count them again.

Minimum Qualification 3

The vendor must have experience providing, within the last three years, Software as a Service (SaaS), or hosted applications operated by the vendor, serving at least 10,000 users a year.

Minimum Qualification 4

The vendor must have experience implementing, within the last three years, a complex solution for a large corporate or government client that: a) involved identity management and access control integration, b) multiple vendors, and c) a scope of services in excess of \$2 million.

2.3 Project Submission:

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

2.3.1 Cover Letter

The bidder must submit a signed Cover Letter on official business letterhead. The Cover Letter must include the following:

- The signature of an official authorized to bind the bidder to all provisions of the RFP.
- A statement that, if awarded the contract, the bidder will comply with all the requirements set forth in the RFP.
- A statement that the offered named Key Staff will be provided once NYSED issues a notice to proceed. NYSED does not allow unapproved substitutes for Key Staff.
- Identification of any draft contract exceptions taken by the bidder. Note that NYSED will only consider exceptions to the State's draft contract if doing such is in the State's best interest. Any draft contract exceptions taken by a bidder should fully describe how they are in the best interest of the State for NYSED's consideration. NYSED expressly reserves the right to reject or accept any such exceptions in whole or in part at NYSED's sole discretion. NYSED will not entertain exceptions brought to its attention after the proposal due date or during contract negotiations. The bidder's proposal and/or proposal price must not be contingent upon these requested exceptions, and must remain firm, even if all such exceptions are rejected by NYSED in their totality.
- Any claims of confidential and proprietary information should also be identified and addressed in this cover letter. NYSED may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law, provided that NYSED agrees beforehand to shield the release of proposed information. If a bidder believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as "confidential and proprietary". Labeling all pages as "confidential" or "proprietary" is unacceptable – such proposals will not be accepted unless the bidder re-labels their proposal to only identify what specific material to shield from public scrutiny. All bidders shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. NYSED reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm. The State will only consider those items confidential and proprietary which it agrees are confidential and proprietary based on the proof provided by the bidder and responses to the State's questions regarding any such claims.

- The following information regarding the consultant's official representative for its proposal:
 - Name of bidder's official representative
 - Title
 - Name of company
 - Address
 - Telephone number
 - FAX number
 - E-mail address
- The legal names of all Subcontractors involved in the consultant's response.

2.3.2 Technical Proposal

The original plus eight (8) copies of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP #DS-07 Technical Proposal - Do Not Open** and must include the following:

- Proposed Solution Description as outlined below
- All Forms and Assurances located in Section 5 - Submission Documents, including original signatures where necessary:
 - 5.1 Response Sheet for Bids
 - 5.2 Non-Collusive Bidding Certifications
 - 5.3 MacBride Certification
 - 5.4 Certification – Omnibus Procurement Act of 1992
 - 5.5 Required Assurances (not referenced anywhere)
 - 5.6 Offerer Disclosure of Prior Non-Responsibility Determinations
 - 5.7 Minimum Qualifications Certification Form
 - Completed Attachment 6.2 – Detailed Requirements
 - Completed Attachment 6.5 - Company Experience and References
 - Completed Attachment 6.6 - Staffing Plan and Résumés
 - Completed Attachment 6.8 - Statement of Work Template

Format for Proposed Solution Description

Table of Contents

The Table of Contents should identify each major section of the bidder's proposal, along with its initial-page number. Any offered attachments or addendums shall be cited here.

Executive Summary

Provide a brief and concise description of the proposed approach and work effort.

System Requirements and Technical Approach

System Requirements

Using the Requirements table provided as Attachment 6.2, Detailed Requirements, and using the following indicators, the bidder should provide its indication as to whether its solution meets NYSED's requirements.

Scale for bidder ability to meet requirements:

- OB - Meets requirement "out of the box"
- CC - Meets requirements with "custom software code"³
- NS - Not supported

The bidder must respond to every requirement in Attachment 6.2, including references to pages in the Technical Proposal where that requirement is discussed. Failure to provide the page number where the requirement is addressed in the proposal may result in a lower score if evaluation is impeded by such failure. **Failure to meet each and every mandatory requirement in Attachment 6.2 will lead to rejection of the proposal on non-responsive grounds (i.e. Not supported is not an acceptable response to a mandatory requirement).**

Technical Approach

The bidder shall describe its approach for performing the work and accomplishing the scope and objectives as identified in the RFP. Specifically, the response shall include the approach for performing the work required for each of the following tasks (as outlined in RFP Section 1.4 Required Implementation and Support Services):

- 1.4.1 Project Initiation, Planning and Management
- 1.4.2 Detailed Requirements Definition
- 1.4.3 Design Specification
- 1.4.4 System Construction
- 1.4.5 Integration and Testing
- 1.4.6 Usability Analysis
- 1.4.7 Documentation
- 1.4.8 Application Warranty Services
- 1.4.9 Application Maintenance and Technical Support Services
- 1.4.10 Training and Documentation
- 1.4.11 Hosting
- 1.4.12 Product Demonstrations

The response shall also include a technical solution description relating the architecture of the solution proposed and the approach to achieving it. The description shall include the following:

- System architecture (including system hardware, system software, supporting tools, and network diagrams)
- Information architecture (conceptual data model)

³ "Custom software code" refers to coding changes required to enable pre-existing products to meet the functional requirements as expressed in Attachment 6.2 Detailed Requirements, excepting those requirements that pertain specifically to integrating the product with SLI data.

- Security architecture (description of how security controls are positioned to maintain the system's confidentiality, integrity, and availability)
- User interface (including screen-shots or mock-ups)
- Narrative description of the proposed process to get from current to final state
- Proposed approach for testing and promoting the system
- Performance optimization capabilities supported by the system, such as content caching at schools where Bandwidth access may be limited

Additionally the response shall include a description of the approach to achieving the following:

- Navigation between assessment views and content
- Recommendation engine
- Language translation / translation guides
 - Languages supported with translation guides
 - Description of translation guide functionality
 - Languages supported with native language pages
- Integration with portal header/footer

Experience and References

The qualifications and prior experience of the bidder are of great importance to NYSED. Direct, prior experience in the provision of data dashboard solutions is highly desirable. NYSED requires substantial experience and expertise, and bidders must demonstrate such experience through past and current project attestations and reachable, verifiable references. The experience must be relevant and must be for services comparable, in scale and scope, to NYSED's operation. The References must reflect each of the categories of minimum qualification claimed by the bidder.

The bidder is expected to provide reachable references to verify all offered experience. NYSED reserves the right to request information from any source so named, and further reserves the right to contact additional references (including appropriate references not specifically named by bidders) to completely verify all offered experience, as well as to request additional references. Failure to provide reachable and responsive references will lead to the downgrading of a bidder's experience score.

The bidder shall provide a minimum of three references for the prime contractor and at least one reference for each proposed sub-contractor. If a sub-contractor's qualifications are being used to satisfy a minimum qualification in Section 2.2 of this RFP, however, three references must be provided for that sub-contractor, relevant to that minimum qualification.

Bidders must complete Attachment 6.5 Company Experience and References as part of their response.

Project Schedule

The bidder shall provide a detailed proposed project schedule based on the timeline contained in Attachment 6.8 – Statement of Work.

Staffing Plan

The bidder shall provide a staffing plan by completing Attachment 6.6 Staffing Plan and Résumés.

The bidder should describe how staffing will be provided to meet the project, business and technical obligations over the entire lifecycle of this engagement. The discussion should address how the bidder intends to allocate Key Project Staff and other staff by phase and task, as well as the level of effort associated with such key personnel. The staffing plan should also address any assumptions that the bidder has made about the expected level of effort of NYSED staff on the project. The staffing plan should also indicate the degree to which it is anticipated that staff will be located on-site (at the State's offices) or remotely.

2.3.3 Cost Proposal

A three-year contract with up to two annual renewals will be awarded. NYSED intends to fund services for all LEA's in the state during the three-year contract term; during the two annual renewals, LEA's will be able to opt in to purchase their own Data Dashboard solutions. Initially, the contract value will include fixed development costs (Year 1) and annual costs for the remainder of the contract term (e.g., Years 2 and 3) that assume each vendor will be serving 1/3 of the State's enrolled students (the per student charge includes access costs for their educators and parents).

The contracts will be amended to revise the contract value following the demonstrations and selections at the end of Year 1 (Year 2 services for all LEAs), again following the updated selections at the end of Year 2 (Year 3 services for all LEAs), again following the opt-in selections at the end of Year 3 (Year 4 services for self-funded LEA's who have opted in), and one last time following the opt-in selections at the end of Year 4 (Year 5 services for self-funded LEA's who have opted in).

The final contract at the conclusion of the term will include the total contract value for the fixed development costs (Year 1) and actual costs for annual services for the remainder of the term (e.g., Years 2 and 3).

The original plus two (2) copies of the completed Cost Proposal must be mailed in a separate envelope labeled **RFP #DS-07 Cost Proposal - Do Not Open**, and must include the following:

For Data Dashboard services, NYSED requires submission of two pricing components that must be inclusive of all products and services required for launch and operation of the proposed solution(s):

- A. The "Implementation Cost" component is a deliverable-based, fixed price covering fees related to the one-time setup, integration, configuration, customization, and testing of the data dashboard module that meets the requirements specified in Attachment 6.2 Detailed Requirements and fulfills

the relevant service requirements identified in Section 1.4 Required Implementation and Support Services.

- B. The “Annual Cost” component is an annually recurring per-student fee that will be inclusive of all costs subsequent to launch and fulfills the relevant service requirements identified in Section 1.4 Required Implementation and Support Services. This fee will include any product enhancements that the vendor elects to perform to keep the product current and competitive. The vendor agrees to hold this pricing for three years, and, for Years 4⁴ and 5⁵ of the contract, pricing may not rise or fall by more than the year over year increase or decrease in the Consumer Price Index (CPI) for All Urban Consumers, US City Average. Discounts for quantity breaks will be as follows:

Quantity	Adjusted Unit Price (per active student per year)
<25,000	100% of proposed unit price*
25,000-249,999	100% of proposed unit price
250,000-500,000	95% of proposed unit price
500,001+	90% of proposed unit price

*Vendor or NYSED may terminate if selection results in fewer than 25,000 enrolled students.

The above identified cost components (the “Implementation Cost” and “Annual Cost”) must include ANY AND ALL one-time and recurring fees, charges, or costs for the duration of the contract, including:

- a) All applicable, allowable overhead
- b) Company fees and profit
- c) Direct non-salary expenses, including but not limited to:
 - Labor, parts, shipping, material and equipment cost (including the cost of providing computers for contractor staff to use while onsite at NYSED)
 - Software license costs
 - Emergency work; maintenance services as specified herein
 - Repairs and replacement of major or minor parts as necessary
 - Administrative, reporting, or other requirements, overhead costs, and profit
 - Travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc. for all contract services.

⁴ For the Year 4 renewal an increase or decrease of up to the year-over-year change in CPI between the month prior to the Year 1 start date and the month prior to the Year 4 start date will be incorporated.

⁵ For the Year 5 renewal an increase or decrease of up to the year-over-year change in CPI between the month prior to the Year 4 start date and the month prior to the Year 5 start date will be incorporated.

- Services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted

2.3.4 Proposed Payment Schedule

All deliverable invoicing will be consistent with the Deliverable Acceptance policy found in Section 4.13.2. Invoicing for the Implementation Cost component (A) will be by milestone as follows:

Milestone	Payment Amount
1. Revised work plan approved	10%
2. Specification for launch functionality signed off	20%
3. LEA selection demo available	20%
4. UAT signed off and product launched	35%
5. 90 days after launch	15%

Invoicing for Annual Cost component (B) will begin after launch and be annual as follows:

Payment	Date	Payment Amount
1 st payment	Nov 1	25% of Annual Fee
2 nd payment	Feb 1	25% of Annual Fee
3 rd payment	May 1	25% of Annual Fee
4 th payment	August 1	25% of Annual Fee

The Annual Cost will cover the period from August 1 through July 30, prorated as necessary, and be calculated as follows:

Annual Cost = Adjusted Unit Price multiplied by the sum of the Student Enrollment on the most recent available BEDS day for all locations that have selected the proposed solution.

Daily proration will occur when:

- the SLA explicitly provides (e.g., service outage, etc.)
- service is not provided for the whole year (e.g., late launch or contract termination)
- locations switch providers, with NYSED approval, at times other than the annual selection period

The cost proposals, cost evaluations, and initial contracts will be based on an equal 33 1/3% split (assuming three contracts are awarded) across LEAs and will be adjusted following each round of LEA demo and selection.

Cost proposals must be submitted using the following forms:

- Bid Form Cost Proposal
- ____ Year Budget Summary
- Subcontracting Form
- M/WBE Subcontracting/Supplier Form

Signature Required

(These forms can be found in Section 5.8 and 5.9)

Budgets must be submitted using whole dollar numbers.

2.3.5 M/WBE Documents

The original plus two (2) copies of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #11-XXX-M/WBE Documents - Do Not Open**. Each set must include the following:

- M/WBE Cover Letter
- **M/WBE 100** Utilization Plan
- **M/WBE 102** Notice of Intent to Participate
- **EEO 100** Staffing Plan

Signature Required

2.3.6 Submission of Documents

The submission must include paper documents plus one electronic version (Microsoft Office format saved on a CD) of the technical, cost, and M/WBE proposals. Please place the CD-ROM in a separate envelope.

Mailed or hand delivered to:

**NYS Education Department
Bureau of Fiscal Management
Contract Administration Unit
Attn: Lynn Caruso, RFP #DS-07
89 Washington Avenue, Room 505W EB
Albany, NY 12234**

The complete proposal must be received by June 19th, 2012 **by 3:00 PM** at NYSED in Albany, New York. All proposals should be delivered via a method that requires a signature from NYSED upon receipt. **Faxed or emailed submissions are unacceptable and will be rejected.**

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

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

Bidders should specify all details and dates required to evaluate the technical proposal and should limit aspects of the project plan which are to be determined only after the award of a contract. No optional deliverables to be provided only at an additional cost

should be included and will not be considered in the evaluation of the technical proposal. Contractual terms, conditions, and assumptions are inappropriate for inclusion in the proposal.

Any proprietary material considered confidential by the bidder must be specifically so identified, and the basis for such confidentiality must be specifically set forth in the proposal.

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.

3.1 Criteria for Evaluating Bids

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

A proposal will first be reviewed by NYSED staff to ensure that the proposal is complete, and that all of the mandatory requirements have been addressed.

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

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

As part of the technical evaluation, the top bidders who have a mathematical chance of being selected (a Best Value determination, based on combined technical and cost scores) will be expected to provide a technical presentation of their proposal to NYSED. The key staff members identified in the proposal must attend. Prior to the technical presentations, NYSED will provide each bidder with a Technical Presentation Package, including an agenda, instructions, and possible clarification questions. Bidders shall not change their proposal during the technical presentation but responses to requested clarifications are permitted. The presentation will be evaluated and scored by the evaluation committee and will account for 10 points of the technical score.

Technical presentations will be held at the Department's main office located in Albany, New York.

Technical Criteria	70Points
Technical Proposal	60 Points
Demonstration/Presentation	10 Points
Financial Criteria	30Points

The **financial portion** of the proposal represents 30 points of the overall score and will be awarded pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the evaluation committee.

The submitted cost information will be awarded points, pursuant to a formula which awards the highest score of 30 points to the proposal that reflects the lowest overall cost. The remaining proposals will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest cost submitted. The resulting percentage is then applied to the maximum point value of 30 points.

NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, vendors who meet the minimum qualifications and whose technical evaluation score exceeds the minimum will be asked to provide a best and final offer. The Contract Administration Unit will recalculate the financial score.

3.2 Method of Award

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

3.3 The contracts issued pursuant to this proposal will be awarded to those proposals whose aggregate technical and cost score are the three (3) highest among all the proposals rated. If a tie score exists for the third ranked proposal, the proposal in the group of tied scores with the lowest cost will be ranked higher. 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 bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation; (16) to request best and final offers.

3.4 Post Selection Procedures

The relevant contents of this RFP, the successful proposal and its required attachments, 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.

3.5 Debriefing Procedures

All unsuccessful bidders may request a debriefing within five (5) business days of receiving a notice of non-award from NYSED. Bidders may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Contact person at:

NYS Education Department
Contract Administration Unit
89 Washington Avenue
Room 505W EB
Albany, NY 12234

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

3.6 Contract Award Protest Procedures

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

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

NYS Education Department
Contract Administration Unit
89 Washington Avenue
Room 505W EB
Albany, NY 12234

3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the

merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of receipt of the protest. The original protest and decision will be filed with the OSC when the contract procurement record is submitted for approval and, and the CAU will advise the 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.

4 ADMINISTRATIVE SPECIFICATIONS

4.1 Subcontracting Limit

Subcontracting (exclusive of subcontracted hosting services) will be limited to **40%** of the annual contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel.

If the vendor proposes to change subcontractors during the contract period, NYSED must be notified prior to the change. NYSED reserves the right to reject any replacement subcontractors proposed by the vendor and reserves the right to approve all changes in subcontractors. The Subcontracting Form located in the Submission Documents must be updated annually and submitted to NYSED. Using this form, the vendor must also report to NYSED, on an annual basis, actual expenditures incurred for all subcontractors and indicate which subcontracting costs are associated with M/WBE.

4.2 Contract Period

NYSED will award three (3) contract(s) pursuant to this RFP. The contract(s) resulting from this RFP will be for an initial term of three years, with the option for renew for two additional years.

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.

4.3 Electronic Processing of Payments

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

Payee Information Form/NYSED Substitute W-9 Form

General Instructions: The Payee Information Form is a packet consisting of the Payee Information Form itself and an accompanying form known as the NYSED Substitute W-9 Form. The NYSED Substitute W-9 form may or may not be needed from your agency. Please follow the instructions for each as outlined below.

The Payee Information Form is used to establish the identity of applicant organizations and enables them to receive funds from the NYSED. An online version is available at <http://www.oms.nysed.gov/cafe/forms/Plform.pdf>.

4.4 Minority and Women-Owned Business Enterprise (M/WBE) Compliance Requirements

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION GOALS

Article 15-A identifies the State's procurement goals for Minority Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) participation as 12% and 8%, respectively, of the total contract budget or as specifically outlined in the RFP. NYSED's intent is to comply with Article 15-A and all bidders must demonstrate a good faith effort to comply with these goals. Minority and Women-Owned Business Enterprise (M/WBE) participation includes any and all services, materials or supplies purchased from New York State certified minority and women owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with NYSED's Minority and Women-Owned Business Enterprise goals as described below.

ACHIEVE FULL COMPLIANCE WITH DESIGNATED GOALS (preferred)

Bidders should submit subcontracting forms that meet or exceed NYSED's participation goals for this procurement. Bidders must complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see <http://www.esd.ny.gov/MWBE/directorySearch.html>.

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

DOCUMENTATION OF GOOD FAITH EFFORTS

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not limited to: advertisements in minority centered publications; solicitation of

vendors found in the NYS Directory of Certified Minority and Women-Owned Business Enterprises (<http://www.esd.ny.gov/MWBE/directorySearch.html>); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing NYSED's Certification of Good Faith Efforts (Forms M/WBE 105 and M/WBE 105A). See the M/WBE Submission Documents for detailed examples of and required forms to document good faith efforts.

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

In the event Bidders cannot comply with NYSED's designated participation goals, said bidders must document their "good faith efforts" to comply and submit one of the following requests.

REQUEST A PARTIAL WAIVER OF DESIGNATED GOALS

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

REQUEST A COMPLETE WAIVER OF DESIGNATED GOALS

In order to request a complete waiver of the designated goals for this procurement, Bidders must provide documentation of their Good Faith Efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a complete waiver on Form M/WBE 101 and document their Good Faith Efforts (Forms M/WBE 105 and M/WBE 105A) at the same time as they submit their bid. The M/WBE coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) must be reported to NYSED M/WBE Program Unit using M/WBE 103 Quarterly M/WBE Compliance Report. This report

must be submitted on a quarterly basis and can be found at www.oms.nysed.gov/fiscal/MWBE/forms.html .

4.5 M/WBE and Equal Employment Opportunities Requirements

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

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

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

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

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

- 1) All State contracts and all documents soliciting bids or proposals for State contracts contain or make reference to the following provisions:
 - a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

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

- b) The contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligation herein.
 - c) The contractor shall state in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status.
- 2) The contractor will include the provisions of subdivision one of this section in every subcontract as defined under §310.14, except as provided under §312.6 of the Article, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the State contract.
 - 3) Contractors or subcontractors shall comply with the requirements of any federal law concerning equal employment opportunity, which effectuates the purpose of this section.
 - 4) Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section⁶. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).
 - 5) Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses⁷.
 - 6) Contractor shall make a good faith effort to solicit active participation by enterprises identified in the Empire State Development ("ESD") directory of certified businesses, which can be viewed at: <http://www.nylovesmwbe.ny.gov>.

⁶Notice – Contractors are provided with notice herein, NYSED may require a contractor to submit proof of an equal opportunity program after the proposal opening and prior to the award of any contract. In accordance with regulations set forth under Article 15-A §312.5, contractors and/or subcontractors will be required to submit compliance reports relating to the contractor's and/or subcontractor's program in effect as of the date the contract is executed.

⁷Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to the NYSED M/WBE Program Unit by the deadline for submission of proposals for eligibility determination. NYSED will work with ESD to expedite the application, however, it is the responsibility of the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.

- 7) Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.
- 8) Contractor shall include the provisions set forth in paragraphs (6) and (7) above, in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.
- 9) Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs which effectuates the purpose of this section.
- 10) Contractor shall submit M/WBE Utilization Plan⁸ (M/WBE 100) as part of their proposal in response to NYSED procurement.
- 11) The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas which must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.
- 12) Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.
- 13) Contractor shall upon written notification from NYSED M/WBE Program Unit as to any deficiencies and required remedies thereof, the contractor, within the period of time specified, will submit compliance reports documenting remedial actions taken and other information relating to the operation and implementation of the Utilization Plan.
- 14) Where it appears that a contractor cannot, after a good faith effort, comply with the M/WBE participation requirements, contractor may file a written application with NYSED M/WBE Program Unit requesting a partial or total waiver (M/WBE 101) of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements, together with an explanation of the efforts undertaken by the contractor to obtain the required M/WBE participation.

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

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

⁸A Utilization Plan, as defined under Article 15-A, shall mean a plan prepared by a contractor and submitted in connection with a proposed state contract. In developing the Utilization Plan bidders should consider the goals and established time frames needed to achieve results which could reasonably be expected by putting forth every good faith effort to achieve the overall prescribed M/WBE participation percentage (%) goals as set forth under the procurement.

- a) Whether or not the certified M/WBEs which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - b) Whether certified businesses solicited by the contractor responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's deadline for submission of proposals.
- 2) Whether there has been written notification to appropriate certified M/WBEs that appear in the Empire State Development website, found at: <http://www.nylovesmwbe.ny.gov>.

All required Affirmative Action, EEO, and M/WBE forms to be submitted along with bids and/or proposals for NYSED procurements are attached hereto. These forms are to be submitted without change to goals specified in the RFP. All M/WBE firms are required to be certified by Empire State Development (ESD), or must be in the process of obtaining certification from ESD.

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

4.6 Vendor Responsibility

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

NYSED recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or

may contact NYSED or the Office of the State Comptroller's Help Desk for a copy of the paper form.

Subcontractors:

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

- the subcontractor is known at the time of the contract award; and
- the subcontract will equal or exceed \$100,000 over the life of the contract.

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

4.7 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 of contract award and, in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at the following web link:

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

Designated Contacts for NYSED:

Program Office – **Kathleen Moorhead**

Contract Administration Unit – Lynn Caruso

M/WBE – **Joan Ramsey**

4.8 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 the 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 the 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>.

4.9 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.

As provided in Public Officer's Law Section 73(1)(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.nyintegrity.org/law/ethc/POL73.html>.

4.10 Draft Contract

The State of New York Agreement (Section 4.10), Appendix A – Standard Clauses for all NYS Contracts (Section 4.11), Appendix A-1 – NYSED standard changes and additions to the State of New York Agreement (Section 4.12), Appendix Q – Amendments and Additions to Appendix A-1 for this Contract and Additional Contractual Provisions (Sections 4.13.1 to 4.13.40), and Appendix A-2 – American Recovery and Reinvestment Act of 2009, Additional Contract Record Keeping Requirements (Section 4.14) **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.

STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the People of the State of New York, acting through John B. King, Jr., Commissioner of Education of the State of New York and Chief Executive Officer of the Board of Regents of the University of the State of New York, party of the first part, hereinafter referred to as the (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

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

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

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

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

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

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

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

II. Payment and Reporting

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

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

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

III. Terminations

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

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

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

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

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

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

IV. Indemnification

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

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

V. Property

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

VI. Safeguards for Services and Confidentiality

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

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

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

4.11 Appendix A - Standard Clauses For NYS Contracts

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

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

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

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

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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the

contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification

number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return

thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
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. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar

services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State. (December 2011)

4.12 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%) 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.
- C. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.

Terminations

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

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 this agreement shall be the sole and exclusive property of the author(s) of the work and/or artist. 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 therefore. Such agreement shall provide that the State shall have the rights outlined in this Agreement with regard to any copyrightable work produced pursuant to said agreement. A copy of such agreement shall be provided to the State.
- B. The New York State Education Department will receive a copy of any such written document owned by the author(s) and/or produced by the artist(s) in both hard copy and electronic form where feasible. The New York State Education Department shall have a non-exclusive, royalty-free right to use any such copyrightable works for non-commercial purposes including but not limited to dissemination of written materials, using excerpts of written materials in other documents issued by the Department, or using copyrightable works or providing the copyrightable works to future contractors for derivative use including creating derivative works for non-commercial purposes of the Department. The data received by the Contractor, authors and/or artist from survey responses, and other input received from interested groups or persons as a result of this contract, shall belong to the Department and the Contractor and the authors/artists shall have a non-exclusive, royalty-free right to use such data or other input for further research or other non-commercial purposes.
- C. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.
- D. This agreement cannot be modified, amended, or otherwise changed except by a writing signed by all parties to this contract.

- E. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- F. Expenses for travel, lodging, and subsistence shall be reimbursed at the per diem rate in effect at the time for New York State employees.
- G. No fees shall be charged by the Contractor for training provided under this agreement.
- H. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- I. 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.
- J. The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement.

Certifications

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

Notices

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

Miscellaneous

- A. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 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 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
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

4.13 Appendix Q - Amendments and Additions to Appendix A-1 for this Contract and Additional Contractual Provisions

4.13.1 Contractor Staff

All employees of the Contractor, or of its subcontractors, who shall perform Services under this resulting contract(s), shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under the Agreement on behalf of Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

A. Staffing Changes

Key Project Staff

Except as otherwise provided for herein or for cessation of work for Reasons Beyond the Contractor's Control (as defined below), the Contractor agrees that the Key Project Staff (Senior Product Executive, Senior Engagement Executive

and Project Manager) will continue their assignment to completion of said assignment except as provided in this section.

- a. The Contractor's Senior Engagement Executive is an integral part of the Contractor's project team. The Senior Engagement Executive shall be available, at a minimum, two full Business Days per month, on site at least once per month, throughout the term of the resulting Agreement and shall be totally accountable to the State for the successful completion of all aspects of the resulting Agreement. The Senior Engagement Executive's role shall include, but not be limited to, the review and sign off on all Deliverables prior to release of said Deliverables for review and sign off by the State; acceptance testing as described in the RFP, the resulting Agreement, and any acceptance procedures established by the Acceptance Management section of the Project Plan; being present on-site at critical points during project development; and meeting, upon reasonable notice, with the State's Project Manager and other State executives when requested by the State's Project Manager.
- b. The Contractor's Senior Product Executive (e.g., Vice President of Product Development, Chief Product Officer, etc.) Executive is an integral part of the Contractor's project team. The Senior Product Executive shall be available up to one half day per quarter to participate in an advisory group to NYSED. The Senior Product Executive and Senior Engagement Executive may be the same person.
- c. The Contractor's Project Manager will be assigned full time to the project and will be responsible for the day-to-day management of the project's timetable, personnel, and administration. His/Her role shall include, but not be limited to, resource allocation, ensuring Contractor staff performance, ensuring the timely development and acceptance of implementation documents and all other Deliverables, communicating with the Project Team, chairing the status meetings, and meeting with the State's Project Director on a daily basis. The Contractor's Project Manager shall always be able to be contacted through Final Acceptance of the System.
- d. The Contractor understands that the State's selection of the Contractor to perform the work under the resulting Agreement will be based, in part, upon the State's confidence in the abilities of the Key Project Staff. Therefore, if the Contractor wishes to remove any of the Key Project Staff from the Project prior to commencement of his or her assignment, or during his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the advice and opinion of the State Project Manager. If, after said consultation, it is mutually agreed that such removal shall take place, the Contractor must immediately provide the résumés of three or more potential replacements with similar or better qualifications for the State Project Director's review and approval. If the State Project Manager does not approve one of those candidates, the Contractor must immediately provide additional candidates for the State Project Director's review. If the State Project Manager still cannot agree to a replacement, it reserves the

- right to either (a) have Key Project Staff remain on the Project, or (b) terminate the resulting Agreement for cause pursuant to RFP Section 7.3.12 Agreement Termination Provisions. Upon the State Project Manager's approval, the replacement will become Key Project Staff and will be subject to the terms and conditions of the resulting Agreement. If the Key Project Staff member's work has already commenced, the Contractor will ensure that there is a smooth transition, including having the Contractor staff who is leaving train the replacement Contractor staff at the State's facilities (see Staff Transition Period, below).
- e. If the State Project Director does not agree to the replacement of Key Project Staff and does not wish to terminate the Agreement, and the Key Project Staff has not ceased work for Reasons Beyond the Contractor's Control, then the Key Project Staff member must remain on the Project and must continue to work with the same degree of professionalism he or she provided prior to the Contractor's request for removal. If the Key Project Staff fails to do so, or if the Contractor removes the Key Project Staff without the State Project Director's consent, the State has the right to terminate the resulting Agreement for cause pursuant to RFP Section 7.3.12 Agreement Termination Provisions.
 - f. If the State Project Director reasonably and in good faith believes that a member of the Contractor's Key Project Staff is not performing adequately and is jeopardizing the timely delivery of deliverables meeting the acceptance criteria, the State Project Director will notify the Contractor and the NYSED Executive Sponsor. The Contractor will have 5 business days to propose a remediation plan to the Department. If the remediation plan is not satisfactory to the NYSED Executive Sponsor, then the Contractor must provide the resumes of three or more potential replacements with similar or better qualifications for the State Project Director's review and approval. If the State Project Director does not approve one of these candidates, the Contractor must immediately provide additional candidates for the State Project Manager's review. If the State Project Director still cannot agree to a replacement, it reserves the right to either (a) have Key Project Staff remain on the Project, or (b) terminate the resulting Agreement for cause pursuant to RFP Section 7.3.12 Agreement Termination Provisions. Upon the State Project Director's approval, the replacement will become Key Project Staff and will be subject to the terms and conditions of the resulting Agreement. If the Key Project Staff member's work has already commenced, the Contractor will ensure that there is a smooth transition, including, having the Contractor staff who is leaving train the replacement Contractor staff at the State's facilities (see Staff Transition Period, below).

Other Contractor Staff

The parties hereto understand that staff turnover is detrimental to Project progress, the quality of the Deliverables and Services to be provided hereunder, and the skills transfer process. The State believes, therefore, that it is in its best interest to maintain the continuity of work assignments for all levels of

Employees. The State also recognizes that it can be difficult, or in some cases impractical, to maintain said continuity. The Contractor agrees, therefore, to make a good-faith, commercially reasonable effort to minimize turnover of Employees it assigns to the Project. The Contractor further agrees that if the Contractor removes an Employee, who is not Key Project Staff, prior to completion of his or her assignment, the Contractor will so notify the State's Project Manager, in writing, five (5) business days prior to said Employee's leave date. The Contractor will provide a replacement with similar or better qualifications. The Contractor will ensure that there is a smooth transition, including having the Employee who is leaving train the replacement Employee at the State's facilities.

Cessation of Work by Contractor Staff For Reasons Beyond Contractor's Control

- a. Reasons beyond the control of the Contractor shall be defined as: (i) death of the Contractor Staff member; (ii) new disability or illness; (iii) Contractor Staff member resigns his or her position; (iv) termination of this Contract; or (v) any other reason deemed acceptable by the State's Project Director.
- b. In the event that any Contractor Staff member ceases work for the reasons specified in (i) through (v), written notification must be forwarded to the State's Project Director.
- c. The provisions of this section do not preclude any Contractor Staff member from reasonable sick leave or annual leave.
- d. The contractor shall take prompt, commercially reasonable steps to resolve the difficulties caused by the Reasons Beyond Contractor's Control, and will seek to replace a staff member or Key Project Staff member in accordance with the provisions of this section.

Staff Transition Period

In the event the Contractor initiates a staffing change of either a Contractor employee or a subcontractor employee who is identified as Key Project Staff under the Agreement, or who has been on-site 80% or greater for a period of six (6) months or greater, the Contractor will offer State a mutually agreed upon transition period up to two (2) weeks. During the transition period, the departing staff and the new staff will work together to develop a transition plan to transition the responsibilities, at no additional cost to NYSED. The State reserves the right to approve this transition plan, in writing, for Key Project Staff.

B. Work Site and Schedule

The Contractor's team members shall perform their duties on-site in Albany, New York, to the degree indicated in the schedule in Section 1.3.3, unless otherwise agreed to by the State, in writing. Non-full-time Contractor and subcontractor staff are not required to be based in Albany but shall be available to be on-site during their active periods of project engagement, as reasonably requested by

the State Project Director. All team members working on-site shall be identified to the State, along with any Contractor-issued equipment intended to be used on-site. Contractor team members working on site shall comply with all building policies, and Contractor team members using NYSED-issued equipment, software, or infrastructure, or Contractor-issued equipment within the NYSED IT environment, or accessing NYSED-owned data, will be responsible for following all IT and acceptable use policies. No reasonable request by the Contractor to permit the use of State equipment off-site shall be refused.

The State and the Contractor will determine equipment/computer needs of the on-site Contractor's Team that the State can provide.

The Contractor shall provide the State with an advance monthly staff schedule no later than five (5) business days before the last day of the preceding month. Unless otherwise agreed to by both parties the Contractor's Team will work onsite in Albany to the degree indicated in the schedule in Section 1.3.3. On the off-site days, the Contractor shall designate individuals to provide on-site coverage to fill in for the Key Project Staff (Project Manager and lead staff) where appropriate.

Contractor employees and subcontractors assigned to each Deliverable will be required to devote to the State Project the percentage of their working time that is defined in the Master Project Schedule.

The Contractor's assigned staff and any subcontractor's staff, when working on-site, shall be located at offices designated by the State Project Director and shall be provided 24/7 access to such offices to the extent possible.

4.13.2 Deliverable Acceptance

Deliverables must meet all applicable State-approved Acceptance Criteria developed in accordance with State-approved Acceptance Management Plans and Test Plans (as defined in Section 1.4 Required Implementation and Support Services).

For each document-based Deliverable (as defined in Section 1.4 Required Implementation and Support Services) other than status reports, the State shall have an acceptance period beginning on the date written notification of completion was received from the Contractor and as outlined herein. All document-based Deliverables shall require written approval by the State Project Director or his or her written designee that such Deliverables comply with the terms of the Agreement.

The Contractor shall provide document-based Deliverables in the form and format agreed to by the State using deliverable specification sheets approved by the Project Director. The deliverable specification sheets will include, but not be limited to the following information: Deliverable title, frequency, draft, and final due dates, approval requirements, outline of contents, and delivery of media.

- A. The number of business days for any State initial review of a document-based Deliverable shall be no more than ten (10) business days, unless otherwise

mutually agreed to by the State Project Director and the Contractor's Project Manager in the Project Work Plan. The ten (10)day period shall begin upon written transmittal by the Contractor Project Manager to the State Project Manager that the Deliverable is in final form and ready for approval, and shall be counted from and include the first working day following the delivery of the Deliverable to the State. The State shall provide Contractor (i) with approval of the Deliverable or (ii) with a written statement, of the itemized deficiencies preventing approval.

- B. The Contractor shall have ten (10) business days to complete all corrective actions or changes in order for such document-based Deliverable to conform in all material respects with the requirements set forth in the Agreement. The count of such business days shall begin on the first business day following Contractor's receipt of the written statement of required corrective actions or changes.
- C. If the State cannot approve the document-based Deliverable after correction by Contractor, the Contractor's Project Director and the State Project Manager may mutually agree to further steps to correct outstanding material deficiencies. However, in no event shall the total time allocated for review, correction, and re-review of material deficiencies in a Deliverable, exceed forty (40) business days, except for good cause in the sole discretion of the State.
- D. The State will have final approval of all document-based Deliverables.

For Deliverables that contain hardware or software programs, the State's Deliverable review process will include acceptance testing as detailed in an approved Acceptance Test Plan. The number of business days for any State initial review/test of a software-based Deliverable shall be set forth in the Acceptance Test Plan, but will be not less than ten (10) business days, unless otherwise mutually agreed to by the State Project Director and the Contractor's Project Manager. The process for software Deliverables will be as follows. User Acceptance testing will take place in a test environment. After approval by the State, the software Deliverable will be migrated to the production environment. The software Deliverable will then be monitored to verify performance in accordance with all requirements and acceptance criteria. The State will provide Deliverable Acceptance upon completion of Production Verification. If any issues are reported by the State during Production Verification, the review period will reset starting on the date the State is notified that the correction has been made in the production system. The State shall have final approval of all hardware or software-based Deliverables.

4.13.3 Task Orders

Task Orders will be used when work is required by the Contractor that had not been included in the Deliverables or in the contract's Statement of Work. Prior to the parties' entering into a Task Order, a reasonability determination will be performed by the State Project Director or designee. Such reasonability

determination shall include the State's review of the Contractor's required number of hours for the task; the titles of staff performing such tasks; and the rates for such tasks consistent with the Contractor's rates submitted in its Cost Proposal. Upon the parties' acceptance, in writing, of the terms of the Task Order, and approval by the State Comptroller if required, the Contractor shall perform such Task Order.

The Task Order will specify:

- The work to be performed
- The acceptance criteria
- The name of the Contractor's staff member(s) who will be assigned to fulfill the Task Order
- The estimated number of hours to be worked by the Contractor's staff
- The total amount to be paid for each Contractor's staff member
- The total amount to be paid for the Services performed

4.13.4 Manner of Payment/Retainage

A. Software Maintenance and Support Subscription Rate Escalation

Pricing will be fixed for Years 1 to 3 of the contract, and services will be provided to all LEA's. The State anticipates approval of two one-year extensions, for Years 4 and 5 of the contract, during which time the annual Software License, Maintenance, Hosting, and Support agreement with the Data Dashboard provider will continue for LEA's who opt in for these services. Year 4 pricing will be based on the year-over-year increase or decrease in CPI for All Urban Consumers, US City Average from month prior to the Year 1 start date of the contract to the month prior to the start date of the Year 4 annual renewal. Year 5 pricing will be based on the year-over-year increase or decrease in CPI for All Urban Consumers, US City Average from the month prior to the Year 4 start date of the contract to the month prior to the start date of the Year 5 annual renewal.

B. Payment Schedule

The State anticipates that the Deliverable payment schedule will be consistent with Section 2.3.2 Cost Proposal, but the exact schedule will be established by the State and the successful Bidder.

Maintenance and Support will begin at the end of the System Warranty period, and will be billable annually at the start of each Maintenance and Support contract year.

4.13.5 Warranties

Where Contractor generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to the State.

A. Representations and Warranties

The Contractor warrants that the Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract, including all appendices.

B. Deliverables

The Contractor warrants that the Contractor's Deliverables and the System will, in order of precedence, conform in all material respects to: (i) the Detailed Requirements (Attachment 6.2), specifications, and all applicable State-approved Acceptance Criteria developed in accordance with State approved Acceptance Management Plans and Test Plans for such Deliverables in Contractor's most recently approved deliverable specification or task order, and (ii) the applicable requirements for such Deliverables in the Agreement.

The Contractor warrants that: (i) any Deliverable(s) that it creates or provides to the State shall be substantially free from defects, as defined herein, and; (ii) the Services relating to the integration, development, and implementation of the Software by means of the Contractor's configuration, modification, and/or enhancement of such Software shall not introduce defects to, or negatively impact the operations of, any pre-existing or newly developed software.

The Contractor warrants that it shall be responsible for performance of the Contractor's software and any third-party software provided by the Contractor to the State. Software used by the Contractor to develop the product and any third-party software supplied to the State by the Contractor must be currently supported by the manufacturer and free of any known defect.

"Defects" shall mean: (i) a failure of a configuration, modification, and/or customization of the software to operate in accordance with the Acceptance Criteria or RFP functional or technical requirements, or (ii) a failure of the Software to operate in accordance with the Software program documentation.

C. Workmanship Warranty

The Contractor warrants that all services provided by the Contractor and its subcontractors under the Agreement will be performed using a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of the Contract, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. The Contractor shall meet or exceed the manufacturers' installation standards.

D. Contractor Compliance

The Contractor warrants that it will pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees and to give all notices and comply with all laws, ordinances, rules, and regulations of any governmental entity in conjunction

with the performance of obligations under the Agreement. Prior to award, and during the Agreement term and any renewals thereof, the Contractor shall establish, to the satisfaction of the State, that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to permits, insurance coverage, licensing, and proof of coverage for workman's compensation, and shall provide such proof as required by the State. Failure to do so shall constitute grounds for the State to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by the State.

E. Personnel Eligible for Employment

The Contractor further warrants to the State that Contractor personnel performing services under the Agreement from within the United States are eligible for employment in the United States.

F. Product Performance

Products delivered pursuant to the Agreement shall conform to the specifications and performance standards defined by the RFP and the Product's documentation. The Product's documentation shall fully describe the proper procedure for using the Products.

G. System Support

Commencing from the User Acceptance of the first project phase through Final Acceptance, the Contractor shall warrant the following:

- a. Components or Deliverables specified and furnished by or through the Contractor in the course of providing the services described in the Agreement shall, individually and together, operate in accordance with all Acceptance Criteria for such Deliverables and the System and shall operate substantially uninterrupted and error-free, and be guaranteed against faulty material and workmanship.
- b. Defects in the materials or workmanship of components or Deliverables specified and furnished by or through Contractor shall be promptly repaired or replaced by Contractor at no cost or expense to the State.
- c. Accepted Deliverables and the System, as a whole, shall: (i) continue to meet the functional, performance, and reliability requirements of the State, as set forth in the RFP, the Agreement, and the manufacturers' specifications for the Equipment and Software, as the same may be amended and updated, and (ii) operate, in conformance with the acceptance criteria established for each Deliverable, the System, as a whole, and by the Acceptance Management Plan.

The Contractor shall promptly provide all necessary services and support, at no cost, to the State to ensure all Deliverables and the System operate in accordance with the warranties set forth in a, b, and c above.

Where the Contractor or other third-party manufacturer/developer markets any project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's obligations for System Support described herein. Where such standard commercial warranty covers all or some of the System Support, Contractor shall be responsible for the coordination with other third-party Product manufacturer(s)/developer(s) for warranty repair or replacement of other third-party manufacturer's/developer's Product.

Where the Contractor or other third-party Product manufacturer/developer markets any Project Deliverable with a standard commercial warranty which goes beyond the System Support, the Contractor shall notify the State and pass through the manufacturer's standard commercial warranty to the State, at no additional charge.

H. System Warranty

For the period of this agreement and any extensions thereof (the "Warranty Period"), the Contractor shall warrant the following:

- a. Components or Deliverables specified and furnished by or through the Contractor in the course of providing the services described in the Agreement shall, individually and together, operate in accordance with all Acceptance Criteria for such Deliverables and the System and shall operate, substantially uninterrupted and error-free, and be guaranteed against faulty material and workmanship.
- b. Defects in the materials or workmanship of components or Deliverables specified and furnished by or through Contractor shall be promptly repaired or replaced by Contractor, at no cost or expense to the State.
- c. Accepted Deliverables and the System, as a whole, shall: (i) continue to meet the functional, performance, and reliability requirements of the State, as set forth in the RFP, the Agreement, and the manufacturers' specifications for the Equipment and Software, as the same may be amended and updated, and (ii) operate in conformance with the acceptance criteria established for each Deliverable, the System as a whole, and by the Acceptance Management Plan.

The Contractor shall promptly provide all necessary services and support, at no cost to the State, to ensure all Deliverables and the System operate in accordance with the warranties set forth in a, b, and c above.

Where the Contractor or other third-party manufacturer/developer markets any project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's obligations for System Warranty described herein. Where such standard commercial warranty covers all or some of the System Warranty, Contractor shall be responsible for the coordination with other third-party Product manufacturer(s)/developer(s) for warranty repair or replacement of other third-party manufacturer's/developer's Product.

Where the Contractor or other third-party Product manufacturer/developer markets any Project Deliverable with a standard commercial warranty which goes beyond the System Support, the Contractor shall notify the State and pass through the manufacturer's standard commercial warranty to the State, at no additional charge.

I. Training and Certification Warranty

The Contractor warrants that all staff assigned to the State's account will be kept current in training and certification. Any fees or charges incurred by the Contractor to obtain and maintain such training and certification shall be the responsibility of the Contractor and may not be billed to the State.

J. Survival of Warranties

All warranties contained in the Agreement shall survive the termination of the Agreement. The Contractor will maintain all original manufacturers' warranties, organized by installation location, and will present the organized warranty package to the State upon completion and/or termination of Agreement.

K. Virus Warranty

The Contractor warrants that services relating to the integration, development, and implementation of the Software by means of the Contractor's configuration, modification, and/or enhancement of such Software shall be performed in a manner so as not to result in introducing a virus or other malware to the software. The Contractor will utilize commercially reasonable virus detection and vulnerability scanning software on its equipment to ensure that any configuration, modification, and/or enhancement it creates and provides to the State shall not contain any virus or vulnerability.

L. Date/Time Warranty

The Contractor warrants that Product(s) furnished pursuant to the resulting Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including but not limited to calculating, comparing, and sequencing) transitions, including leap-year calculations.

M. Breach of Warranty

In the event of any breach of the above warranties, the Contractor shall, as applicable: (i) correct errors and defects that caused the breach of warranty, or (ii) re-perform the deficient services. If the Contractor does not correct the program errors or re-perform the service in a commercially reasonable time and manner, the State may pursue other remedies as described below.

4.13.6 Indemnification Relating to Third-Party Rights

The Contractor warrants that it owns or holds appropriate license rights in any intellectual property provided to the State/Department, and that any such use of

intellectual property in accordance with this contract will not infringe on those rights. The Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities, and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent and/or any other ownership interest, services and Deliverables furnished, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the Contractor's products, Deliverables, or services furnished or utilized under the Agreement, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit;(ii) the opportunity to take over, settle, or defend such action, claim, or suit at Contractor's sole expense; and (iii) reasonable assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require.

If the use of any Contractor product, Deliverable, or part(s) thereof shall be enjoined for any reason, or if the Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion, to take action in the following order of precedence: (i) to procure for the State the right to continue using such product, Deliverable(s) or part(s) thereof, as applicable; (ii) to modify the product or Deliverable(s) so that it becomes non-infringing and is of at least equal quality and performance; (iii) to replace said product or Deliverable or part(s) thereof, as applicable, with a non-infringing product or Deliverable of at least equal quality and performance; or (iv) if none of the foregoing is commercially reasonable, then the State agrees to return the product or Deliverable (or part thereof), and Contractor shall provide monetary compensation to the State for its inability to continue to provide to LEAs for their use the affected product or Deliverable (or part thereof) up to the applicable dollar amount specified in the Limitation of Liability section below.

The Contractor further agrees that, in the event the State is sued by a third party for issues related to the work performed by the Contractor under this Agreement and/or the deliverables, the Contractor will provide such experts and witnesses as may be necessary to defend any allegations regarding such work or deliverables, at Contractor's cost. Defense shall include, but is not limited to, consultation with the State's representatives and attorneys, and appearance at depositions or trials to give testimony.

4.13.7 Limitation of Liability

Except as set forth in the Indemnification paragraphs above, the limit of liability shall be as follows, except as otherwise provided for herein:

- a. The Contractor's liability to the State for any claim, loss, or liability arising out of, or connected with the products or services provided, and whether based upon default, or other liability such as breach of contract, warranty,

negligence, misrepresentation, or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the amount disbursed by the State to the Contractor under the Agreement.

- b. The State may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the State unless Contractor, at the time of the presentation of claim, shall demonstrate to the State's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c. Neither the Contractor nor the State shall be liable to each other for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others (exclusive of a party's misappropriation or misuse of confidential information in breach of its confidentiality obligations under the Agreement).

Notwithstanding the foregoing, the Contractor remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of contractor, its officers, employees, subcontractors, partners, or agents or due to a breach of the provisions of this Agreement related to confidentiality of data and/or violation of State or federal confidentiality laws..

Notwithstanding any other provision in this contract, the Contractor shall be responsible for any and all notification obligations arising out of a breach of confidentiality by Contractor, its officers, employees, subcontractors, partners or agents, of data provided by the State or an LEA, school or BOCES pursuant to this contract and during the term of this Agreement. The costs of such notification will be borne solely by the Contractor.

4.13.8 Force Majeure

Neither Party will be liable for losses, defaults, or damages under the resulting Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of the resulting Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire, or any other cause beyond the reasonable control of the party that was so delayed or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

4.13.9 Conflict Resolution

In connection with the Contractor's performance under the Agreement, the Contractor shall cooperate in a reasonable manner with the State and any other

Contractor(s) or consultant(s) retained by the SLC or the State to work on the NYSED Education Data Portal system.

In the event of conflicts between the Contractor and other consultants, contractors, or subcontractors, the Contractor shall submit to the State a timely written explanation of the details of the conflict, including such pertinent facts as may provide the State with a firm basis for understanding the nature of the conflict. The Contractor agrees to act in a good-faith effort to avoid conflicts, and to resolve conflicts with other consultants, contractors or subcontractors that cannot be avoided.

With respect to the conflicts detailed above, if the Contractor is unable to resolve a conflict, the State Project Director (or designee) shall have the right and authority to direct the involved parties on the appropriate course of action to be taken to resolve the conflict.

If the Contractor or a subcontractor is also a Contractor or subcontractor for the EDP Content Management and System Services contract, and a conflict arises between the work being performed on one EDP contract vis-à-vis the other EDP contract, the conflict shall immediately be escalated to the State Project Manager.

4.13.10 Remedies for Breach

It is understood and agreed that all rights and remedies set forth in this Agreement shall be in addition to all remedies or actions otherwise authorized or permitted by law:

- A. Withhold Payment: In any case where a question of non-performance or deficient performance by the Contractor arises, payment may be withheld, in whole or in part, at the discretion of the Department.
- B. Bankruptcy: In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of the Contract, the State may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the State the amounts owed by the Contractor arising out of the same transactions.
- C. Reimbursement of Costs Incurred: The State shall have the right to award a new contract to complete the NYSED Education Data Portal system as described by the RFP, and the Contractor shall be responsible for damages and for all additional costs incurred in re-letting the contract.
- D. Deduction/Credit: Sums due as a result of these remedies may be deducted or offset by the State from payments due, or to become due, to the Contractor on the same or another transaction. If no deduction, or only a partial deduction, is made in such fashion, the Contractor shall pay to the State the amount of such claim or portion of the claim still outstanding, on demand. The State reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

4.13.11 Suspension of Work

The State reserves the right to suspend any or all activities under the Agreement, at any time, in the best interest of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a freeze on State spending, revocation of any grant funding associated with the project, declaration of emergency, or other such circumstances. Upon receipt of such notice, the Contractor shall immediately comply with the suspension order. Activity may resume at such time as the State issues a formal written notice authorizing a resumption of work.

4.13.12 Mitigation of Costs

The Contractor shall not undertake any additional or new contractual obligations on or after the date of a termination notice without the prior written approval of the State. On or after the date of termination notice, and during the termination notice period, if any, the Contractor shall take all commercially reasonable and prudent actions to close out outstanding, existing obligations to the extent possible and as economically as possible for the State.

4.13.13 Termination Closeout Plan

Within thirty (30) calendar days of receipt of a notice of termination as set forth in the Agreement, or at the end of the contract term, the Contractor shall provide for approval by the State a detailed written plan for transition. The closeout plan shall outline, at a minimum, the tasks, milestones, and Deliverables associated with the smooth transition of the Project to a successor Contractor or to identified persons with the State. The closeout plan shall include all other information mutually agreed upon by the Parties to the Agreement. Consideration for the closeout plan shall be considered paid as part of the payments for the Deliverables in the Agreement. No further compensation shall be due for the completion of the closeout plan.

4.13.14 General Provision as to Remedies

The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, an event otherwise constituting a breach or default under the Agreement.

4.13.15 Public Announcements

Public announcements or news releases regarding the NYSED EDP program may not be released by any Bidder, the Contractor, or their agent without prior review and approval of the NYSED. Such approval shall not be considered until an executed Agreement is in place.

Publicity includes but is not limited to news conferences, news releases, advertising, brochures, reports, discussions, and/or presentations at conferences or meetings.

4.13.16 Conflict of Interest

In providing its services, the Contractor warrants and represents, to the best of its knowledge and belief, that Contractor's other obligations to third parties or to the State will not result in a conflict of interest or in the appearance of a conflict of interest that would render Contractor, its employees, subsidiaries, affiliates, partners, agents, or subcontractors unable to legally provide the Products or Services under the Agreement.

In the event that the Contractor, through reorganization, consolidation, merger, or otherwise, becomes an affiliate, or is expected by Contractor to become an affiliate of the Content Management and Systems Services prime contractor, the quality management provider or any other consultant engaged by the State, the Contractor shall immediately notify the State Project Director. Upon such notification, the State/NYSED reserves the right, after discussions with the Contractor as to appropriate alternative resolutions, to terminate the Agreement.

If the Contractor develops a conflict of interest based upon its other business relationships, which would render the Contractor unable to legally perform the Services, the Department may terminate the Agreement upon written notice. The Contractor shall notify the Department of any such conflict upon becoming aware of such conflict.

The Contractor represents and covenants that it has, and will maintain during the term of the Agreement, quality control systems to prevent such a conflict of interest and that it maintains, and will maintain during the term of the Agreement, adequate safeguards to comply with this requirement.

If the NYSED terminates the Agreement as a result of the Contractor establishing a new business relationship with a third party, the Contractor shall compensate the State/NYSED for any and all reasonable, documented, direct costs that the State/NYSED incurs to procure a new Contractor to perform the portion of the Services not yet performed by the Contractor as of the effective date of termination. Prior to any such termination the NYSED will provide notice to the Contractor.

The Contractor must disclose the name of any officer, director, project staff, or senior executive who is also an employee of New York State. Further, the Contractor must disclose the name of any State employee who directly owns an interest of ten percent (10%) or more in the Contractor's Firm or any of its

subsidiaries. No State employee shall receive, directly or indirectly, any compensation from the Contractor or any of its subsidiaries as a result of this contract. The Contractor will take appropriate steps to make a similar determination regarding its sub-contractors.

This shall be an ongoing requirement, and failure to comply will subject the Agreement to cancellation.

4.13.17 Required Consents

Each party is responsible for promptly obtaining and providing all required consents necessary for the Parties to provide the Services described in the Agreement. A Required consent means any consents or approvals required to give the parties, and the Contractor's subcontractors, the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware, and other products the State of New York Users, without infringing the ownership or license rights (including patent and copyright) of the provisions of owners of such products.

4.13.18 Confidentiality

All work will be performed by the Contractor, its subcontractor and their respective officers, agents, and employees under the supervision of the Contractor or the Contractor's employees.

Any information made available to the Contractor, its subcontractor, or their respective officers, agents, and employees, in any format, shall be used only for the purpose of carrying out the provisions of the Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known, in any manner, to any person except as may be necessary in the performance of the Agreement. Disclosure to anyone other than an officer, agent, or employees of the Contractor or its subcontractors is prohibited. The Contractor will be required to sign an Information Protection Agreement, and a Confidentiality and Non-Disclosure Agreement, to be provided subsequent to award.

All information will be accounted for by the Contractor upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

The Contractor agrees that the data processed during the performance of the Agreement will be completely purged from all data storage components of the Contractor's computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. The Contractor will provide written notification to the State Project Director when all data have been destroyed.

The Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the State Project Director or

his/her designee with a statement containing the date of the destruction, description of material destroyed, and the method used. In the event that it becomes necessary for the Contractor to receive confidential information, which Federal or State statute or regulation prohibits from disclosure, the Contractor hereby agrees to destroy all such confidential information that has been received as part of this Agreement when the purpose that necessitated its receipt by the Contractor has been completed. In addition, Contractor agrees not to retain any confidential information which Federal or State statute or regulation, including but not limited to the federal Family Educational Rights and Privacy Act (FERPA), prohibits from disclosure after termination of the Agreement. Contractor will provide written notification to the State Project Manager when the confidential information has been destroyed. The Contractor will require all project staff who have access to such confidential information to sign a confidentiality agreement that they will use the confidential information solely for purposes of this contract, and will not disclose the information to any third parties, nor to any person within Contractor's firm or sub-contractors unless such person has a legitimate business need to access such information for purposes of this contract.

The Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of the State's confidential information, which Federal or State statute or regulation prohibits from disclosure. At a minimum, the Contractor shall comply with, and shall require and ensure that its subcontractor(s) comply with, the data and information security policies of NYSED; New York State Cyber Security Policy P03-002 (see <http://www.dhSES.ny.gov/ocs/resources/documents/Cyber-Security-Policy-P03-002-V3.4.pdf>); and the federal Family Educational Records and Privacy Act (FERPA). However, if the laws of the state in which the data is housed by Contractor or a subcontractor provide greater protection for confidentiality and security of the data, then the Contractor or subcontractor must comply with the most stringent security and confidentiality laws. Failure to abide by the more stringent laws of the other state, where the data is housed, will be considered a violation of this contract in the same manner as violation of applicable New York or federal law.

The Contractor shall never disclose information which Federal, State statute, or regulation prohibits from disclosure. Other confidential information disclosed under the Agreement will be subject to the Agreement for five years following the initial date of disclosure.

The Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such confidential information of any New York State agency information directly to that New York State agency. The State may terminate the Agreement for cause if it determines that the Contractor has violated a material term of this section. The terms of this section shall apply equally to the Contractor, its agents, and subcontractors, if any. The Contractor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to the terms of this section.

The State will have the right to terminate the Agreement for cause if the Contractor fails to provide the safeguards described above.

Notwithstanding the language contained in this section, the Contractor may release any information pursuant to a final order issued from a Court of competent jurisdiction, provided the State has had an opportunity to be heard. The Contractor shall immediately forward to the State Project Director a copy of any such order requiring disclosure of confidential information, and shall advise the court of this provision.

Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered confidential information:

- a. Information that is previously rightfully known to the receiving party without restriction on disclosure;
- b. Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain;
- c. Information that is independently developed by the Contractor without use of confidential information of the State;
- d. Information unrelated to the scope of this engagement and not required by State or federal law to be kept confidential; and
- e. That the State has approved for disclosure, but solely in accordance with the State's approval or direction.

4.13.19 Insurance

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor must obtain and furnish Certificates of Insurance evidencing compliance with all insurance requirements contained herein. Such Certificates shall be, in form and substance, acceptable to the State.

Acceptance and/or approval of Certificates of Insurance by the State shall not diminish any of Contractor's obligations, responsibilities, or liabilities under the Agreement.

All insurance required by the Agreement shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing (only with respect to liability arising out of the Agreement) to any insurance or self-insurance maintained, and shall be endorsed to provide that reasonable efforts will be used for written notice to be given to the State at least thirty (30) calendar days prior to the cancellation or non-renewal of such policy or policies, which notice, evidenced by return receipt of United States Certified Mail, shall be sent to the State/Department. The insurance policy(ies) shall name the State of New York, its officers, agents, and employees as additional insureds. The additional insured requirement does not apply to Workers' Compensation or Disability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the State and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of the Agreement and to remain in full force and effect throughout the term of the Agreement and as further required by the Agreement. The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverage during the period of time such coverage is required to be in effect.

Not less than thirty (30) calendar days prior to the expiration date or renewal date, the Contractor shall supply with updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of the Agreement, or as otherwise required by the Agreement, shall obtain and maintain, in full force and effect, the following insurance with limits not less than those described below and as required by the terms of the Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 0001, or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract).

Workers' Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near, or over navigable waters, US Longshore and Harbor Workers' Compensation Act endorsement must be included. Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) require that the State shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the State, the Contractor shall be required to verify for the State, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL (see Appendix J: Compliance with Workers' Compensation Law). Any questions relating to either Workers' Compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board.

Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired, and non-owned automobiles.

Employee dishonesty coverage on all employees, including contract and temporary, in an amount of \$250,000.

4.13.20 Mergers, Acquisitions or Divestitures

In the event there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors, the Contractor is required to provide prompt written notice to the State with all details of any such change.

"Substantial" or "material" change in Contractor status shall be defined to include, but not be limited to, a sale, acquisitions, mergers, or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions, or partners which result in a change in the controlling ownership or assets of such entity after the submission of the proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in the bankruptcy of the Contractor, its corporate affiliates, subsidiaries or division, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries, or divisions or partners.

Upon receipt by the State of such notice, the State shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer or assign the Agreement without the consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to terminate this Agreement immediately, in whole or in part, if it finds that such change materially and adversely affects the delivery of services solely determined with reference to the best interests of the State, or if the change in Contractor status causes a conflict of interest or violation of law.

In the event the Contractor is acquired or merged, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

4.13.21 Material Change in Contractor Status

A. Ownership

The Contractor, or its licensors, retain all ownership and intellectual property rights to the licenses in perpetuity. Any property or material furnished or provided by the State to the Contractor hereunder, is and will remain the property of the State.

B. Prior Licensed Software

The State's prior licensed software shall not be extinguished or merged by execution of the resulting Agreement or by unilateral acts of the Contractor.

4.13.22 Open Source and Third Party Software Disclaimer

Open source software and Third Party software is developed independently of Contractor and may be governed by a separate license. If such software is governed by a separate license, Contractor shall provide a copy of that license in the applicable Documentation, and the Authorized User's license rights and obligations with respect to that open source software shall be defined by those separate license terms and subject to the conditions, if any, therein. Nothing in the Contract shall restrict, limit, or otherwise affect any rights or obligations the Authorized User may have, or conditions to which the Authorized User may be subject, under such separate open source license terms. The Contractor may not use material pursuant to a Creative Commons License for performance of its responsibilities under this contract without prior approval of the State, and shall ensure that any such material is free from all obligations to third parties, including but not limited to royalties.

4.13.23 Ownership of Data and Records

All data and other records contained in or entered into any Contractor accessible data store by the State or LEA, or supplied to the Contractor by the State or LEA are, and shall remain, the sole property of the State or LEA respectively. The Contractor shall not copy or use such records except to carry out contracted work under the terms herein, and shall not transfer or display such records to any other party not involved in the performance of the resulting Agreement. Contractor will certify in writing that all data and records have been destroyed upon completion of the work hereunder.

4.13.24 Title and Legal Interest in Agreement Deliverables

Unless otherwise specified in the Agreement, all materials developed pursuant to the terms of the Agreement without limitation, including materials developed as a result of Task Orders, contract documentation, software coding or modifications, and all other contract Deliverables of whatever description, custom program code developed or prepared for the State by the Contractor under the Agreement, whether or not the Agreement is completed, is confidential information and the property of the State and all title and interest therein shall vest in the State and shall be deemed to be a "work made for hire" and made in the course of the services rendered hereunder. To the extent that title to any such works may not, by operation of law, vest in the State, or such works may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably assigned to the State. All such materials shall belong exclusively to the State, with the State having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor agrees to give the State, and any person designated by the State, reasonable assistance, at the State's expense, required to perfect the rights defined in this Paragraph.

Notwithstanding the foregoing, the Contractor or third parties shall retain all right, title and interest in any of their respective pre-existing software products. The State acknowledges that the successful Contractor or its licensors shall retain all ownership and intellectual property rights to proprietary code offered to the State under a licensing agreement. Any property or material furnished or provided by the State to the Contractor hereunder is and will remain the property of the State.

Nothing herein shall preclude the State from entering into an agreement with the Contractor to jointly own a specific work developed under the Agreement.

4.13.25 Software Use

A. The Contractor shall pay all associated license, maintenance, hosting, and support fees from the start date of the resulting agreement and continuing through the end of the System Warranty Period (i.e., end of the term of the Agreement). All software licenses will be held by the Contractor. The State acquires only the right to use the Software and does not acquire any rights of ownership. All rights, title, and interest in the Software shall at all times remain the property of the Contractor or the licensor through which the Contractor obtained the rights to distribute the Software. The Contractor represents that (i) it is the owner of the Software developed by the Contractor and that it has the right to modify same and to grant the State a license for its use, and/or (ii) it has the right to sublicense to the State those portions of the Software not owned by the Contractor, if applicable.

4.13.26 Product Version

Products licensed or provided shall be the most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested, in writing, by the State Project Manager and Contractor is willing to provide such version.

4.13.27 No Hardstop/Passive License Monitoring

Unless NYSED is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that, in the event of a breach or alleged breach of this provision, NYSED shall not have an adequate remedy at law, including monetary damages, and that NSYED shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which NYSED shall be entitled.

4.13.28 Use by Other Agencies and the Federal Government

Any contract entered into pursuant to an award of this RFP shall contain a provision that grants the option to extend the terms and conditions of such contract to any other State agency in New York. The Contractor recognizes that this contract is funded by federal Race to the Top / American Recovery and Reinvestment Act (ARRA) funds, and that the federal government reserves a right to use material or works created pursuant to this contract pursuant to 34 C.F.R. §80.34, to the extent that provision is applicable.

4.13.29 Additional Services Requested

The NYSED may, at any time, by written notice, make changes or additions to work or services within the general scope of this contract for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the Agreement, an equitable adjustment shall be made in the cost using the billing rates set forth in the Agreement, and the Contractor shall be notified, in writing, accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 calendar days from the date of receipt by the Contractor of the notification of change; provided however, that the NYSED, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with the Agreement as modified. A change to the scope of the Agreement or budget would be subject to the approval of the State Comptroller.

4.13.30 Freedom to Undertake

With respect to any contract or employment as an independent Contractor or employee of New York State, or any New York public corporation as defined in Section 66 of the New York General Construction Law or any agency or department of either, pursuant to the terms of any other present or future agreement, expressed, implied, entered into with such entity, if any, the Contractor by submitting a proposal thereby covenants and represents that there is no conflict as to hours required to be worked or duties required to be performed pursuant to the terms of this proposal and any aforesaid contract or employment.

4.13.31 Reports and Findings

Any and all reports and findings rendered to the NYSED by the Contractor shall be the exclusive property of the Department and subject to its exclusive use and control. The NYSED herewith waives any and all rights to such reports and findings and the control thereof.

The Contractor shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of the contract.

4.13.32 Records Access

the NYSED staff, others authorized by the NYSED such as representatives of the Federal government, or other State agencies authorized by State law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the Contractor involved in transactions relating to the contract during the contract period and for a period of six years after final payment for said services by the Department. The Contractor will make all records, including related documents of any and all subcontractors, available to New York State. Such retained records shall not include confidential data or information, as defined in this Contract, unless specifically mandated in writing by NYSED to be retained. Otherwise, such confidential data and information shall be promptly destroyed as provided in this Contract.

As authorized by the NYSED, the Contractor shall cooperate with Federal auditors and other independent auditors conducting audits of State and related Federal records and with any subsequent auditors for the examination of documents, systems, and financial statements. Such cooperative work shall be reported to the NYSED and identified separately in all billings under the contract.

4.13.33 Work Paper Retention and Availability

The work papers to be prepared by the Contractor during the engagement will be the Contractor's property, although copies thereof and access to them will be made available, upon request, to the NYSED, representatives of the Federal government and State agencies when authorized by the NYSED, and other State agencies authorized by law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the NYSED.

The Contractor selected agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the contract.

4.13.34 Waiver, Modification, Execution, or Severability

No waiver or modification of the contract or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the parties hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting the contract, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of the paragraph may not be waived except as herein set forth.

The written contract shall contain the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties.

The parties hereto shall execute such other further documents as may be required to effectuate the terms of the contract.

In the event that any provision of the Agreement shall be declared void, voidable, illegal, or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal, or invalid. All of the provisions of the Agreement not specifically found to be so deficient shall remain in full force and effect.

4.13.35 Freedom of Information Law

New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, §§84-90), available at: <http://www.dos.state.ny.us/coog/index.html>, promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Bidder and the proposals of unsuccessful Bidders may be subject to disclosure under FOIL.

However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Bidder's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.

Please note that all information that a Firm may claim as proprietary, copyrighted, or rights-reserved is not necessarily protected from disclosure under FOIL.

As noted in Section 2.3.1 above, if there is information in a Firm's proposal that a Firm claims meets the definition set forth in Section 87(2)(d), the Firm should identify such information and provide an outline of its reasons for seeking exemption from FOIL disclosure. Failure to identify the information which a Firm believes should be protected by Section 87(2)(d) may result in such information being disclosed if a request is received.

It is a Firm's responsibility to consult an attorney with any questions the Firm may have about New York State's Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

The State will not honor any attempt by a Bidder either to designate its entire bid proposal as proprietary or to claim copyright protection for its entire proposal.

The Contractor must provide to the Department all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Department pursuant to the Freedom of Information Law.

4.13.36 Piggybacking

This contract may be extended for use in accordance with the State Finance Law Section 163 (10)(e). NYSED reserves the right to convert any provisions that involve LEA procurement into a piggybacked OGS backdrop contract.

4.13.37 Performance Monitoring

The Contractor's performance will be assessed by the State according to the achievement of Contractor's contractual obligations in a timely and professional manner, as set forth herein. NYSED may utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work product.

4.13.38 Notices

All notices, demands, instructions, claims, approvals, and disapprovals are required to be given to either Party at the addresses set forth in the final contract document or to such other address as either Party shall have provided the other.

4.13.39 Reservations

NYSED reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, Contractor will, as directed by the NYSED, cooperate and work in harmony with such consultants and contractors.

4.13.40 Proposal Ownership

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Department reserves the right to use any portions of the Bidder's proposal not specifically noted as proprietary.

4.14 Appendix A-2

American Recovery and Reinvestment Act of 2009 (ARRA)

ADDITIONAL CONTRACT RECORD KEEPING REQUIREMENTS

This contract is funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009 (ARRA). The United States Office of Management and Budget (OMB) has released, "Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009" (M-09-21). This guidance provides detailed information on reporting requirements included in Section 1512 of the Recovery Act.

Recipient vendors receiving ARRA funding will be required to submit quarterly information which will include at a minimum the following information:

- Vendor name and zip code of Vendor headquarters;
- Expenditures (per quarter and cumulative);
- Expenditure description; and
- Estimates on jobs created or retained via the expenditure of these funds by the Vendor.

Additional data may be required from vendors as a result of guidance issued by OMB.

Vendors will be required to submit the ARRA data in a form and format to be determined by the New York State Education Department (NYSED). NYSED anticipates that the reporting information will be provided to Vendors no later than August 30th. There will be no additional compensation for this reporting activity, and it is anticipated that the Quarterly Reporting forms will be required in both paper and electronic formats.

An employee of any non-federal employer receiving ARRA funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to law enforcement and other officials information that the employee reasonably believes is evidence of:

- Gross mismanagement;
- Gross waste of covered funds;
- A danger to public health and safety;
- An abuse of authority; or
- A violation of law.

5 SUBMISSION DOCUMENTS

5.1 Response Sheet for Bids

Response Sheet for Bids

Please complete the bidder section on this sheet even if you choose not to bid. Read the detailed specifications, terms, and conditions, and submit this form along with your completed bid form and supporting materials.

Agency and Bid-Delivery Information

Bids may not be faxed. To ensure the confidentiality of your bid before the bid opening, enclose your bid within an envelope labeled

**Bid Proposal #DS-07
DO NOT OPEN**

Place this sealed envelope within another envelope labeled with the delivery information.

Bidder Information—Please Complete This Section

Please complete the following even if you are choosing not to bid; responses must be legible. By signing, you indicate your express authority to sign on behalf of yourself, or your company or other entity and full knowledge and acceptance of the terms and conditions of the bid. You also affirm that you understand and agree to comply with the procedures of the NYSED relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

<u>Name of Company Bidding</u>	<u>Employer's Federal Tax ID Number</u>
Address <i>Street</i> <i>Zip Code</i>	City <i>State</i>

Check one of the following:

I certify that my organization has filed its Vendor Responsibility Questionnaire online via the New York State VendRep System and that the current questionnaire was certified within the past six months.

I am including a completed paper copy of the Vendor Responsibility Questionnaire with the bid proposal.

My entity is exempt based on the OSC listing.

Other, explanation:

I am not submitting a bid. (Please complete and submit this sheet only; in addition, please indicate why you have chosen not to bid.)

<hr/>		
Bidder's Signature	<i>Date</i>	<i>E-mail</i>
	<i>Phone</i>	<i>Fax</i>
Print Name as Signed and Title		

The New York State Education Department reserves the right to request any additional information deemed necessary to properly review bids.

5.2 Non-Collusive Bidding Certifications

In accordance with Section 139-d of the State Finance Law and paragraph 7 of Appendix A (Standard Clauses for NYS Contracts), the bidder hereby affirms, under penalty of perjury:

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this ____ day of _____, 20__ as the act and deed of said corporation or partnership.

The person signing on behalf of the bidder further affirms that he/she is authorized and responsible for signing this certificate.

Identifying Data

Name of Potential Contractor _____

Street Address _____

City, State, zip code: _____

Telephone: _____

Name: _____

Title: _____

Signature: _____

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By: _____

Name

Name

Title

Title

Street Address

City, State, Zip Code

IF BIDDER(S) ARE A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

IF BIDDER(S) ARE A CORPORATION, COMPLETE THE FOLLOWING:

NAME

LEGAL RESIDENCE

President:

Secretary:

Treasurer:

President:

Secretary:

5.3 MacBride Certification

**"NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MacBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either:

(Answer Yes or No to one or both of the following, as applicable)

1. Has business operations in Northern Ireland:

_____ Yes _____ No

If yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.

_____ Yes _____ No

Company Name: _____

Printed Name and Title of Authorized Representative:

Signature: _____

Date: _____

Proposal: _____

Commodity: _____

5.4 Certification – Omnibus Procurement Act of 1992

The Omnibus Procurement Act of 1992 requires that by signing this RFP/bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State;
2. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
3. 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;
4. The contractor acknowledges notice that New York 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.

Name: _____

Title: _____

Company Name: _____

Date: _____

5.5 Required Assurances

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them

for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Professional, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs

(a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, and zip code)

Check if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Professional, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications. The applicant will provide immediate written notice to the NYSED Contract Administration Unit if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE
CONTRACT YEAR	CONTRACT NUMBER

5.6 Offerer Disclosure of Prior Non-Responsibility Determinations

Instructions: The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the State Education Department.

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract RFP Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Name: _____

Title: _____

5.7 Minimum Qualifications Certification

RFP #DS-07

By signing this form, the undersigned certifies it can provide and/or meet all of the requirements listed below as well as all of the required implementation and support services deliverables outlined in Section 1.4 of the RFP. Please use the line space, where provided, to describe how you are going to provide or meet the specified requirement.

A bidder may meet the minimum qualifications through the primary bidder's qualifications or the qualifications of its subcontracting team. The qualifications of all members of the bidder's team are applicable for the purposes of meeting at least three out of four of the requirements represented below.

(Please clearly document how this proposal meets each mandatory requirement):

<i>Qualification</i>	<i>As supported in this proposal on page(s)</i>
The bidder must have been responsible for at least three product implementations of a K-12 education software application within the last three years.	
The bidder must have been responsible for at least three product implementations of a data dashboard or presentation application within the last three years. If your implementations counted in Minimum Qualification 1 included a data dashboard or presentation system then you may count them again.	
The vendor must have experience providing, within the last three years, Software as a Service (SaaS), or hosted applications operated by the vendor, serving at least 10,000 users a year.	
The vendor must have experience within the last three years implementing a complex solution for a large corporate or government client that: a) involved identity management and access control integration, b) multiple vendors, and c) a scope of services in excess of \$2 million.	

Completed Attachment 6.2 Mandatory Systems Requirements	Yes/No
A completed Attachment 6.2 is included with this bid and indicates that all mandatory systems requirements as indicated in Attachment 6.2 will be met .	

Proposals that do not include the completed and signed Mandatory Requirements Certification will be disqualified and removed from further consideration.

Vendor Signature and Title		Date:	
Printed Name			
Company Name			
Company Address			

5.8 Bid Form

**NYS Education Department
Data Dashboard Solutions RFP**

COST PROPOSAL (Whole dollar figures only)

For Data Dashboard services, NYSED requires submission of two pricing components that must be inclusive of all products and services required for launch and operation of the proposed solution(s):

The “Implementation Cost” component is a deliverable-based, fixed price covering fees related to the one-time setup, integration, configuration, customization, and testing of the data dashboard module that meets the requirements specified in Attachment 6.2 Detailed Requirements and fulfills the relevant service requirements identified in Section 1.4 Required Implementation and Support Services.

Implementation Cost	
----------------------------	--

The “Annual Cost” component is an annually recurring per-student fee that will be inclusive of all costs subsequent to launch and fulfills the relevant service requirements identified in Section 1.4 Required Implementation and Support Services. This fee will include any product enhancements that the vendor elects to perform to keep the product current and competitive. The vendor agrees to hold this pricing for three years, and, for Years 4⁹ and 5¹⁰ of the contract, pricing may not rise or fall by more than the year over year increase or decrease in the Consumer Price Index (CPI).

	Annual Cost Per Student
Years 2 and 3	

Discounts for quantity breaks will be as follows:

Quantity	Adjusted Unit Price (per active student per year)
<25,000	100% of proposed unit price*
25,000-249,999	100% of proposed unit price
250,000-500,000	95% of proposed unit price
500,001+	90% of proposed unit price

*Vendor or NYSED may terminate if selection results in fewer than 25,000 enrolled students.

⁹ For the Year 4 renewal an increase up to the year-over-year change in CPI between the month prior to the Year 1 start date and the month prior to the Year 4 start date will be permitted.

¹⁰ For the Year 5 renewal and increase up to the year-over-year change in CPI between the month prior to the Year 4 start date and the month prior to the Year 5 start date will be permitted.

The above identified cost components (the “Implementation Cost” and “Annual Cost”) must include ANY AND ALL one-time and recurring fees, charges, or costs for the duration of the contract, including:

- a) All applicable, allowable overhead
- b) Company fees and profit
- c) Direct non-salary expenses, including but not limited to:
 - Labor, parts, shipping, material and equipment cost (including the cost of providing computers for contractor staff to use while onsite at NYSED)
 - Software license costs
 - Emergency work; maintenance services as specified herein
 - Repairs and replacement of major or minor parts as necessary
 - Administrative, reporting, or other requirements, overhead costs, and profit
 - Travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc. for all contract services.
 - Services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted

**New York State Education Department
Subcontracting Form**
New York State Education Department
(whole dollar figures only)

Data Dashboard Solutions RFP #DS-07

Subcontracting For Implementation Cost

Name of Subcontractor	M/WBE	Work Description & Estimated Hours/Days	Projected Cost

*Indicate with an "X" which subcontractors are M/WBE.

Total Subcontracting Cost	Total Project Budget	Percent of Subcontracting to Total Budget

Subcontracting (5 Years)	Total Year 1	Total Year 2	Total Year 3	Total Year 4	Total Year 5	Grand Total Subcontracting For 5 Years
Percent of Subcontracting to Annual Budget						

Subcontracting (exclusive of subcontracted hosting services) is limited to forty percent (40%) of the annual contract budget.

New York State Education Department
(whole dollar figures only)

Data Dashboard Solutions RFP #DS-07

M/WBE Purchases For Year One

Table 1-- Minority Business Enterprise

Name of Vendor	Type of Services or Supplies	Cost
Total Year 1 MBE Costs		
Total Year 1 Budget		
Total Year 1 MBE Costs divided by Total Year 1 Budget (%)		

Table 2-- Women-Owned Business Enterprise

Name of Vendor	Type of Services or Supplies	Cost
Total Year 1 WBE Costs		
Total Year 1 Budget		
Total Year 1 WBE Costs divided by Total Year 1 Budget (%)		

M/WBE Purchases For Years 1-5

M/WBE Purchases (5 Years)	Year 1	Year 2	Year 3	Year 4	Year 5	Grand Total For 5 Years
% MBE Purchases to Budget						
% WBE Purchases to Budget						

5.9 M/WBE Documents

M/WBE COVER LETTER

RFP #DS-07

Minority & Woman-Owned Business Enterprise Requirements

NAME OF FIRM _____

In accordance with the provisions of Article 15-A of the NYS Executive Law, 5 NYCRR Parts 140-144, Section 163 (6) of the NYS Finance Law and Executive Order #8 and in fulfillment of the New York State Education Department (NYSED) policies governing Equal Employment Opportunity and Minority and Women-Owned Business Enterprise (M/WBE) participation, it is the intention of the New York State Education Department to provide real and substantial opportunities for certified Minority and Women-Owned Business Enterprises on all State contracts. It is with this intention the NYSED has assigned M/WBE participation goals to this contract.

In an effort to promote and assist the participation of certified M/WBEs as subcontractors and suppliers on this project for the provision of services and materials, the bidder is required to comply with NYSED's participation goals. The goals are 12% Minority Business Enterprise (MBE) and 8% Women-Owned Business Enterprise (WBE). NYSED is open to participation levels that achieve the overall goal through a different split between MBE and WBE (e.g. 10% and 10% or 16% and 4%). These participation goals shall be applicable to the contract as a whole and will be monitored by NYSED M/WBE Program Unit for compliance.

Bidders are required to respond to the participation goals by completing and submitting **M/WBE 100**, Utilization Plan, **M/WBE 102**, Notice of Intent to Participate and **EEO 100**, Staffing Plan in this RFP or at www.oms.nysed.gov/fiscal/MWBE/forms.html.

By my signature on this Cover Letter, I certify that I am authorized to bind the Bidder's firm contractually
Typed or Printed Name of Authorized Representative of the Firm
Typed or Printed Title/Position of Authorized Representative of the Firm
Signature/Date

M/WBE UTILIZATION PLAN

INSTRUCTIONS: All bidders submitting responses to this procurement must complete this M/WBE Utilization Plan and submit it as part of their proposal. The plan must contain detailed description of the services to be provided by each Minority and/or Women-Owned Business Enterprise (M/WBE) identified by the bidder.

Bidder's Name _____

Telephone: _____

Address _____

Federal ID No.: _____

City, State, Zip _____

RFP No.: _____

Certified M/WBE	Classification (check all applicable)	Description of Work (Subcontracts/Supplies/Services)	Annual Dollar Value of Subcontracts/Supplies/Services
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____

PREPARED BY (Signature) _____ DATE _____

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-1, 5 NYCRR PART 143 AND THE ABOVE REFERENCE SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.

NAME AND TITLE OF PREPARER: _____
 TELEPHONE/E-MAIL _____

DATE _____

M/WBE 100

<i>(print or type)</i>	
REVIEWED BY _____	DATE _____
UTILIZATION PLAN APPROVED YES/NO _____	DATE _____
NOTICE OF DEFICIENCY ISSUED YES/NO _____	DATE _____
NOTICE OF ACCEPTANCE ISSUED YES/NO _____	DATE _____

**M/WBE SUBCONTRACTORS AND SUPPLIERS
NOTICE OF INTENT TO PARTICIPATE**

INSTRUCTIONS: Part A of this form must be completed and signed by the Bidder/Contractor. Parts B & C of this form must be completed by MBE and/or WBE subcontractors/suppliers. The bidder/contractor must submit a separate M/WBE Notice of Intent to Participate form for each MBE or WBE as part of the proposal.

Bidder Name: _____ Federal ID No.: _____

Address: _____ Phone No.: _____

City _____ State _____ Zip Code _____ E-mail: _____

Signature of Authorized Representative of Bidder's Firm _____
Print or Type Name and Title of Authorized Representative of Bidder's Firm

Date: _____

PART B - THE UNDERSIGNED INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE PROCUREMENT:

Name of M/WBE: _____ Federal ID No.: _____

Address: _____ Phone No.: _____

City, State, Zip Code _____ E-mail: _____

BRIEF DESCRIPTION OF SERVICES OR SUPPLIES TO BE PERFORMED BY MBE OR WBE:

DESIGNATION: MBE Subcontractor WBE Subcontractor MBE Supplier WBE Supplier

PART C - CERTIFICATION STATUS (CHECK ONE):

The undersigned is a certified M/WBE by the New York State Division of Minority and Women-Owned Business Development (MWBD).

The undersigned has applied to New York State's Division of Minority and Women-Owned Business Development (MWBD) for M/WBE certification.

THE UNDERSIGNED IS PREPARED TO PROVIDE SERVICES OR SUPPLIES AS DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH THE BIDDER CONDITIONED UPON THE BIDDER'S EXECUTION OF A CONTRACT WITH THE NEW YORK STATE EDUCATION DEPARTMENT.

The estimated dollar amount of the agreement \$ _____

_____ Date

Signature of Authorized Representative of M/WBE Firm

Printed or Typed Name and Title of Authorized Representative

EQUAL EMPLOYMENT OPPORTUNITY - STAFFING PLAN

Instructions on Page 2

Bidder Name: _____ Telephone: _____
 Address: _____ Federal ID No.: _____
 City, State, ZIP: _____ RFP No: _____

Report includes: _____ Reporting Entity: _____

Work force to be utilized on this contract Contractor
 Contractor/Subcontractor's total work force Subcontractor - Name: _____

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO - Job Categories	Total Work Force	Race/Ethnicity - report employees in only one category																	
		Hispanic or Latino		Not-Hispanic or Latino															
				Male									Female						
		Male	Female	White	African-American or Black	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran	White	African-American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran
Executive/Senior Level Officials and Managers																			
First/Mid-Level Officials and Managers																			
Professionals																			
Technicians																			
Sales Workers																			
Administrative Support Workers																			
Craft Workers																			
Operatives																			
Laborers and Helpers																			
Service Workers																			
TOTAL																			

PREPARED BY
 (Signature): _____

DAT
 E: _____

NAME AND TITLE OF
 PREPARER: _____

TELEPHONE/EMAIL
 : _____

STAFFING PLAN INSTRUCTIONS

General Instructions: All Bidders and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Bidder shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Bidder shall complete this form for the contractor's or subcontractor's total work force.

Instructions for Completing:

1. Enter the RFP number that this report applies to, along with the name, address, and federal ID number of the Bidder.
2. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Bidder's total work force.
3. Check off the appropriate box to indicate if the Bidder completing the report is the contractor or subcontractor.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and race/ethnic background and enter under the heading Race/Ethnicity. Contact the Designated Contact(s) for the solicitation if you have any questions.
6. Enter the name, title, phone number and/or email address for the person completing the form. Sign and date the form in designated areas.

RACE/ETHNIC IDENTIFICATION

For purposes of this form NYSED will accept the definitions of race/ethnic designations used by the federal Equal Employment Opportunity Commission (EEOC), as those definitions are described below or amended hereafter. (Be advised these terms may be defined differently for other purposes under NYS statutory, regulatory, or case law). Race/ethnic designations as used by the EEOC do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. The race/ethnic categories for this survey are:

- **Hispanic or Latino** - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
- **White (Not Hispanic or Latino)** - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Black or African American (Not Hispanic or Latino)** - A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)** - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian (Not Hispanic or Latino)** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **American Indian or Alaska Native (Not Hispanic or Latino)** - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- **Two or More Races (Not Hispanic or Latino)** - All persons who identify with more than one of the above five races.
- **Disabled** - Any person who has a physical or mental impairment that substantially limits one or more major life activity; has a record of such an impairment; or is regarded as having such an impairment
- **Vietnam Era Veteran** - a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

5 NYCRR 142.8 CONTRACTOR'S GOOD FAITH EFFORTS

(a) The contractor must document its good faith efforts toward meeting certified minority- and women-owned business enterprise utilization plans by providing, at a minimum:

- (1) Copies of its solicitations of certified minority- and women-owned business enterprises and any responses thereto;
- (2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
- (3) Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
- (4) Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the directory of certified businesses;
- (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
- (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises.

(b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:

- (1) whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
- (2) the number of certified minority- and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
- (3) The actions taken by the contractor to contact and assess the ability of certified minority- and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
- (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified minority- and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
- (5) the terms and conditions of any subcontract or provision of suppliers offered to certified minority- or women-owned business enterprises and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
- (6) whether the contractor offered to make up any inability to comply with the certified minority- and women-owned business enterprises goals in the subject State contract in other State contracts being performed or awarded to the contractor; and
- (7) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

5.10 Letter of Intent

**New York State Education Department
Letter of Intent Form
Education Data Portal: Data Dashboard Solutions**

Authorized representatives of our organization have received and read the Request for Proposal and we believe our organization is qualified to bid for the requested services. We understand that receipt of this form electronically to edpDataDashboards@mail.nysed.gov by **COB on May 4, 2012** is requested.

Organization Name:

Address/Phone/Email:

Signatory Authority Name/Title (Print or Type):

Signature: _____ **Date:** _____

6 ATTACHMENTS

6.1 Shared Learning Infrastructure Documentation

The following documents are attached and are current as of the time of release of the RFP. For updates to these documents please see the SLC website at www.slcedu.org:

A. Guidance – SLC Project Documents

SLC_Read_Me_Draft_Documentation_Overview.pdf

B. API

Data Store Draft API – RFP Guidance (January 13, 2012)	SLC_Data_Store_Draft_API_RFP_Guidance.pdf
Data Store Draft API Specification (December 20, 2011)	SLC_Data_Store_Draft_API_Spec.pdf
Introductory Data Store API Usage – Whitepaper (December 20, 2011)	SLC_Introductory_API_Usage_Whitepaper.pdf

C. File Format

SLI Data Ingestion Specification (January 30, 2012)	SLI_Data_IngestionSpecification.pdf
SLI Bulk Data Transfer – RFP Guidance (February 1, 2012)	SLI_Bulk_Data_Transfer_RFP_Guidance.pdf

D. Learning Registry

Learning Registry Index Solution – RFP Guidance (January 31, 2012)	SLC_Learning_Registry_Index_Solution_RFP_Guidance.pdf
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E. Learning Resource Metadata Initiative (LRMI)

Learning Resource	SLC_LRMI_RFP_Guidance.pdf
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Metadata Initiative (LRMI) – RFP Guidance (January 13, 2012)	
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F. Identity Integration

SLI Identity Integration – RFP Guidance (January 27, 2012)	SLIRFP_Identity_Integration_Doc.pdf
Identity Integration Solution Overview (January 20, 2012)	SLC_Identity_Integration_Overview.pdf

G. Integration and Customization

SLI Portal and Dashboard Integration and Customization – RFP Guidance (January 24, 2012)	SLIRFP_Portal_Dashboard_RFP_Guidance_Doc.pdf
Customizing the Portal & Educator Dashboards – Overview (December 16, 2011)	SLC_Customizing_SLI_Portal_and_Dashboards_Overview.pdf

H. Learning Standard Alignment

Learning Standard Alignment in the SLC Technology: A Whitepaper (March 29, 2012)	SLI_Learning_Standards_Alignment_Whitepaper_v1.0.pdf
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6.2 Detailed Requirements

See separate document

6.3 Hosting Services

See separate document

6.4 Maintenance and Support Services

See separate document

6.5 Company Experience and References

See separate document

6.6 Staffing Plan and Resumes

See separate document

6.7 Counts of Student Enrollment, Classroom Teachers and Other Educators

See separate document

6.8 Statement of Work

See separate document

7 GLOSSARY

Term	Definition
Achievement Reporting and Innovation System	The New York City Department of Education's Achievement Reporting and Innovation System (ARIS) provides a single place where educators can find important information to use to accelerate student learning (www.arisnyc.org).
Application Programming Interface	A source code-based specification intended to be used as an interface by software components to communicate with each other.
ARIS Connect System	Part of ARIS that: <ul style="list-style-type: none"> ■ Engage in collaborative inquiry with your colleagues ■ Find or create a community of shared interest ■ Share a resource with your colleagues
Big 5	Refers to the following five New York State school districts: NYC; Buffalo; Rochester; Syracuse; Yonkers.
Boards of Cooperative Educational Services (BOCES)	Organizations that provide school districts with a program of shared educational services.
Common Core	The Common Core State Standards provide a consistent, clear understanding of what students are expected to learn, so teachers and parents know what they need to do to help them. More information on Common Core Standards can be found at http://www.corestandards.org/ .
Data Dashboard	An information system user interface that (similar to an automobile's dashboard) is designed to be easy to read.
Ed-Fi Data Standard	Developed for the K-12 sector, Ed-Fi is open, XML-based, and CEDS-aligned to integrate information from a broad range of existing sources so it can be sifted, analyzed and put to use every day, www.ed-fi.org .
Federated Identity	A federated identity is the means of linking a person's electronic identity and attributes, stored across multiple distinct identity management systems.
Hosting/ASP services	An entity that manages and distributes software-based services and solutions to customers across a wide-area network from a central data center)
iFrames	An HTML structure that allows another HTML document to be inserted into an HTML page.
Independent Validation and Verification	Independent procedures that are used together for checking that a product, service, or system meets requirements and specifications and that it fulfills its intended purpose.
Learning Maps	Graphical representations of student progression along the Common Core State Standards.
Learning Registry	A new approach to capturing, sharing, and analyzing learning resource meta-data to broaden the usefulness of digital content to benefit educators and learners. www.learningregistry.org .
Learning Resource Metadata Initiative	Project led by Creative Commons (CC) and the Association of Educational Publishers (AEP) to establish a common vocabulary for using meta-data to describe learning resources.

Local Education Agency (LEA)	For purposes of this contract, an LEA shall include a school district, a charter school or a BOCES.
Master Data Management	Comprises a set of processes and tools that consistently defines and manages the master data (i.e. non-transactional data entities) of an organization.
Networks	Groupings of schools in the New York City school district and throughout the state.
Partnership for Assessment of Readiness for College and Careers	A consortium of states working together to develop a common set of K-12 assessments in English and math anchored in what it takes to be ready for college and careers www.parcconline.org .
Portlet	Pluggable user interface software components that are managed and displayed in a web portal.
Recommendation Engines	A subclass of information filtering system that seek to predict the 'rating' or 'preference' that a user would give to an item.
Reference Implementation	A reference implementation (or, less frequently, sample implementation or model implementation) is the standard from which all other implementations, with their attendant customizations, are measured.
Regional Information Centers	Similar to BOCES, RICs are a trusted provider of collaborative services. By regionalizing services, the RICs, in particular, make a wider range of technology skill sets available to school districts. This relationship increases the buying power of a district and promotes consistent technical standards. This cost effective system continues to lighten the burden placed on local taxpayers and has leveled the playing field so that: no matter the size of a district, the best resources remain within reach for New York students.
Role-Based Access Control	Is an approach to restricting system access to unauthorized users. RBAC is sometimes referred to as role-based security.
SAML	An XML-based open standard for exchanging authentication and authorization data between security domains, that is, between an identity provider (a producer of assertions) and a service provider (a consumer of assertions).
Shared Learning Collaborative (SLC)	Led by the vision of the Council of Chief State School Officers and nine participating states, and funded by the Bill & Melinda Gates Foundation and Carnegie Corporation of New York, the collaborative aims to create a shared technology infrastructure that works better and costs less per state than what can be accomplished by each state working individually.
Shared Learning Infrastructure (SLI)	As part of the SLC, a shared data store and set of web services that support the implementation of the Common Core State Standards and help states and districts provide teachers with the instructional data and tools they need to make personalized learning the norm in every classroom.
Software Development Kit	A set of software development tools that allows for the creation of applications for a certain software package, software framework, hardware platform, computer system, video game console, operating system, or similar platform.