

REQUEST FOR PROPOSAL (RFP)

RFP Proposal #10-013

NEW YORK STATE EDUCATION DEPARTMENT

Title: An On-Line Job Resource Tool for Public Computer Centers (Task 1) and An On-Line Job Resource Tool for New York State Libraries (Task 2)

The New York State Education Department (SED), New York State Library (NYSL) seeks proposals for the provision of a commercial off-the-shelf 24/7 online job resource tool to the public computer centers created through the State Education's grant program "New York Computer Centers: Broadbandexpress@yourlibrary", located in 30 public libraries and 5 E-mobile units in 41 upstate New York counties (Task 1). The New York State Education Department is also seeking proposals for the provision of a 24/7 online job resource tool for all types of libraries located in the 62 counties in New York State (Task 2). Both projects support the goals outlined in the grant awarded to the New York State Library, a unit of the Office of Cultural Education within the New York State Education Department, by the National Telecommunications and Information Administration's (NTIA) federal American Recovery and Reinvestment Act (ARRA) Broadband Technology Opportunity Program (BTOP). More information about the grant program can be found at: <http://www.nysl.nysed.gov/libdev/nybbexpress/index.html>. Tasks must be bid separately, but bidders have the option to bid on either Task 1, Task 2 or both. NYSED will award **one (1)** contract pursuant to this RFP. If sufficient funding is available, NYSED will award a contract for Task 2 only. If funds are not sufficient to award a contract for Task 2, NYSED will award a contract for Task 1 only. The contract(s) resulting from this RFP will be for a term beginning July 1, 2011 and ending April 30, 2013.

Eligible applicants for each task are not-for-profit and for-profit organizations and associations.

Service Area: All public libraries in the 41 upstate New York counties in which the public computer centers are located (Task 1); All types of libraries located in all 62 New York counties (Task 2).

Subcontracting 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. The goals are **17%** Minority Business Enterprise (MBE) and **12%** Women-Owned Business Enterprise (WBE). Please see the section on M/WBE Mandatory Requirements for information regarding NYSED's Minority/Women-Owned Business Enterprise Procurement Policy.

Mandatory Requirements:

1. The job resource tool must include the following:
 - a. Web-based application that is accessible online 24 hours a day, 7 days a week.
 - b. Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT

Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by (state agency name, contractor or other) and the results of such testing must be satisfactory to (state agency name) before web-based information and applications will be considered a qualified deliverable under the contract or procurement (the policy is available at: <http://www.cio.ny.gov/policy/NYS-P08-005.doc>).

2. Bidders must comply with M/WBE requirements as outlined in 2). Description of Services.

Components contained in RFP Proposal #10-013 are as follows:

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

Questions regarding the request must be submitted by E-mail to NYSLRegComments@mail.nysed.gov no later than the close of business February 8, 2011. Questions regarding this request should be identified as Program, Fiscal or M/WBE. A Questions and Answers Summary will be posted to <http://www.nysl.nysed.gov/libdev/nybbexpress/index.html> no later than February 15, 2011

Program Matters

Maribeth Krupczak
518-486-5250

NYSLRegComments@mail.nysed.gov

Fiscal Matters

William Artini
518-402-5388

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M/WBE Matters

Joan Ramsey
(518) 486-6883

NYSLRegComments@mail.nysed.gov

The following documents must be submitted in separately sealed envelopes, as detailed in the Submission section of the RFP, and be received at NYSED no later than **March 1, 2011 by 3:00 PM: Five (5) copies of each technical proposal (one bearing an original signature in blue ink) and three (3) copies of each cost proposal (one bearing an original signature in blue ink) must be included in the bid proposal, as follows:**

- Technical Proposal labeled **Technical Proposal - RFP #10-013 Do Not Open**
- Cost Proposal and electronic version labeled **Cost Proposal – RFP #10-013 Do Not Open**
- M/WBE Documents labeled **M/WBE Documents—RFP #10-013 Do Not Open**

The mailing address for all the above documentation is:

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

(Facsimile copies of the proposals are NOT acceptable)

Issue Date January 20, 2011

2. Description of Services to be Performed

Work Statement and Specifications:

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

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) MANDATORY REQUIREMENTS

The bidder is required to use New York State certified Minority and Women-Owned Business Enterprise (M/WBE) for an amount greater or equal to seventeen percent (17%) Minority Business Enterprise (MBE) and twelve percent (12%) Women-Owned Business Enterprise (WBE) of the total dollar amount of the contract. Bidders are required to comply with NYSED's Minority and Women-Owned Business Enterprise goals by completing and submitting **M/WBE 100**, Utilization Plan, **M/WBE 102**, Notice of Intent to Participate and **EEO 100**, Staffing Plan. These forms can be found at www.oms.nysed.gov/fiscal/MWBE/forms.html. 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 www.nylovesmwbe.ny.gov.

Minority and Women-Owned Business Enterprise (M/WBE) participation includes any or all services, materials and supplies purchased from New York State certified minority and women owned firms. Utilizing Minority and Women-Owned firms will be applied toward the goals.

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.

Background

The New York State Library submitted a successful application in Round One of the National Telecommunications and Information Administration's (NTIA) federal American Recovery and Reinvestment Act (ARRA) Broadband Technology Opportunity Program (BTOP).

Federal stimulus funding will be used to create public access computer centers in thirty public libraries and five E-mobile computer training units in forty-one upstate New York counties. The grant has strict reporting requirements and an approved timeline. These public access computer centers and E-mobile units must be available and fully operational by 2011 to meet grant timeline requirements. A component of the public computer centers and the E-mobile units is to offer a 24/7 online job resource tool to the general public. Please visit the web site for further information about the grant at: <http://www.nysl.nysed.gov/libdev/nybbexpress/index.html>. The New York State Library is also interested in offering an online 24/7 job resource tool to all libraries in New York State, due to the challenging economic times, which dictate that now, more than ever, people are turning to libraries for current job information and developing job skills.

The online job resource tool should: 1) Provide technical assistance and other resources to support job search and career advancement and 2) Advance the use of E-services for training, employment,

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digital literacy, and education. This job resource tool should: help people develop their resume building skills through a live online help option; provide citizenship information; include interactive practice examinations for getting their GED; and provide access to practice Civil Service tests and SAT exams.

New York State provides a number of job support and job search services. The New York State Department of Labor (DOL) supports a series of One-Stop Career Centers across the state that provide Career Services, including resume writing, interview techniques, apprenticeship opportunities, training grants, and an on-line job listing. DOL's Career Zone provides an online source to research occupations, and Job Zone is an online location to post customized resumes in a job portfolio.

The State Office of Temporary and Disability Assistance (OTDA) provides information about job placement resources. The OTDA Food Stamp Employment and Training Program provides employment and training services for recipients of Food Stamp Benefits to help them toward self-sufficiency. At a minimum, all local social services districts offer Job Search and Job Readiness Training. Other districts offer work experience, on-the-job training, vocational training, education and job skills training.

The State Education Department also funds a series of regional Literacy Zones , which include support services in workforce development programs.

The State Education Department envisions using ARRA Broadband Technology Opportunity Program grant funds to link participant libraries with the resources provided through these state programs, in addition to other job support services available through State programs. The successful vendor must demonstrate how they will present links to these programs within the context of their product or service.

The job resource tool software and its services will be presented through the NOVELNY portal (<http://www.novelnewyork.org>). NOVELNY, the New York Online Virtual Electronic Library, is a public no-cost online information network that creates a "library without walls." Provided by the New York State Library, NOVELNY connects New Yorkers to 21st century information and is supported with temporary federal Library Services and Technology Act funds from the Institute of Museum and Library Services (IMLS).

Project Description

The State Library seeks proposals from vendors to supply licenses for an existing web-accessible job resource tool that will provide end-users with a variety of tools and resources. The Library does not seek proposals for a custom-developed resource, but does request a product that can deliver a customized user interface. Vendors will also provide a 24/7 live support service for users of the system; administrative support tools and statistics as well as marketing materials for the web-accessible job resource tool.

This RFP seeks cost proposals for two levels of access to the online tool, described as Task 1 and Task 2.

Task 1: Provide access to libraries in the 41 upstate counties covered in the BTOP grant

Task 2: Provide access to all types of New York libraries statewide (approximately 7,000 libraries).

Deliverables for Task 1 and Task 2:

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- 1) A web-based, Commercial Off-the-Shelf job resource tool with the following features:
 - a. Support for the following resources and functions:
 - i. job search and career advancement;
 - ii. Access to a variety of online services for training, employment, digital literacy, and education;
 - iii. Resume building, review and maintenance;
 - iv. Access to citizenship information;
 - v. Interactive practice examinations for getting their GED;
 - vi. Web links to online job assistance programs offered by NYS agencies;
 - vii. Access to practice Civil Service tests and SAT exams.
 - b. Multiple language support, but the system must provide all information in English at a minimum.
 - c. The successful vendor must demonstrate how they will present links to online job assistance programs offered by other New York State agencies within the context of their product or service.
 - d. A user verification and authentication method that allows access both from libraries and from home or other locations. Users would be authenticated to the system and they would be associated with their "home" library. Individual end-user accounts will be self created and maintained.
 - e. Describe customer training provided. Description should include mention of Web-based tutorials, end-user documentation, tip-sheets, etc.
 - f. Customizable user interface that allows individual libraries to include their logo and contact information. This interface would be presented to users when they log in or access the system from their local library.
 - g. Free 30-day trial period to evaluate the product once the contract is awarded.
 - h. Reporting system that enables local library administrators to obtain use statistics that include:
 - i. Number of individual users associated with a specific library
 - ii. Frequency of use
 - iii. Types of information services accessed by individual users
- 2) Live online user assistance:
 - a. A provision for live-online user support, delivered via text/chat, online video chat or telephone to provide users with assistance in using the services and tools within the system. This is for both technical assistance in using the website and assistance with resume writing, practice tests, skills assessment and job searching.
- 3) Training in system use and administration, to be provided during the entire contract period through 10 regional training sessions (staff from libraries in the region that choose to attend) and 2 webinars, with a report submitted to NYSED's NYSL after each session:
 - a. Training for system administration to modify and correct user accounts

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- b. Training for system administrators to access and create reports
 - c. Training for system administrators to customize the user interface.
 - d. Training for librarians to provide patron assistance in using the system
- 4) Marketing and user support materials:
- a. Working with the State Library, the vendor will design, produce and distribute customized marketing materials that are intended to make library patrons and residents of the local community aware of the online job resource, its hours of availability and how individuals can access it from both the library and from home or other non-library locations. These materials will be mass-produced by the vendor. Each library will receive a minimum of 10,000 pieces of marketing material in whatever format is agreed upon by the vendor and the State Library.

The New York State Library will provide the following for the vendor:

A dedicated Program Coordinator who will:

- a. Work with the vendor to coordinate training
- b. Work with the vendor to coordinate registration and authentication
- c. Accept submission of bills for payment

Proposal Requirements:

The following should be addressed in the vendor's proposal for each Task:

1. Describe the database product(s) content and features. Describe languages included beside English. Description should include special hardware or software requirements, if needed. Details on how the product will link and integrate with job assistance programs offered by other New York state agencies.
2. Describe how each of the resources and functions will be provided, specifically their content, features and functionality.
3. Describe methods regarding patron verification and authentication, including remote access.
4. Describe customer training provided. Description should include mention of Web-based tutorials, end-user documentation, tip-sheets, etc.
5. Describe customer and technical support.
6. Describe statistics provided, including qualitative comments collected from the user, and indicate if statistical reporting complies in part or in whole with the guidelines developed by the International Coalition of Library Consortia found at <http://www.library.yale.edu/consortia/webstats06.htm> or the COUNTER Code of Practice found at http://www.projectcounter.org/code_practice.html.
7. Describe pricing structure or formula for the product.
8. Describe the accessibility features of the product/service, including screen reader adaptability, telephone help, etc.

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9. Describe the proposed informational (marketing and publicity) materials and support.
10. Describe the live help feature(s) of the product, including hours of operation and staffing numbers.

Project Timeline:

Timeline for Task 1 and Task 2:

Year One: July 1, 2011 through June 30, 2012

- 1) In July 2011
 - a) Initial one day meeting with NYSL Program Coordinator and appropriate NYSL staff in Albany
- 2) By August 1, 2011
 - a) Online job resource software operational in appropriate New York libraries
 - b) Establish user accounts for all library administrators
 - c) Phone and email support available
- 3) By November 1, 2011
Conduct administrative and basic training for participating libraries and library systems as directed by NYSL
Self service electronic "use manual" and/or training video available online
Customizable templates for instruction and promotion are ready for use
- 4) By January 1, 2012 first quarterly statistical reports are submitted to NYSL

Year Two: July 1, 2012 through April 30, 2013

- 1) Training sessions held as requested by NYSL.
- 2) Quarterly statistical reports delivered per contract specifications.

Allowable Costs for Task 1 and Task 2

- 1) Software License Fees and/or web subscription service fees
- 2) Travel Expenses (Per diem, hotel, and travel costs determined according to GSA rates for New York State:
See <http://www.gsa.gov/portal/category/21287> and select "New York."
For mileage reimbursement rates, see <http://www.gsa.gov/mileage>.
- 3) Training expenses

Payments and Reports

The contractor will be required to submit quarterly statistical reports and reports for training sessions held during the quarter. These reports are due 30 days after the end of the quarter.

All reports must be submitted in a timely manner. Payments will be made to the vendor once quarterly reports are reviewed and accepted by NYSED. Failure to submit the required reports may result in the suspension of future payments.

Subcontracting Limit

Subcontracting 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.

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.

Consultant Staff Changes

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

Contract Period

NYSED will award one (1) contract pursuant to this RFP. The contract(s) resulting from this RFP will be for a term beginning April 1, 2011 and ending March 31, 2013. Extensions for the two (2) additional one (1) year periods would be dependent upon:

- the successful completion of the first 22-month's activities;
- funds being allocated for the program in the State budget for the period;
- successful negotiation of a scope of continued services (which may simply be the continuation of the same services described in the original agreement);
- successful negotiation of associated costs, (which may have been pre-determined in the original contract language by limiting rate increases to a specific factor);
- the mutual agreement of both parties; and,
- approval of a contract extension agreement by the NYS Comptroller as described in section 3 of Appendix A, which is contained in this document.

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.

Please note: the contract start date and payment schedule are estimations based upon historical time frames for similar procurements. These dates are subject to change based upon availability of funding

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and/or required approvals. NYSED will notify any effected bidder(s) in writing whenever a required date change is identified by the agency.

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.

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 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

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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 section¹. 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 businesses².

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>

7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.

¹ Notice – 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.

² Should 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.

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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 Plan³ (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:

- I. Whether the contractor has advertised in general circulation media, trade association publications and minority-focused and women-focused media and, in such event;
 - 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.
- II. 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>

³ A 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.

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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.

2.) Submission

Documents to be submitted with this proposal

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

Project Submission:

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

1. Technical Proposal—five (5) copies (one bearing an original signature in blue ink)
2. Cost Proposal—Three (3) copies (one bearing an original signature in blue ink)
3. Microsoft Word (CD format)—One (1) electronic version with both the technical and cost proposals.
4. M/WBE Documents—Three (3) copies (one bearing an original signature in blue ink)

The proposal must be received by [REDACTED] by 3:00 PM at NYSED in Albany, New York.

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

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 specifically be so identified, and the basis for such confidentiality must be specifically set forth in the proposal.

Project Submission for Task 1 and Task 2

Technical Proposal

(70 Points)

The original plus four (4) copies of the completed Technical Proposal must be mailed in a separate envelope labeled RFP #10-013-Technical Proposal-Do Not Open and must include the following:

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- Response Sheet for Bids
- All Forms and Assurances located in 5.) Submission Documents including original signatures where necessary
- Mandatory Requirements Certification Form Signature Required
- Project Description as outlined below:
 - 1) A detailed work plan and timeline for each of the two years of the contract
 - 2) A narrative statement that describes the applicant's proposed project design to include all components and requirements as set out in this request for proposal.
 - 4) A plan for training and on-going support.
 - 5) A narrative statement of expertise including:
 - a. Description of successful large scale regional and/or statewide development and management of user software authentication and delivery of product/services
 - b. Description of experience with and organizational capacity to administer a regional or statewide online job resource tool
 - c. Description of large scale training and on-going support of an online job resource tool product:
 - d. Familiarity with library structure/services in New York State.
 - 6) References with permission to contact those listed – previous clients preferred.
 - 7) Resumes of staff to be assigned to the project.
 - 8) Samples of customizable instructional or promotional material

Cost Proposal

(30 Points)

The original plus two (2) copies of the completed Cost Proposal must be mailed in a separate envelope labeled RFP #10-013-Cost Proposal-Do Not Open and must include the following:

- 1.) Bid Form Cost Proposal
- 2.) 22-Month Budget Summary Signature Required
- 3.) Subcontracting Form

Cost Proposal for Task 1 and Task 2

Two cost proposals can be submitted: one proposal (Task 1) for the provision of the components and requirements of this RFP to all public libraries in the 41 upstate counties (an estimated 6 million residents) where the public computer centers created under the BTOP grant are located and one proposal (Task 2) for the provision of the components and requirements of this request statewide for all types of libraries. Each cost proposal should outline the expenses of the entire project.

The Financial Criteria portion of the RFP will be scored based upon the grand total of the 22-month budget summary.

M/WBE Documents

The original plus two (2) copies of the completed M/WBE Documents must be mailed in a separate envelope labeled RFP #10-013-M/WBE Documents-Do Not Open. Each set must include the following:

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1. M/WBE Cover Letter
2. M/WBE 100 Utilization Plan
3. M/WBE 102 Notice of Intent to Participate
4. EEO 100 Staffing Plan

Signature Required

3.) Evaluation Criteria and Method of Award

This section begins with the criteria the agency will use to evaluate bids, and closes with the “method of award” or how the contractor will be selected. This will be followed by various terms and conditions that reflect the specific needs of this project as well as New York State contract guidelines and requirements.

Criteria for Evaluating Bids

All 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.

An evaluation committee of NYSED staff will complete a review of all proposals submitted. The committee will review each 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 sixty percent (60%) of the points available for the Technical Proposal (a total of 45 out of 75 points) will move on to the next step of the process, 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.

Criteria for Evaluating Bids	
Quality of product features: 1. Detailed work plan and a detailed and realistic timetable for meeting the operational deadline of the project (5 pts.) 2. Product features demonstrate the components necessary to fulfill all requirements, as set out in this request for proposal. (25 pts.) 3. Description of the plan for initial training and on-going support including publicity materials(5pts.) 4. Approach, skill level and method for providing live-online user support (10 pts.)	45 pts.
Quality of project expertise: 1. Evidence of experience and capacity in supporting statewide or large regional delivery of on-line product/service. (15 pts.) 2. Evidence of experience developing and delivering employment support services via online tools (15 pts.)	30 pts.
Overall project cost	25 points
Total:	100 points

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Rater Scoring Differences:

NYSED will review the accuracy of reviewers score sheets to ensure the review process was conducted properly. NYSED reserves the right to request additional information from reviewers in cases where review comments do not support the score or when reviewers' scores differ by 15 points or more. In either case, reviewers will be requested to provide further explanation and to confirm the accuracy of their scores. Reviewers will be given the right to change their scores, as long as a written explanation is included.

Technical Criteria

(75 Points)

An in-house committee of not less than three people will evaluate bids pursuant to the criteria listed above.

Financial Criteria

(25 Points)

The Financial Criteria portion of this RFP will be scored based upon the grand total for the 2-year year budget summary.

- The financial portion of the proposal represents twenty-five (25) points of the overall score and will be awarded up to twenty-five (25) points pursuant to a formula. This calculation will be computed by the Contract Administration Unit upon completion of the technical scoring by the technical review panel.
- The agency reserves the right to request best and final offers.
- The submitted budget will be awarded points pursuant to a formula which awards the highest score of twenty-five (25) points to the budget that reflects the lowest overall cost. The remaining budgets will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest budget submitted. The resulting percentage is then applied to the maximum point value of twenty-five (25) points.

Method of Award

All proposals which are received by the bid due date and meet the mandatory requirements of the RFP will be reviewed by the technical evaluation committee as described above. The cost component for Task 2 will then be calculated for all proposals which receive at least the minimum number of technical points. The total score for each proposal will represent the 75/25 percent split between technical and cost scores. The successful bidder will be that bidder whose aggregate technical and cost scores is the highest among all the proposals rated. In the event that more than one proposal obtains the highest aggregate score, the successful bidder will be the bidder in that group of highest aggregate scores whose proposal reflects the lowest cost.

After determining the successful bidder, NYSED will evaluate the cost of the successful bidder in comparison to the maximum feasible cost determined by NYSED given the availability of funding and budget constraints. If the cost proposed by the successful bidder is equal to or below the maximum feasible cost established by NYSED, NYSED will proceed with an award to the successful bidder pursuant to Task 2, and will not consider costs submitted for Task 1. If the cost proposed by the

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successful bidder is above the maximum feasible cost established by NYSED, no award will be made pursuant to Task 2 and NYSED will score cost proposals submitted in response to Task 1.

When calculating the total aggregate scores for Task 1, the same technical scores will be used for Task 1 that were used for Task 2. Total aggregate scores for Task 1 will be calculated using the same method described above for Task 2. NYSED will evaluate the cost proposed by the successful bidder in comparison to the maximum feasible cost determined by NYSED. If the cost proposed by the successful bidder is equal to or below the maximum feasible cost established by NYSED, NYSED will proceed with an award to the successful bidder pursuant to Task 1.

NYSED reserves the right to reject all proposals and cancel the RFP if it is in NYSED's best interest.

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) eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders; (11) waive any requirements that are not material; (12) negotiate with the successful bidder within the scope of the RFP in the best interests of the state; (13) conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; (14) utilize any and all ideas submitted in the proposals received; (15) unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 120 days from the bid opening; (16) require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; (17) to request best and final offers.

Post Selection Procedures

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

Debriefing Procedures

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All unsuccessful bidders may request a debriefing within five (5) business days of receiving notice 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, the program staff will issue a written debriefing letter to the bidder.

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. 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 the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

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

Vendor Responsibility

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, the Department must make an affirmative responsibility determination. The factors to be considered include: legal authority to do business in New York State; integrity; capacity- both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit

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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/documents/vrdocrules.pdf>.

Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions at: <http://www.osc.state.ny.us/vendrep/systeminit.htm> or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>. Vendors should also refer to the VendRep System checklist, which can be found at <http://www.osc.state.ny.us/vendrep/documents/checklist.pdf>.

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

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website: <http://www.osc.state.ny.us/vendrep/templates.htm> or may contact the State Education Department or the OSC Help Desk for a copy of the paper form.

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

PROCUREMENT LOBBYING LAW

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

Designated Contacts for NYSED
Program Office – Maribeth Krupczak
Contract Administration Unit – William Artini
M/WBE Unit – Joan Ramsey

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.

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

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

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

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

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

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

Public Officer's Law Section 73

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

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

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

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

(ii) officers and employees of statewide elected officials;

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(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.) Assurances

Appendix A – Standard Clause for all New York State Contracts **WILL BE INCLUDED** in the contract that results from this RFP. Vendors who are unable to complete or abide by these assurances should not respond to this request.

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

Appendix A – Standard Clause for all New York State Contracts, contains the following three (3) certifications:

Non-Collusion Certification

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

MacBride Certification

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

Certification-Omnibus Procurement Act of 1992

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

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

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

Offerer Disclosure of Prior Non-Responsibility Determinations

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

M/WBE Documents – **(the forms below are included in 5.) Submission Documents)** Each set must include the following:

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

(Signature Required)

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement,

major repair or renovation of real property and improvements thereon for such project, then:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245

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

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

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

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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 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. Variations in each budget category which do exceed ten percent (10%) of such category must be submitted to the Office of the State Comptroller for approval.
- 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.

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

Safeguards for Services and Confidentiality

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

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

Certifications

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

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F. Contractor certifies that it is in compliance with NYS Public Officers Law, including but not limited to, §73(4)(a).

Notices

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

Miscellaneous

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

The initial planned employment report must be submitted at the time of approval of this Agreement. The annual employment report on Form B will be submitted each year the contract is in effect and will detail actual employment data for the most recently concluded State fiscal year (April 1 – March 31). The first report will be filed no later than May 15, 2011. Thereafter, Form B will be filed no later than May 15th of each succeeding year. Copies of the report will be submitted to the NYS Education Department, OSC and the NYS Department of Civil Service at the addresses below.

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

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

Reports to DCS are to be transmitted as follows:

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

Reports to NYSED are to be transmitted as follows:

By mail: NYS Education Department
Contract Administration Unit
Room 505 W EB
Albany, NY 12234

By fax: (518) 408-1716

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