REQUEST FOR SERVICES

FOR

Job Skills Training Programs

Issued on December 9, 2013 by:

New York State Governor's Office of Employee Relations (GOER)
NYS & CSEA Partnership for Education and Training
Corporate Plaza East – Suite 502
240 Washington Avenue Extension
Albany, NY 12203
www.nyscseapartnership.org

Schedule of Key Events

RFS Release Date	December 9, 2013
Written Questions Due	December 23, 2013
Response to Written Questions —Posted on Website	December 26, 2013
Proposal Due Date	January 10, 2014
Selection Review Begins	January 13, 2014
Anticipated Notification of Award	April 21, 2014
Project/Contract Start Date	June 1, 2014

Designated Contact(s) during Restricted Period (this date forward only contact the following):

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A. INTRODUCTION

1. Purpose of the Request for Services

The purpose of this Request for Services (RFS) is to secure the services of individual contractors and organizations to provide training delivery in a traditional classroom setting as well as via webinar for programs related to job skills described in Part B. The services sought will support the New York State (NYS) & Civil Service Employees Association (CSEA) Partnership for Education and Training (Partnership), which provides training and related services to NYS agencies and employees who are represented by CSEA.

Because the Partnership is a jointly-funded program of NYS and CSEA, selected contractors must demonstrate sensitivity to the balance of labor and management interests and perspectives in any given area.

The Partnership views the overall training function as a process involving four major stages: training needs assessment; curriculum/program design and development; training program delivery; and training program evaluation. Typically, the Partnership provides oversight and coordination for all four stages and relies on the contractor's resources to provide training delivery as needed. Ideally, bidders should possess knowledge and experience in all four stages of the training process. Bidders should have a working knowledge and understanding of needs assessment and program evaluation because they may be asked to administer these functions as part of training delivery; however, the Partnership's primary need is for Subject Matter Experts (SMEs) capable of delivering training programs using Partnership-owned curricula for job skills courses in a classroom setting, and webinar.

The course categories that the Partnership offers are listed in Attachment 1. Depending on bidder expertise, bidders may bid on as many categories as desired, as long as they meet the subject matter and training expertise requirements of the category which are outlined in Part B, Section 2. Bidders indicating expertise in more than one course category will be considered in each category separately.

There are contracts currently in place that expire June 30, 2014. For planning of training delivery post June 30, 2014, all contracts resulting from this RFS must be identified by June 1, 2014.

The term of the contract will be defined in the Contract Agreement, but is anticipated to begin June 1, 2014 and end on June 30, 2016 and will reflect a dollar amount anticipated to be made available to the contractor over the total contract term. Work is not guaranteed as a result of a contract award.

2. Description of the Partnership and the Governor's Office of Employee Relations (GOER)

The purpose of the Partnership is to support the implementation of several articles of the negotiated agreements (contracts) between NYS, as represented by the GOER and the State's largest public employee union, CSEA. The Partnership's mission is to provide, through labor-management cooperation, programs and services for CSEA-represented NYS employees and agencies that promote:

- Increased career mobility, workplace safety and health, and job satisfaction;
- A highly-skilled, motivated, and productive workforce committed to excellence in public service; and
- Effective labor-management relationships between State and CSEA representatives.

The Partnership works directly with NYS agency managers and CSEA leaders at all levels in state agencies and facilities to assess specific program and service needs; design and deliver programs and training courses; and evaluate program efforts. Selected contractors will work closely with Partnership staff to provide training for CSEA-represented NYS employees.

3. GOER Responsibilities

GOER will oversee the implementation of the contract(s) resulting from this RFS. Additional information about GOER can be found at http://goer.ny.gov/ .

4. Description of Population Served

The New York State workforce is distributed across approximately 60 separate state agencies, geographically spread throughout New York State. The workforce is extremely diverse with respect to educational backgrounds, job skills and specialties, and demographics. Multiple public employee unions represent approximately 94% of the workforce, with the greatest portion represented by CSEA. The approximately 67,000 NYS employees represented by CSEA are grouped into four bargaining units:

- The Administrative Services Unit (ASU) employees who primarily perform general office and program support functions;

- The Institutional Services Unit (ISU) employees who primarily perform direct care and client service functions within State institutions and community residences;

- The Operational Services Unit (OSU) employees who primarily operate and maintain the State's physical facilities; and

- The Division of Military and Naval Affairs (DMNA) employees who primarily maintain the NYS armories and National Guard bases.

Training for these employees is usually delivered at agency worksites during traditional working hours. However, in order to accommodate shift and weekend requirements, courses may be scheduled at other times and places. Courses may be held at a worksite as a result of a mutual request from labor and management to address a specific worksite need. Courses are also available to employees through a published schedule that permits them to address their individual work-related training needs.

B. DESCRIPTION OF SERVICES SOUGHT

The following provides a description of the types of training offered by the Partnership and the services requested through this RFS. Each bidder should be aware that all training programs delivered to audiences of NYS and CSEA representatives must seek to balance both labor's and management's interests and perspectives.

1. Job Skills Courses

The job skills courses provide a variety of half-day, one-day, and multi-day training courses and one to two-hour webinars in the following categories:

- Individual Development
- Interpersonal Communication
- Language Skills
- Math Skills
- Safety and Health
- Work Management
- Writing Skills

The courses in these categories address a wide range of workplace issues and employee development needs with basic, intermediate, or advanced-level training. Basic-level training is geared to those employees for whom familiarity with fundamental concepts will enhance job skills for current and future jobs or lay a foundation for more advanced training. Intermediate and advanced-level training is designed with the experienced employee in mind. The goal is to refine existing skills and develop more advanced competencies. The courses contain practical, relevant information and techniques to help employees effectively manage responsibilities at work and at home. The courses in these categories

combine lecture with hands-on practical applications to give employees the opportunity to learn new skills or enhance existing ones. Courses within the categories may be designed in a “building block” sequence to provide a full range of training.

Some courses are delivered via webinar. In this delivery method, the instructor is in a separate location from course participants. Course participants are also in separate locations from each other. The instructor and participants are connected via telephone line and internet connection. From their respective computers, an instructor conducts the training and participants interact with the instructor and with each other through a variety of webinar tools, including chat box, whiteboard, raised hand, or polling functions.

A list of course categories in job skills and examples of these courses can be found in Attachment 1.

2. Description of Training Expertise Required

This section describes the subject matter and training knowledge, skills, and experience the Partnership has identified as needed to be considered for selection. Training delivery expertise focuses on the full range of classroom and webinar training skills required to provide high-quality, learner-centered instruction. The Partnership expects the bidder to identify work experience relevant to the Partnership audience.

Each general explanation below is followed by the specific selection criteria that must be included in each proposal for each category bid.

a. **Bidder Capability**: Bidders are expected to describe their firm’s ability to deliver half-day, one-day and multiple-day classroom sessions, and one to two-hour webinars on dates, times and locations mutually agreed to by the Partnership, contractor, and agency worksite. Proposals are expected to describe the professional expertise and qualifications of the training staff assigned to the project. Training delivery occurs at various locations throughout New York State using instructor manuals and participant materials provided by the Partnership.

For each category being bid, the proposal is expected to:

1) Provide a comprehensive description of the bidder’s firm and its training staff indicating the ability to deliver the requested training. Include a list of the bidder's key staff and trainers assigned to the project and describe their experience (include resumes).

2) Describe the bidder's firm's ability to deliver multiple classroom-based and webinar course offerings at various locations throughout New York State. If the bidder's firm has geographic limitations, please provide these.
3) Describe experience consistent with excellence in service (for example, include awards, ratings, evaluations, or other evidence of distinction in the training field).

b. **Subject Matter Expertise (within the last 5 years):** Bidders are expected describe their training staff's knowledge of each category in which they are bidding.

For each category being bid, the proposal is expected to:

1) Describe qualifications to teach courses in the category.
2) Describe additional background and experience in the category deemed relevant.
3) List the number of years or months of experience.

c. **Adult Learner Training Expertise (within the last 5 years):** Bidders are expected to describe their training staff's experience training adult learners in each category in which they are bidding. Bidders are also expected to describe their training staff's knowledge and experience with adult training methodology and techniques including, but not limited to, case studies, role playing, small group discussion and facilitation, demonstrations, simulations, and direct lecture presentations.
For each category being bid, the proposal is expected to:

1) Describe each trainer's experience teaching courses to adult learners in the category.
2) Include a list of courses delivered to adult learners, both classroom-based and via webinar, for the category. Specify when and where these courses were conducted.
3) Describe the nature of the training (for example, multi-sensory, multi-modal, interactive, learner centered).
4) List the number of years or months of experience.

d. **Experience with Similar Employers and Employees (within the last 5 years):** Bidders are expected to describe their experience in serving clients similar to New York State (for example: other public employers; large, multi-site employers; unionized employee populations; or culturally diverse employee populations).
For each category being bid, the proposal is expected to:

1) List and describe training delivery experience with New York State government or other public employers.
2) List and describe training delivery experience with other large multi-site employers.
3) List and describe training delivery experience with other employees deemed relevant.

3. **Use of Technology in Training Delivery:** Bidders are expected to describe their ability to provide laptop computers, speakers, and LCD projectors for their instructors to deliver training. Laptops should have Microsoft Office PowerPoint (version 2007 or greater) to enable curricula slide shows to be shown. LCD projectors allow the slide shows to be viewed by classroom participants.

C. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (ADM-311 found in Attachment 3) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Governor's Office of Employee Relations, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

D. PROCESS FOR PROPOSAL SUBMISSION

1. Policy and Prohibitions Regarding Permissible Contact - Restrictions on Contact

   Pursuant to State Finance Law Sections 139-j and 139-k, this Request for Services includes and imposes certain restrictions on communications between a Governmental Entity and a prospective bidder/contractor during the procurement process.

   From October 28, 2013, the date notice was given regarding the development of this RFS, through final award/approval as referenced above, all contacts concerning this RFS/Procurement Contract must be directed to the designated staff, as of the date hereof, identified on page 1 of this Request for Services unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j (3)(a). This is referred to as the "restricted period."

   GOER is also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the prospective bidder/contractor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection of a contract award and in the event of two findings within a 4-year period; the prospective bidder/contractor is debarred from obtaining governmental Procurement Contracts. Prospective bidders/contractors are directed to (Attachment 4) to read the full policy and guidelines.

2. Bidders' Questions Concerning this RFS

   Bidders may submit typed questions via electronic mail to dawn.lapointe@nyscseapartnership.organd heidi.langley@goer.ny.gov . Questions regarding the RFS will be accepted until 5:00 PM EST on December 23, 2013. No telephone inquiries will be accepted. Answers to all questions received by this date will be posted on the GOER website at http://goer.ny.gov/vendor-info/index.cfm no later than December 26, 2013.

   If a bidder discovers what they believe to be an error in this RFS immediately notify dawn.lapointe@nyscseapartnership.org and heidi.langley@goer.ny.gov via e-mail, of such error and request clarification or modification to the

document. Any such notice shall be given prior to the proposal submission deadline. GOER shall make RFS modifications by addenda, provided that such modifications would not materially benefit or disadvantage any particular vendor.

If a bidder fails, prior to the proposal submission deadline, to notify GOER of a known error or an error that reasonably should have been known, the bidder shall assume the risk. If awarded the contract, the bidder shall not be entitled to additional compensation or time by reason of the error or its late correction.

3. Proposal Due Date

Proposals are due no later than 5:00 PM EST on January 10, 2014. Any proposals or unsolicited amendments to proposals received after the due date and time will not be considered in the review process. Bidders are responsible for submitting their proposals on time. GOER takes no responsibility for any third party error in the delivery of proposals (e.g., U.S. Post Office, Federal Express, UPS, courier, etc.).

4. Proposal Mailing Instructions

The delivery/mailing address is:

Dawn LaPointe
NYS & CSEA Partnership for Education and Training
Corporate Plaza East – Suite 502
240 Washington Avenue Extension
Albany, NY 12203

- Bidders must submit five (5) hard copies of each separate proposal and one copy on CD ROM in Microsoft Word format for each category bid in a sealed envelope.
- Proposals for all categories bid may be mailed in one envelope.
- All cost information for each category bid **must** be submitted on the Contractor Cost Information (ADM-30), Attachment 2.
- Mark the outside mailing label referencing the RFS title and proposal due date: **Job Skills Training Programs, January 10, 2014**
- Emailed or faxed proposals will not be accepted.

- Handwritten proposals will not be accepted.

5. Submission of Proposals

All evidence and documentation requested under this RFS must be provided at the time the proposal is submitted. All proposals and accompanying documentation will become the property of the State of New York and will not be returned. The content of each bidder's proposal will be held in strict confidence (subject to GOER's responsibilities to disclose such proposal under any applicable law) during the bid evaluation process. The successful Bidder's proposal and the RFS will be made part of the contract.

6. Projected RFS Timetable

a) RFS Release Date: December 9, 2013
b) Written Questions Due: December 23, 2013
c) Response to Written Questions and Posted on Website: December 26, 2013
d) Proposal Due Date: January 10, 2014
e) Selection Review Begins: January 13, 2014
f) Anticipated Date of Award: April 21, 2014
g) Project/Contract Start Date: June 1, 2014

7. Expenses Prior to Contract Execution

GOER is not liable for any costs incurred by a bidder in the preparation and production of a bid proposal or for any work performed prior to contract execution. By submitting a proposal, the bidder agrees not to make any claims for, or have any right to, damages resulting from any misunderstanding or misrepresentation of the specifications, or because of any misinformation or lack thereof.

E. PROPOSAL REQUIREMENTS

It is important to note that the Partnership is accepting proposals from Subject Matter Experts (SMEs) in specific categories. Within each category, the Partnership offers courses on various topics related to that category. Attachment 1 lists the categories and examples of some of the courses in that category.

Depending on their expertise, bidders may bid on as many categories as desired. Bidders indicating expertise in more than one category will be considered for each category separately. Therefore, bidders must submit separate proposals for each category.

<u>Format and Content</u>

1. All proposals must be completed in Microsoft Word format. Proposals must have one inch margins. Proposals are limited to four typewritten, double-sided pages for each category in Part B, Section 2 using single-spacing and a font size of 10 or larger.

2. **Failure to include the required documents and information described below may result in the proposal not being considered.**

   For each course category:

   - Summary of Services Being Bid

     A summary must outline significant features of the proposal, describe the bidder's overall experience, and include a brief description of any related activities currently being provided by the bidder to New York State.

   - Service Description

     Refer to Part B, Section 2, Description of Services Sought, which provides an explanation of specific selection criteria to be included in the proposal and upon which the proposal will be considered.

     - Include a complete description of the services to be provided and the number of professional and support personnel to be assigned. Describe the qualifications and subject matter expertise of key personnel who will be assigned to this project.

     - Clearly state and specifically identify in your proposal any subcontractors or subcontracts that are to be used to deliver any of the services contained in this RFS.

     - Any other factors that you believe make you or your organization especially qualified to perform this project.

   - Resumes

     Provide resumes of the bidder's firm's key staff and trainers assigned to the project. Resumes should be limited to two typewritten, double-sided pages for each person and should include educational credentials, professional employment history, and work experience.

- References

  Provide four (4) references with whom the bidder has worked within the past 3 to 5 years and who can attest to the bidder's qualifications, by listing the organization name, address, contact person, and telephone number. These four (4) references should speak to the training expertise of the firm as outlined in Part B, Section 2. References will be contacted by phone, Monday through Friday, between 9:00 a.m. and 4:00 p.m. Bids may be rejected as non-responsive if references are not provided.

- Required Forms

  - Application for Competitively Bid Contract (ADM-28)

    Submit only once regardless of number of categories bid.

    Bidders are required to complete ADM-28, Application for Competitively Bid Contract, Attachment 5, which includes certification by the bidder that all information provided with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

    This form also includes a statement indicating the bidder's willingness to enter into a contractual agreement, which will include those terms and conditions as set forth in "Standard Clauses for New York State Contracts--Appendix A" (Attachment 4).

  - Cost Proposal

    All cost information for each category bid *must be* submitted on the ADM-30, Contractor Cost Information, Attachment 2. Please note that rates must include all non-personal services and indirect costs.

    Reasonable travel expenses will be reimbursed for costs actually incurred at rates established for New York State employees as described in GOER's Travel and Lodging Reimbursement Policy for Consultants which is available at http://goer.ny.gov/vendor-info/index.cfm.

  - Equal Employment Opportunity Staffing Plan (ADM-311)

Bidders are required to complete Form ADM-311, Equal Employment Opportunity Staffing Plan, Attachment 3**,** identifying the anticipated work force to be utilized on the contract.

F. SELECTION

1. Initial Screening Process

Failure to address the required selection criteria or furnish the forms and documents specified in this RFS may eliminate a proposal from further review.

Screening criteria includes the following:

- Five (5) hard copies of the completed proposal and one copy on CD ROM in Microsoft Word format for each category bid.
- ADM-30, Contractor Cost Information.
- ADM-28, Application for Competitively Bid Contract.
- ADM-311, Equal Employment Opportunity Staffing Plan.
- Resume(s) for bidder's firm's key staff and trainers assigned to this project.
- Four references.
- Response to each selection criteria, Part B, Section 2, for each category bid.

As part of the initial screening process, at least two (2) of the four (4) references will be contacted for each bidder. Each reference will be asked to respond to a series of pre-determined questions regarding the quality of the services provided, the bidder's responsiveness and flexibility. Reference checks will be scored on a pass or fail basis. Bidders are expected to pass two reference checks in order for their bids to be considered for further review.

2. Method of Selection

The Selection Committee will identify up to five (5) successful bidders per course category**.** GOER reserves the right to issue awards to more than five (5) successful bidders. Contracts will be awarded by the GOER, on behalf of the Partnership, pursuant to GOER's discretionary purchasing authority under State Finance Law section 163(6).

3. Letter of Intent

GOER's Contract Unit will advise the successful bidder(s) of our intent to award a contract by mailing a "Letter of Intent." Once the successful bidder(s) have fulfilled requirements stated in the "Letter of Intent," a contract will be

transmitted to the selected bidders (there after referred to as contractor) for review and signature. Each bidder whose proposal is not selected will also be notified in writing.

G. CONTRACT INFORMATION FOR SUCCESSFUL BIDDERS

1. Contract Award

A contract defining all deliverables and the responsibilities of the selected bidders (contractor) and GOER will be developed for signature by both parties and for approval and processing in accordance with State policy and practice.

2. Post Contract Selection – Assignment of Work

Training delivery assignments will be rotated evenly among all bidders awarded a contract. However, this does not mean that all selected bidders will receive an equal number or that work is guaranteed as the result of a contract award. Various factors could influence specific course assignments. These factors include, but are not limited to:

- Geographic location of contractor and training site;
- Contractor expertise with the curriculum;
- Contractor availability;
- Program considerations such as completion of building block course sequence and;
- Contractor performance evaluations for training delivery.

3. Appendix A (Standard Clauses for New York State Contracts) – Attachment 4

The terms of Appendix A, Standard Clauses for New York State Contracts, attached hereto, are hereby incorporated in this RFS and any resulting contract. The contractor is required to adhere to the clauses of Appendix A.

4. State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

The winning bidders for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to GOER, the Office of the State Comptroller, and the Department of Civil Service.

Form A and Form B are located at http://goer.ny.gov/vendor-info/index.cfm.

5. Publicity

News releases or any other public announcements regarding this project may not be released without prior approval from GOER. Publicity includes, but is not limited to, news conferences, news releases, advertising, brochures, reports, discussions and/or presentations at conferences or meetings. The inclusion of our materials, our agency name, or other such reference to New York State and/or the Governor's Office of Employee Relations in any document or forum is considered publicity. This provision shall survive the termination, suspension, cancellation or expiration of the contract.

6. Contract Period

The anticipated term of the contract will be defined in the Face Page of the Contract Agreement, but is expected to begin June 1, 2014 and end on June 30, 2016.

GOER reserves the right to schedule work assignments as it deems appropriate and does not guarantee work as a result of the award of a contract.

7. Service Delivery Location

During the term of the original Agreement, GOER will request the selected consultant(s) to deliver services as needed. Services resulting from this RFS may be delivered in any location throughout New York State.

8. Consultant/Instructor Substitutions

Recognizing that the consultant may need, during the term of the contract, to add or change staff or hire subcontractors who can be deployed to work under this contract, the Partnership reserves the right to review staff credentials and accept or reject staff for Partnership projects. Partnership Program Managers will be responsible for obtaining the appropriate resumes, credential documentation, etc. for determination of deploying such staff.

9. Cancellation (See "Executory Clause" in Appendix A)

Cancellation for Convenience: GOER retains the right to cancel the contract without reason provided that the contractor is given at least 20 days written notice of its intent to cancel. This provision should not be understood as waiving GOER's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision.

10. Suspension of Work

GOER reserves the right to suspend any or all activities under the contract, at any time, in the best interests of the State or Issuing Entity. In the event of such suspension, the contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, awaiting settlement of collective bargaining, or other such circumstances. Upon issuance of such notice, the contractor is not to accept any work deployment request, and shall comply with the suspension order. Activity may resume at such time the Director of GOER, or authorized designee, issues a formal written notice authorizing a resumption of work.

11. GOER Rights Reserved

In order to serve the best interests of the State, GOER reserves the right to:

- Postpone or cancel this RFS upon notification to all bidders.
- Amend the specifications after the release with appropriate notice to all bidders.
- Request bidders to present supplemental information clarifying their proposal, either in writing or in formal presentation.
- Waive or modify minor irregularities in proposals received after prior notification to the bidder.
- Reject any and all proposals received in response to this RFS.
- Contact bidder's references as a check on qualifications.
- Award the contract to other than the lowest bidder.
- Award contracts to more than one bidder.
- Cancel the project contract on 20 days written notice and pay the contractor for charges incurred up to the time of cancellation.
- Make any payment contingent upon the submission of specific deliverables.

12. Assurances

The bidder warrants that it has carefully reviewed the needs of the State as described in the RFS, its attachments and other communications related to the

RFS and that it has familiarized itself with the specifications and requirements of the RFS and warrants that it can provide such services as represented in bidder's proposal. The bidder agrees that it will perform all of its obligations in the resultant contract in accordance with all applicable federal, State, and local laws, regulations and policies now or hereafter in effect. The bidder affirms that the terms of the RFS and the attachments do not violate any contracts or agreements to which it is a party, and that its other contractual obligations will not adversely influence its capabilities to perform under the contract.

13. Electronic Files or Data

If electronic files are to be exchanged as a part of this proposal or as a product of the contract, they must conform to agency information management guidelines.

14. Non-Discrimination/Americans with Disabilities Act (ADA)

GOER does not discriminate on the basis of race, color, national origin, sex, religion, age, disability, or sexual orientation in the admission to, access to, or employment in its programs or activities. A reasonable accommodation will be provided on request.

Any product(s) developed as a result of this RFS must be in a format that can be converted for use by individuals with disabilities to meet the reasonable accommodation standards established by the Americans with Disabilities Act.

15. Conflict of Interest

Bidders may be requested to provide evidence that the award of the contract from this RFS will not result in a conflict of interest with regard either to other work performed by the contractor, or to potential conflicts of interest among specific contractor staff or subcontractors.

16. Copyright

All Partnership curriculum used under this contract must be in compliance with GOER/LMC Copyright Policy. As indicated by this Copyright Policy, GOER adheres to and requires the successful bidder to adhere to the requirements of the Copyright Law, which is Federal law and contained in Title 17 of the United States Code, Sections 101 et seq.

The contractor will not include any other material in the class without the prior written approval of the Partnership. All materials used in Partnership classes must comply with the requirements of GOER/LMC Copyright Policy, Attachment 6.

17. Freedom of Information Law and bidder's Proposals

The purpose of New York State's Freedom of Information Law (FOIL), which is contained in Public Officers Law (POL) Sections 84-90, is to promote the public's right to know the process of governmental decision making and to grant maximum public access to governmental records. Consequently, a member of the public may submit a FOIL request for contracts awarded by the State or for the proposals submitted to the State in response to Requests for Proposals. After formal contract award, the proposal of the successful bidder and the proposals of non-successful bidders are subject to disclosure under FOIL. However, pursuant to Section 87(2)(d) of the POL, a State agency may deny access to those portions of proposals or portions of a successful bidder's contract which "are trade secrets or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."

If a bidder believes that any information in its proposal meets the requirements of POL Section 87 (2)(d) and wishes such information not to be disclosed if requested by a member of the public pursuant to FOIL, the bidder shall submit with its proposal, a letter, specifically identifying by page number, line or other appropriate designation, such information that is alleged to meet the requirements of POL Section 87(2)(d) and explaining in detail how such information allegedly meets such requirements.

A bidder's failure to submit with its proposal such a letter shall constitute a waiver by the bidder of any rights it may have otherwise under Section 89(5).

In no event will GOER consider information to be covered under POL section 89(5) if that information is not the proprietary information or ideas of the bidder and so designated in the proposal, or if that information:

- was known to GOER before submission of such proposal;
- properly became known to GOER thereafter through other sources; and/or
- is in the public domain.

Additionally, any such claim is subject to review by GOER and a court of competent jurisdiction pursuant to Section 89(5) of the POL.

18. Subcontractors

The contractor may subcontract services as requested in the RFS provided under the contract, or any part of it, only upon the prior written approval of GOER.

A subcontractor shall be defined as any firm or person who is not an active employee of the contractor, but who is otherwise engaged or assigned to perform work under the contract. All agreements between the contractor and its subcontractors shall be by bona fide written contract.

The contractor shall include in all subcontracts in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the contract, provisions consistent with those found in the contract, including, but not limited to:

- That the work performed by the subcontractor must be in accordance with the terms of the contract;
- That the subcontractor shall comply with the provisions of section 5-a of the Tax Law;
- That nothing contained in such subcontract shall impair the rights of GOER;
- That nothing contained herein shall create any contractual relation between any subcontractor and GOER;
- That the subcontractor shall maintain all records with respect to work performed by the subcontractor in the same manner as required of the contractor; and
- That GOER shall have the same authority to audit the records of all subcontractors as it does those of the contractor.

The contractor shall be fully responsible to GOER for the acts and omissions in the performance of services as requested in the RFS under the contract of the subcontractors and/or persons either directly or indirectly employed by it or by the subcontractors, as it is for the acts and omissions in the performance of services as requested in the RFS under the contract or persons directly employed by the contractor. The contractor shall not in any way be relieved of any programmatic or financial responsibility under the contract by its agreement with any subcontractor or by GOER's approval of such an agreement with a subcontractor.

GOER reserves the right to reject any proposed subcontractor for any reason, which may include, but is not limited to: (i) that the proposed subcontractor is

on the Department of Labor's list of companies with which New York State cannot do business; or (ii) GOER determines that the proposed subcontractor is not qualified or has previously provided unsatisfactory contract performance or service.

19. Notices

a. All notices permitted or required under the contract shall be in writing and shall be transmitted by either:

1) certified or registered US Mail, return receipt requested; or
2) facsimile transmission; or
3) personal delivery; or
4) expedited delivery service; or
5) email.

b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered US Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

20. Mandatory Contract Termination Provisions

a) GOER reserves the right to terminate this contract in the event it is found that the certification filed by the prospective bidder/contractor in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, GOER may exercise its termination right by providing written notification to the contractor.

b) Contractor Responsibility -The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Director of the Governor's Office of Employee Relations or his or her designee, to present evidence of its continuing legal authority to do business

in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. i. Suspension of Work (for Non-Responsibility) - The Director of the Governor's Office of Employee Relations or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Director of the Governor's Office of Employee Relations or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

21. Contract Payments

The contractor shall provide complete and accurate billing invoices to GOER in order to receive payment. Billing invoices submitted to GOER must contain all information and supporting documentation required by the resulting contract, GOER and the OSC Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Director, in the Director's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with current State procedures and practices. The contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. The contractor acknowledges that it will not receive payment on any invoices submitted under the resulting contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

22. Extension of Use

Any contract resulting from this bid solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

H. SUMMARY OF DOCUMENTS REQUIRED WITH PROPOSAL AND CONTRACT

Below is a table summarizing the documents to be completed and submitted with the bidder's proposal as well as the forms that the selected bidder will need to complete prior to a contract being approved. Forms not included as attachments to this RFS are located at http://goer.ny.gov/vendor-info/index.cfm.

Document Name	Required with Proposal	Required with Contract
Application for Competitively Bid Contract (ADM-28), Attachment 5	√	
Contractor Cost Information (ADM-30), Attachment 3	√	
Form A		√
Form B		No. Form B is due at the end of the fiscal year.
Equal Employment Opportunity Staffing Plan (ADM-311), Attachment 3	√	

Attachment 1

Request for Services
Job Skills Training Programs

Course Categories

NOTE: Bidders should submit proposals for *course categories* in which they have expertise and NOT for specific courses. Descriptions for some of the courses listed below can be accessed on the Partnership's website at www.nyscseapartnership.org.

Partnership Course Categories	Examples of Courses in the Category
Individual Development *Courses in this category provide employees with the knowledge and skills they need to help improve their work and personal lives.*	• Computer Basics • Dealing with Stress • Designing Dynamic PowerPoint Presentations • Getting Started with a Healthy Lifestyle • Internet Research Skills • Managing Finances • Understanding Today's Computer • Using Credit Wisely • Your Work Matters: Pride in Public Service
Interpersonal Communication *Courses in this category provide employees with the skills they need to communicate effectively.*	• Being an Effective Team Member • Communicating with the Public • Conflict Resolution: How to Be Your Own Mediator • Customer Service • Dealing with Feedback • Effective Telephone Communication • Electronic Etiquette • Influencing with Confidence • Job Etiquette • Workplace Social Skills
Language Skills *Courses in this category are designed for employees whose first language is not English and provide basic skills in reading, writing, grammar, speaking, listening, and non-verbal communication. Courses in this category also provide employees with basic knowledge of the Spanish language and Hispanic/Latino culture and provide essential skills in using and understanding standard pronunciation, common vocabulary, and grammatical structure of the language. The courses in this category provide the fundamentals for working with clients and the public who are non-English speakers or not fluent in English.*	• Conversational Spanish • Focus on Pronunciation: Level 1 • Focus on Pronunciation: Level 2 • Introduction to Spanish: Level 1 • Introduction to Spanish: Level 2

Partnership Course Categories	Examples of Courses in the Category
Math Skills *Courses in this category provide employees with the skills they need to complete assignments involving basic, intermediate, and advanced level mathematical computations.*	• Introduction to Accounting • Math Skills Builder: Level 1 • Math Skills Builder: Level 2
Safety and Health *Courses in this category provide employees with the knowledge and skills needed to promote a safe and healthy work environment.*	• Accident Recordkeeping • Asbestos Awareness • Confined Space Entry and Rescue • Control of Hazardous Energy (Lockout/Tagout) • Excavation and Trenching Safety • Fall Prevention and Protection • Fire Safety • Forklift Operator Safety • Hazard Communication and the NYS "Right-to-Know" Law • Heavy Equipment Operation Safety • Inspection Procedures and Techniques • Introduction to Imminent Danger • Introduction to Infectious Diseases • Lead Awareness • Respiratory Protection • Personal Protective Equipment • Preventing Slips, Trips, and Falls in the Workplace • OSHA 10-Hour Construction • Scaffolding Safety (assembly, use, disassembly) • Tool Safety • Working in Extreme Temperatures
Work Management *Courses in this category provide employees with the skills they need to complete assignments efficiently and effectively.*	• Managing Change • Critical Thinking • Effective Problem Solving • Getting Organized: Time, Tasks, and LIfe • Take Control of Your Time • Taming Your Tasks • The Organized Office Worker

Partnership Course Categories	Examples of Courses in the Category
Writing Skills *Courses in this category provide employees with the skills they need to communicate effectively via the written word.*	• Building a Better Vocabulary • Catching Errors: A Proofreader's Guide • Grammar and Punctuation • Organizing Your Writing • Practical Proofreading • Writing Effectively • Writing for Clarity • Writing for Your Audience • Writing Reports and Evaluations

Attachment 2

Request for Services
Job Skills Training Programs

Contractor Cost Information (ADM-30)

Please print or type.

Contractor Name:	
I (We), the undersigned, attest that I am (we are) authorized to bind the bidder to the rates listed below:	
Please specify the name and title of the firm's officer authorized to sign contract.	
Name:	Title:
Signature:	Date:

Course Category	Training Delivery Rate Per Day (based on an 8 hour day)
Individual Development	
Interpersonal Communication	
Language Skills	
Math Skills	
Safety & Health	
Work Management	
Writing Skills	

Special Notes:

1. Daily rates must include all contractor non-personal service (NPS) costs and any indirect costs (e.g., supplies, materials, copying, utilities).
2. Travel will be reimbursed in accordance with the New York State travel guidelines http://goer.ny.gov/vendor-info/index.cfm.
3. Attendance at the Consultant Orientation for Course Delivery will be reimbursed at a rate of $100 per hour.
4. Postage to return materials will be reimbursed with **prior** approval from the Partnership.
5. Instructors must bring a laptop with Microsoft PowerPoint (version 2007 or greater), speakers and LCD projector, at no cost to New York State, to training programs that require it.
6. Partial days will be pro-rated based on an eight-hour day.
7. All training will be done with one instructor unless otherwise determined and pre-approved by Partnership staff. Delivery would then be reimbursed on a per instructor basis.
8. Preparation for first-time delivery of a course must be mutually agreed upon and will be reimbursed at a rate of 50% of the contractor's rate for training delivery.

Project/RFP Title:
Contractor Name:
Contractor Address:

Enter the total number of employees for each classification.

EEO Job Category	Total Workforce	Work force by Gender		Workforce by Race/Ethnic Identification									
		Total Male (M)	Total Female (F)	White (M)	(F)	Black (M)	(F)	Hispanic (M)	(F)	Asian/Pacific Islander (M)	(F)	American Indian/Alaskan Native (M)	(F)
Officials/Administrators													
Professionals													
Technicians													
Sales Workers													
Administrative Support Workers													
Craft Workers													
Laborers													
Service Workers													
Temporary/Apprentices													
Totals													

PREPARED BY (Signature):	**DATE:**
NAME AND TITLE OF PREPARER (Print or Type):	
PHONE # AND EMAIL ADDRESS OF PREPARER:	

General instructions: Where the workforce to be utilized in the performance of the State contract can be separated out from the contractor's total workforce, the vendor shall complete this form only for the anticipated workforce to be utilized on the State contract. Where the workforce to be utilized in the performance of the State contract cannot be separated out from the contractor's total workforce, the vendor shall complete this form for the contractor's total workforce.

Instructions for completing:

1. Enter the Project/RFP that this report applies to along with the name and address of the contractor.
2. Enter the total workforce by EEO job category.
3. Break down the total workforce by gender and enter under the heading "Workforce by Gender."
4. Break down the total workforce by race/ethnic background and enter under the heading "Workforce by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

WHITE - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

BLACK - A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

HISPANIC - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN / PACIFIC ISLANDER - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

AMERICAN INDIAN / ALASKAN NATIVE (Not of Hispanic Origin) - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Attachment 4

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

December, 2011

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
http://www.empire.state.ny.us

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

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

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

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

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

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

Attachment 5

Governor's Office of Employee Relations (GOER)/New York State Labor-Management Committees (LMC)

Application for Competitively Bid Contract

1. Project/Procurement Title:	
2. Contract Procurement Number (to be completed by GOER):	
3. Issuing Unit or Committee:	
4. Name of Firm Submitting Proposal: Federal Employer Identification #:	
5. Address (Payment Office Mailing Address):	E-mail: Facsimile:
6. Telephone Number:	
7. *Non-Sectarian use of Funds:* Are any of your purposes sectarian (for the advancement of any religion)? ☐ YES ☐ NO **If YES**, please state if funds to be received from New York State will be used for a purely secular purpose:	
8. *Compliance with New York State Policy*: I (we), the undersigned, affirm that we are willing to comply with all the conditions set forth in the Request-For-Proposals, specifically those set forth in New York State Standard Appendix "A" and all the statutes and regulations pertaining thereto.	

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9. *Americans with Disabilities Act (ADA):* The successful bidder(s) shall comply with all applicable requirements of the Americans with Disabilities Act (ADA), codified at Title 42 of the United States Code, Section 12101 et seq. and associated regulations, including, but not limited to, those located in 28 C.F.R. Part 36. The successful bidder(s) shall comply with all applicable requirements of the New York State Human Rights Law, codified in the Executive Law Sections 290-301 and applicable regulations implemented pursuant to that law. The successful bidder shall warrant to the GOER that the successful bidder(s) is (are) in compliance with both the ADA and its regulations and the New York State Human Rights Law and its regulations. The successful bidder(s) shall also indemnify the GOER to that end.

10. *Period of Validity:* Each bidder(s) shall hold all provisions of their proposal firm and not revocable for a period of up to ninety days from the bid opening unless withdrawn in writing or unless otherwise specified in the solicitation.

11. *Vendor Responsibility Questionnaire Requirement, Check the appropriate box:* **(NOT APPLICABLE)**

☐ Certified, within the last 6 months, and filed the Vendor Responsibility Questionnaire online via the New York State VendRep System.

OR

☐ Included a properly executed paper copy of the Vendor Responsibility Questionnaire with the Technical Proposal.

Procurement Lobbying Law Provision of State Finance Law Sections 139-j and 139-k 139-k (5):

Contractor Disclosure of Contacts Form
Procurement Lobbying Law – Form 1

This form shall be completed and submitted with your bid, proposal, or offer. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the bid, proposal, or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid, proposal, or offer.

* * * *

Procurement Lobbying Law Provision of State Finance Law Sections 139-j and 139-k
139-k (5):

Prospective bidder/Contractor Disclosure of Prior Non-Responsibility Determinations

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

Name and Title of Person Submitting this Form:

Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous five years? ☐ No ☐ Yes

If yes to above, please answer the following questions:

Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139?
☐ No ☐ Yes

Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Government Entity?
☐ No ☐ Yes

If yes to above, please provide details regarding the finding of non-responsibility below:

Government Entity:

Date of Finding of Non-Responsibility:

Basis of Finding of Non-Responsibility: (Add additional pages if necessary.)

Procurement Lobbying Law Provision of State Finance Law Sections 139-j and 139-k

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? ☐ No ☐ Yes
If yes to above, please provide details below:
Governmental Entity:
Date of Termination or Withholding of Contract:
Basis of Termination or Withholding: (Add additional pages as necessary.)

I (We), the undersigned, attest that I am (we are) in agreement with all of the above provisions and I am (we are) authorized to bind the bidder to the above provisions and the provisions of the technical proposal and cost proposal that I (we) have submitted.
Signature(s) of Individual(s) Authorized to Sign Contract:
Name(s)/Title(s):
Date:

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Attachment 6

GOER/LMC

COPYRIGHT POLICY

Last Revised: May 2011

PURPOSE OF THE COPYRIGHT LAW

The Copyright Law is found in 17 United States Code (USC) Sections 101 et seq. The primary purpose of the Copyright Law is to encourage the creation and production of original works of authorship, including literary, dramatic, musical, artistic, and other intellectual works. The law provides authors of such works or the owner of copyright with exclusive rights to reproduce and distribute their work.

THE OWNER OF THE COPYRIGHT

The Copyright Law provides that the copyright in a work becomes the property of the author who created the work. The author, as the owner of the copyright, can enter into contracts or agreements, which transfer or assign to others some or all of her/his rights as copyright holder.

However, if a work is a "work made for hire," then the Copyright Law provides that the employer or other person for whom the work was prepared owns the copyright.

< A work created by an employee within the scope of his or her employment is a "work made for hire." For example, copyright ownership vests with GOER, when a GOER staff member authors a training manual as part of that staff member's job duties.

< If a work is created by an independent contractor, and fits within one of the nine categories of works set forth in the law, and there is a written agreement between the parties specifying that the work is a "work made for hire," then the person for whom the work was prepared owns the copyright. For example, when GOER contracts with an independent contractor to write/create a curriculum, GOER would own the copyright, as this would be a "work made for hire."

RIGHTS OF THE OWNER OF COPYRIGHT

Section 106 of the Copyright Law grants the ***owner of the copyright the exclusive right to do and to authorize others to do*** the following:

- to reproduce the copyrighted work;
- to prepare derivative works based upon the copyrighted work;
- to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental lease, or lending (this includes distribution of free copies to students);
- to perform the copyrighted work publicly with respect to literary, musical, dramatic, and choreographic works, pantomimes, motion pictures, and other audiovisual works;
- to display the copyrighted work publicly in the case of literary, musical dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

IT IS ILLEGAL FOR ANYONE TO VIOLATE ANY OF THE RIGHTS PROVIDED BY THE COPYRIGHT LAW TO THE OWNER OF COPYRIGHT.

Where GOER is the copyright owner, GOER holds all of the above rights.

These exclusive rights of the copyright holder are, however, subject to important exceptions. Certain public and private uses of copyrighted works are allowed under the law without the copyright holder's permission if they can be determined to be **Fair Use**. Fair use is discussed more fully in the following pages.

Mere ownership of a book, manuscript, painting, or any other copy does not include ownership of the copyright. *This is the case even when one acquires the original work. For example, if a person were to acquire the original manuscript of John Grisham's, "The Firm," the owner of the copyright would still be John Grisham, or the person(s) he has assigned the copyright to. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.*

WORKS PROTECTED BY COPYRIGHT

In order for a work to receive copyright protection, it must be an **original** work of authorship representing an appreciable amount of creativity and must be fixed in a tangible medium of expression. The primary categories of works in the Copyright Law are literary works, musical works, dramatic works, pantomimes, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works and sound recordings.

These categories are viewed broadly. For example, textbooks, computer programs and most compilations may be registered as literary works; maps and architectural plans may be registered as a pictorial, graphic, or sculptural work.

Copyright protects the words or pictures or graphics chosen by the author to describe, explain or illustrate an idea or system.However, it gives the copyright owner no exclusive rights in the idea, method, or system described or depicted.

> *For example, an author wrote a book setting forth his theory of what happened to Jimmy Hoffa. The copyright in the book prevents others from reproducing, copying or distributing the text and illustrations used by the author to describe his theory. It does not give the author any copyright to the theory set forth in the book. Other persons may write their own books or plays using the theory. However, they may not use the author's words.*

WHEN COPYRIGHT PROTECTION BEGINS

Normally, the act of publishing a document and securing copyright protection occur at the same time. For example, a copyright notice is fixed on a work when it is printed. Under the law in effect after 1978, copyright protection is secured the moment a work is fixed in tangible form. Thus a work still enjoys copyright protection even if there is no copyright symbol or other copyright notice. Furthermore, a work fixed in tangible form, but not published, is protected by copyright.

Publication though is important for many reasons. Published works are subject to mandatory deposit requirements (with the Federal Copyright Office), publication affects the limitations on the exclusive rights of a copyright owner, publication year determines the duration of copyright for anonymous and works made for hire, and publication with notice puts the public on notice that the work is protected by copyright. Publication is defined as:

> *The distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease or lending. The offering to distribute copies to a group or person for purposes of further distribution, public performance or public display constitutes publication. A public performance or display of a work does not constitute publication.*

When we copy a curriculum or manual and distribute it to State employees in a training session we are publishing the document. If the work that GOER has published contains the copyrighted material of others, without the appropriate permissions, GOER has **violated the Copyright Law.**

WORKS NOT PROTECTED BY COPYRIGHT

1. Works, which were never copyrighted.

   Works published prior to January 1, 1978 without copyright notice are not protected and may be reproduced without restriction. However, works published after January 1, 1978 without notice of copyright are protected by the Copyright Law.

2. Published works whose copyrights have expired.

   Generally, all copyrights have expired for works originally created and published or registered before March 1, 1922. Although a pre-1978 work may not contain the required copyright notice, it is best to assume that all works dated 1922 or later is covered by a valid copyright.

3. United States Government publications.

   United States Government publications may be copied freely. They are deemed to be in the public domain and are not copyrightable. This category consists of documents prepared by an officer or employee of the U.S. Government as part of that person's

official duties. It does not extend to documents published by others with the support of Government grants and contracts. These works may or may not be protected by copyright depending on the specifics of the contract under which they were created. *Note: Publications of the State of New York and other states are copyrightable.*

4. Ideas, methods and systems**.**

   Copyright protection is not available for ideas or procedures for doing, making or building things, scientific or technical methods or discoveries, business operations or procedures, mathematical principles, formulas, algorithms, or any other concept, process, or method of operation.

   Section 102 of the Copyright Law, clearly expresses this principle: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work."

5. Names, titles and short phrases**.**

   Even if a name, title or short phrase, is novel, distinctive, or lends itself to a play on words, it cannot be protected by copyright. There is no copyright protection to combinations of words such as: names of products or services, names of businesses, pseudonyms, titles of works, catchwords, mottoes, slogans, and mere listings of ingredients. Some of these may be protected by trademark.

6. Works that have not been fixed in a tangible form of expression.

   Works must be fixed in a tangible form of expression in order to be protected. Choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded are not subject to copyright protection.

7. Works consisting <u>entirely of</u> information that is common property and containing no original authorship.

   Standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources are not subject to copyright protection.

<u>COPYRIGHT NOTICE</u>

Works published prior to January 1, 1978 were required to contain a copyright notice in order to be protected by copyright law. However, works published after January 1, 1978 do not have to contain copyright notice in order to be protected by the copyright law.

Proper copyright notice has three parts:

1) a symbol "©," the word "Copyright," or the abbreviation "Copr.",

2) the year a work is first published, and,

3) the name of the copyright owner.

Sometimes the statements such as "All Rights Reserved" or "No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical [etc., etc.]" are printed underneath a copyright notice. These statements do not override any rights to **Fair Use** provided by the Copyright Law.

DURATION OF COPYRIGHT

1. Works Originally Created on or After January 1, 1978.

   After January 1, 1978, a work is automatically protected from the moment it is fixed in tangible form for a term of the author's life, plus an additional 70 years after the author's death. For a joint work prepared by two or more authors who did not work for hire, the term lasts for 70 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter.

2. Works originally created before January 1, 1978, but published or registered after that date.

   These works have been automatically brought under the statute and are now given copyright protection. The duration of copyright in these works will generally be computed in the same way as for works created on or after January 1, 1978.

3. Works Originally Created and Published or Registered Before January 1, 1978.

   Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a term of 28 years from the date it was secured. The law amended as of 1978 provides that copyrights in existence prior to January 1, 1978 may be renewed.

   Generally, all copyrights have expired for works originally created and published or registered before March 1, 1922. Although a pre 1978 work may not contain the required copyright notice, it is best to assume that all works dated 1922 or later are covered by a valid copyright.

Determining the copyright status of some post 1922, but pre 1978 works, may not be easy. For difficult issues, we may have to seek the assistance of the U.S. Copyright Office, who will investigate the copyright status of a work on an hourly fee basis.

FAIR USE DOCTRINE

The Fair Use provisions of the Copyright Law are set forth in Section 107 and contain exceptions to the copyright owners exclusive rights to reproduction and distribution. Fair Use permits limited copying without the copyright owner's permission for purposes such as criticism, comment, scholarship, research, or teaching.

The law does not establish specific limits of what constitutes Fair Use of a copyrighted work. However, it does provide that in determining whether a particular use would be deemed a Fair Use of a copyrighted work, the four factors set forth in Section 107 must be considered:

1. **the purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

2. **the nature** of the copyrighted work;

3. **the amount and substantiality** of the portion used in relation to the work as a whole; and

4. **the effect of the use** upon the potential market for or value of the copyrighted work.

Because of the Fair Use provision of the law, what would otherwise be considered copyright infringement is permitted. Authors may quote from or reproduce small amounts of material for purposes of criticism, comment or to illustrate or support their own ideas. For example, two or three paragraphs of a book or periodical article, a stanza of a poem, a single chart or graph may be copied. Use of a more extensive quotation must be analyzed on a case-by-case basis under the four factors of Fair Use and where necessary, express permission of the copyright owner must be obtained. Whether or not permission is needed, any sources used should always be credited using the proper citation format. *Kate L. Turabian, A Manual for writers of Term Papers, Theses, and Dissertations, Sixth Ed.* (Chicago: The University of Chicago Press, 1996) should be referred to for the proper citation format, and a helpful summary is provided in the document *Guidelines for Documenting Sources* which is included at the end of this manual.

EVALUATING FAIR USE UNDER THE FOUR STATUTORY FACTORS

1. Purpose and character of the use.

A nonprofit educational purpose makes it more likely, but does not ensure, that the use

would be considered fair. A copy made to avoid purchasing the original and used in place of the original would not be considered Fair Use. A quote for purposes of comment or criticism is more acceptable than quoting to support one's position.

2. Nature of the copyrighted work.

A use would be more likely to be considered fair when the copyrighted work was a compilation of facts or information, rather than a creative or imaginative work. Copying of books out-of-print or materials unavailable for purchase, newspaper or journal (not newsletter) articles of current interest, or material designed for distribution to the general public are more likely to be considered Fair Use. In the context of classroom use (which would include GOER training programs), copying from textbooks and other materials prepared primarily for the educational market (particularly consumable workbooks) is not considered Fair Use.

3. Amount and substantiality of the material used in relation to the copyrighted work as a whole.

In evaluating this factor both the amount of the work being copied and the significance or importance of the portion being copied must be examined. As a general rule, quotes should be limited to one or two consecutive paragraphs or stanzas. The material quoted should be but a small portion of the copyrighted work and should not contain the essence or principal element of the copyrighted work. Substantial paraphrasing is considered mere copying and Fair Use analysis must be used to determine if permission is required.

4. Effect of the use on the potential market for or value of the copyrighted work.

A use is not considered fair where it would diminish or lower the value of the copyrighted work.

Clearly, the determination as to what is and what is not Fair Use requires a review of the facts on a case-by-case basis. Any questions on whether a particular use would be considered a Fair Use under the Copyright Act should be directed to Kevin Grossman in GOER's Counsel's Office.

<u>COPYING OF COPYRIGHTED MATERIALS FOR EDUCATIONAL PURPOSES</u>

Copying for educational purposes can be an infringement of the rights of the copyright holder. The creators of the Copyright Act of 1976 recognized a need for guidance about what constituted permissible amounts of photocopying of copyrighted materials for educational purposes. To offer some guidance, "Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" (hereafter Classroom Guidelines) was written by representatives of various educational organizations and was included, as part of the legislative history of the Act.

The Classroom Guidelines provide standards for both single copying by teachers and multiple copying for classroom use. The guidelines, which set forth the minimum, not maximum, of educational Fair Use, are summarized below.

For simplicity sake, where the materials being copied are for educational purposes, and consist of a single copy or multiple copies for classroom use, consider the copying "as is." Refer to section "Steps in Copyright Analysis" for further clarification.

A. Single Copying by Teachers or Instructors

At the very least, a teacher may make a single copy of any of the following for scholarly research or in preparing to teach a class:

- a chapter from a book;
- an article from a periodical or newspaper;
- a short story, short essay, or short poem, whether or not from a collective work;
- a chart, diagram, graph, drawing, cartoon or picture from a book, periodical, or newspaper.

All single use copying of copyrighted works must comply with the four factors of Fair Use as set forth previously. Under the following conditions, photocopying would most likely be considered Fair Use:

- where staff were unable to locate another copy of the work because it was not available from the library or other source and cannot be obtained within required time constraints;
- where the material will be copied only once and will not be distributed to others;
- where the amount of material photocopied is a small proportion of the entire work.

As a general rule, most single copy photocopying for individual use in research may be considered Fair Use.

B. Copying for Classroom Use

The Classroom Guidelines permit distribution by a teacher of multiple copies of materials to students in a class, without obtaining prior permission to do so from the copyright owner, under the following conditions (all conditions <u>must</u> <u>be</u> met):

1. The distribution of the same photocopied material does not occur every semester, is for only one course, with only one copy provided to each student, which copy becomes the student's property, and no charge is made for the copy beyond the actual cost of reproduction;

2. The amount of material distributed does not exceed certain brevity standards:

    a. for prose--a work may be copied in its entirety if it is less than 2500 words in length. If the work is longer, the excerpts copied should not exceed 1000 words, or 10% of the work, whichever is less;

    b. for poetry--250 words is the suggested limit;

    c. for illustrations--one is the rule of thumb;

3. The copying is at the instance and inspiration of the individual teachers such that the decision to use the material did not allow adequate time to request permission prior to use; and

4. The appropriate copyright notice appears on the first page of the photocopied material.

The best rule of thumb, which can be garnered from these guidelines, is that photocopying should not be done as a substitute for purchasing the material, particularly for multiple copy classroom use. Photocopying practices must not have a significant detrimental impact on the market for the original copyrighted work. As with single use copying, all multiple use copying of copyrighted works must comply with the four factors of Fair Use set forth previously.

PHOTOCOPYING AND DUPLICATION WHICH REQUIRE PERMISSION

Following are some guidelines to help in determining when photocopying and duplication require permission. Again, all such copying must be analyzed under the four factors of Fair Use.

1. Repetitive Copying: The classroom or reserve use of photocopied materials in multiple courses for successive years would require advance permission from the copyright owner.

2. Copying for Profit: Where the students are charged more than the actual cost of photocopying the material.

3. Consumable Works: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner.

4. Creation of Anthologies as Basic Text Material for a Course: Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts used together as the basic text for a course will in most instances require the permission of the copyright holders. Such photocopying is considered a substitute for purchase of a book and not a Fair Use.

USE OF AUDIO-VISUAL MATERIALS

The rules governing the use of excerpts of audiovisual work are the same as those governing any other copyrighted performance. Audiovisual works, for the purpose of these guidelines, include audiotapes, videotapes, CDs, DVDs, and computer recorded and stored media such as mp3 files and YouTube© videos. Therefore, employees must analyze whether a particular use is a Fair Use under the four statutory factors mentioned above.

As a general rule, employees should only use a brief excerpt of an audiovisual work and the excerpt should not constitute more than a small portion of the work from which they were extracted. If the excerpt used supplants what otherwise would have been the sale of an audiovisual work, a copyright infringement may occur.

The following represents guidelines that, if followed, tend to make the use of an excerpt from an audiovisual work "fair use" for a nonprofit educational purpose. They are derived from a variety of sources including Section 110 of the United States Copyright Law, the Guidelines for Off-Air Taping for Educational Purposes (Kastenmeier Guidelines), and various policies of educational institutions.

A. **Audiovisual Works in the Classroom**

The limited use of an audiovisual work for a nonprofit educational purpose is generally permissible, provided the following conditions are met:

1. The work must be shown as part of the instructional program.

2. The work must be shown by a program participant or instructor to only program participants and the instructor.

3. The work must be shown either in a classroom or other location devoted to instruction.

4. The work must be shown either in a face-to-face setting or where participants and instructors are in the same building or general area.

5. The work must be shown using a legally reproduced copy with the copyright notice included.

Even the limited use of an audiovisual work is prohibited when:

6. The work is used for any purpose unrelated to a teaching activity.

7. The work is shown in a public performance, to an audience not confined to program participants, and is not related to nonprofit educational instruction.

8. The use involves an illegally acquired or illegally duplicated copy of the work.

9. The work is transmitted by radio or television (either closed or open circuit) from an outside location.

B. **Broadcast Programming**

The following apply to "off-air recording" of a broadcast program (including cable television programs) for a nonprofit educational purpose:

1. An "off-air recording" may be kept for no more than 45 calendar days after the recording date, at which time the tapes must be erased.

2. The "off-air recording" may be used by an individual instructor in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary in classrooms, during the first 10 consecutive work days in the 45 calendar retention period. "Work days" are defined as days when GOER is open for business within the 45 calendar day retention period.

3. The "off-air recording" may be viewed after the 10 day consecutive period for teacher evaluation purposes, such as to determine whether or not to include the "off-air recording" for future teaching curriculum.

4. All copies of the "off-air recording" must include the copyright notice on the broadcast program as recorded.

5. The "off-air recording" may not be physically or electronically altered or combined with others to form anthologies. However, the "off-air recording" need not be used or shown in their entirety.

6. If several different instructors want to use the same "air recording," duplication is permitted but all copies are subject to restrictions of the original recording.

7. These guidelines are for commercial television broadcasts and some public television broadcasts, unless there are other negotiated rights or licensing agreements.

C. **Public Broadcasting Service/Programs**

Many of the programs and series distributed by the Public Broadcasting Service (PBS) include a 7-day re-record right. The 7-day re-record rights allow:

1. Only a single copy of the program may be recorded for a nonprofit educational purpose and it may not be duplicated.

2. A program may be recorded and shown each time a program is broadcast.

3. The program may be retained for 7 consecutive days following the broadcast but must be erased at the end of the 7th day.

4. The program may be shown as often as needed during the 7-day period.

D. **Audiovisual Work - Distribution and Duplication**

Rights to make multiple copies of an audiovisual work and distribute that work beyond the GOER/LMC can vary depending on the work. Employees should not assume that they have the right to duplicate and distribute a work simply because they have purchased a copy. For example, distribution and duplication rights may have to be purchased from the producer or the distributor. Additionally, there may be no rights available from any source at any cost.

E. **Digital Distance Education**

Digital distance education, such as webinars or video conferencing, is an emerging educational technique being used in lieu of traditional classroom learning. The Technology, Education, and Copyright Harmonization Act of 2002 ("TEACH Act") clarifies what uses of copyrighted material are permissible with regard to distance education when permission of the copyright holder has not been sought. Furthermore, the TEACH Act outlines the specific requirements that the information technology staff and students must abide by in order to be in compliance with the current copyright laws. The Act permits teachers and students of an accredited, nonprofit education institution or government body to transmit performances and displays of copyrighted material as part of a course if certain conditions have been met. If these conditions are not or cannot be met, use of the material will have to qualify as a fair use or have the permission of the copyright holder to be lawful.

Questions regarding the use of copyrighted materials in a digital distance educational environment must be directed to Assistant Counsel Kevin Grossman prior to the distribution and use of those materials.

AGENCY COPYRIGHT POLICY

1. Photocopying of Copyrighted Educational Materials at GOER.

The summary of the Classroom Guidelines set forth above may be used in determining the minimum standards of educational Fair Use for making single and multiple photocopies of works protected by copyright.

All staff are required to comply with the educational Fair Use guidelines for copying. Staff must write for permission from the holder of the copyright for all photocopying requests which may exceed educational Fair Use limits.

2. Copyright of Published Materials and Works.

All materials and works published shall contain a notice of copyright. Refer to page 3 for the meaning of the word "published." For materials and works published by GOER, the following copyright notice shall be used:

Copyright © 1997 by The New York State Governor's Office of Employee Relations.

For materials and works published by the LMC's, the same format should be used but the LMC name should be inserted instead of GOER. For example:

Copyright © 1997 by The New York State Child Care Advisory Committee.

3. Copyright Registration.

Copyright registration is a legal formality by which a public record is made of a particular copyright and additional rights accrue to the copyright owner including the right to sue others for copyright infringement. Registration is accomplished by mailing to the Register of Copyrights a completed application form for each work to be registered, paying a $20 fee for each application and submitting two complete copies of the work to be registered.
The decision to register materials and works will be determined on a case-by-case basis by GOER spokesperson in consultation with the program manager and Counsel's office. The factors that will be considered when making the decisions to register include, but are not limited to, the following:

- The length of time the material or work will be used.
- The number of uses for the material or work.
- The time, effort and money expended for the creation of the material or work.
- The number of copies to be distributed.
- The scope of the distribution of copies of the material or work.
- Whether others will be given permission to copy the material or work.
- The uniqueness of the subject matter of the material or work.

STEPS IN COPYRIGHT ANALYSIS

Following is an outline of the process to follow in analyzing whether or not permission must be obtained.

Is this Incorporation or Copying "as is?"

1. Incorporation - Where the material is being incorporated into a publication of GOER.

    a. Is the material being incorporated from a copyrighted work?

    b. If the material being incorporated is copyrighted, then the Fair Use doctrine applies and the use must be analyzed. Consult with Kevin Grossman in GOER's Counsel's Office as needed.

    c. If the use is Fair then no permission is required, but proper citation format must be used.

    d. If the use exceeds the Fair Use guidelines, then permission must be requested. Permissions must be granted in writing.

2. Copying "as is" - Where the material is being copied for educational purposes and a single copy or multiple copies for classroom use are being made.

    a. Is the material being copied from a copyrighted work?

    b. If the material is from a copyrighted work, then the summary of classroom guidelines set forth on pages 7 through 9 should be consulted and the use must be analyzed. Consult with Kevin Grossman in GOER's Counsel's Office as needed.

    c. If the use is Fair, then no permission is required, but copyright notice must appear on the first page of all copies.

    d. If the use exceeds what is permitted for educational copying, then permission must be obtained. Permissions must be granted in writing.

WRITING FOR PERMISSION: SAMPLE LETTERS

When a use of copyrighted material requires permission, GOER's Counsel's Office will secure the appropriate permission. Program managers and staff who need permission to use materials should contact the GOER's Counsel's Office and provide the following informational materials:

1. Copy of original copyrighted material in its entirety. This material should provide the Counsel's Office with the copyright holder's information. If it does not, the copyright holder's name and address should be provided to the Counsel's Office.

2. A draft copy of how the original copyrighted material will be incorporated into the GOER or LMC curriculum or materials the program manager or staff is producing, if applicable.

The process of granting permission requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. Therefore, allow substantial lead time for the Counsel's Office to obtain the permission before the materials are needed in final form.

COPYRIGHT REQUIREMENTS FOR CONTRACTORS:

When contracting with consultants for curriculum development and/or delivery the following language will be included in our Request for Proposals, Contracts, and Purchase Order agreements, and compliance will be required of our consultants:

- **Ownership of Materials:** All materials developed with funding provided by the State and all proposals, work plans and budgets become the property of New York State. All materials produced, either in whole or in part, through funding provided by New York State shall belong exclusively to GOER and to the State of New York. GOER may use any of the materials developed with project funds for any GOER or other State purpose.

- **Copyright:** All documents created or prepared under this contract must be in compliance with GOER/LMC Copyright Policy. As indicated by this Copyright Policy, GOER adheres to and requires the successful bidder to adhere to the requirements of the Copyright Law, which is Federal law and contained in Title 17 of the United States Code, Sections 101 et seq. Such requirements include, but are not limited to the following:

  - When GOER contracts for the creation of a training or instructional work and/or materials or curriculum, it is deemed under the Copyright Law as a Work-Made-for-Hire Agreement and GOER is the owner of the copyright thereto.

  - The vendor must contact GOER to incorporate or include previously copyrighted materials in the work being created or prepared under the contract. The vendor shall submit a copy of the previously copyrighted material, a draft of how the vendor proposes to include or incorporate the previously copyrighted material in the Work-Made-for-Hire. GOER shall obtain written permission, where such written permission is necessary and required, from the copyright owner(s) or their legal representative(s) for such inclusion or incorporation of such previously copyrighted material.

  - After GOER obtains written permission, GOER will transmit a copy of the written permission to the vendor and, the vendor shall include, on the appropriate page(s) of the Work-Made-For-Hire, a citation to the copyright owner(s), using the style as set forth in the written permission.

  - Where a copyright owner requests a fee for permission, GOER shall pay the copyright owner(s) or legal representative(s) the agreed upon fee, if any for the inclusion or incorporation of previously copyrighted material in the

work-made-for-hire. GOER, in its sole discretion, may determine that it will not pay such fee for the right to include or incorporate such previously copyrighted material. In such event, the vendor will be required to create new materials or use alternate previously copyrighted materials (which shall also be subject to GOER's Copyright Policy).

- Bibliographic and footnote references and citations must be included where appropriate and must use the proper format as set forth in the Copyright Policy.

- The contract will contain a warranty by which the contractor shall warrant to GOER that he/she is the sole author of the material or work created or produced, except for the incorporated material for which copyright permission was obtained.

- The contract will contain an indemnification in which the contractor agrees to indemnify GOER against any legal action with respect to the warranty.

  Where the consultant is using materials previously developed by that consultant and adapting or revising such materials for delivery to New York State employees, the consultant materials must comply with the requirements of GOER/LMC Copyright Policy.

COPYRIGHT REFERENCES

Grossman, John, Editor. *The Chicago Manual of Style, 14th Edition.* Chicago: The University Chicago Press, 1993.

Guidelines for Classroom Copying in Not-for-Profit Educational Institutions. H.R. Judiciary Comm. Rep. No. 94-1476, 94th Congress, 2d Session, pp. 68-71.

State University of New York at Albany. *Copyright Policies*. Albany: SUNY Albany, 1987.

Title 17 United States Code Sections 101 et seq.

Turabian, Kate L. *A Manual for Writers of Term Papers, Theses, and Dissertations, 6th Edition.* Chicago: The University of Chicago Press, 1996.
United States Copyright Office, Circular 1, *Copyright Basics*.

United States Copyright Office, Circular 9, *Works-Made-For-Hire Under the 1976 Copyright Act*.

United States Copyright Office, Circular 31, *Ideas Methods, or Systems.*
United States Copyright Office, Circular 34, *Copyright Protection Not Available for Names, Titles, or Short Phrases.*

Attachment 7

Revised October 1, 2013

GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS (GOER)/ NEW YORK STATE LABOR-MANAGEMENT COMMITTEES (LMCs)

Travel and Lodging Reimbursement Policy for Consultants

Reimbursement for consultant travel and meal/lodging expenses is subject to the same limitations that apply to New York State employees. These limitations are described below.

If neither the city nor the county is listed, the location is a standard CONUS (Continental United States) with a rate of $83 for lodging and $46 for meals ($9 breakfast, and $37 dinner).

Reimbursement rates cited in this policy are subject to change. Updates to this policy are located on the GOER website at http://goer.ny.gov/vendor-info/index.cfm.

MAXIMUM ALLOWANCES

Overnight status: When a lodging receipt is provided, meal expenses can be reimbursed at the rates listed below.

Day trips: Receipts required. Meal expenses are reimbursable up to the rates listed below.

CITY	COUNTY	LODGING	BREAKFAST	DINNER
Albany	Albany	$111.00	$12.00	$49.00
Binghamton/Owego	Broome and Tioga	$ 97.00	$ 9.00	$37.00
Buffalo	Erie	$ 107.00	$11.00	$45.00
Floral Park/Garden City/Great Neck	Nassau	$150.00	$13.00	$53.00
Glens Falls	Warren			
October 1 - June 30		$ 99.00	$13.00	$53.00
July 1 - August 31		$154.00	$13.00	$53.00
September 1 - September 30		$ 99.00	$13.00	$53.00
Ithaca/Waterloo/Romulus	Tompkins and Seneca	$113.00	$9.00	$37.00
Kingston	Ulster	$111.00	$13.00	$53.00
Lake Placid	Essex			
October 1 - November 30		$113.00	$12.00	$49.00
December 1 - February 28		$133.00	$12.00	$49.00
March 1 - June 30		$107.00	$12.00	$49.00
July 1 - August 31		$169.00	$12.00	$49.00

CITY	COUNTY	LODGING	BREAKFAST	DINNER
September 1 - September 30		$113.00	$12.00	$49.00
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island) *October 1 - December 31* *January 1 – February 28* *March 1 - June 30* *July 1 – August 31* *September 1 - September 30*	Bronx County, New York County, Kings County, Queens County and Richmond County	 $303.00 $191.00 $267.00 $229.00 $303.00	 $14.00 $14.00 $14.00 $14.00 $14.00	 $57.00 $57.00 $57.00 $57.00 $57.00
Niagara Falls *October 1 - May 31* *June 1 – September 30*	Niagara	 $83.00 $99.00	 $10.00 $10.00	 $41.00 $41.00
Nyack/Palisades	Rockland	$112.00	$12.00	$49.00
Poughkeepsie	Dutchess	$102.00	$13.00	$53.00
Riverhead/Ronkonkoma/Melville	Suffolk	$119.00	$14.00	$57.00
Rochester	Monroe	$101.00	$10.00	$41.00
Saratoga Springs/Schenectady *October 1 - June 30* *July 1 - August 31* *September 1 - September 30*	Saratoga and Schenectady	 $114.00 $164.00 $114.00	 $11.00 $11.00 $11.00	 $45.00 $45.00 $45.00
Syracuse/Oswego	Onondaga	$96.00	$11.00	$45.00
Tarrytown/White Plains/ New Rochelle	Westchester	$139.00	$14.00	$57.00
Troy	Rensselaer	$100.00	$10.00	$41.00
Watertown	Jefferson	$96.00	$11.00	$45.00
West Point	Orange	$106.00	$10.00	$41.00

1. **Lodging Letter**: GOER can provide consultants with a letter requesting that they be afforded, at the discretion of the hotel/motel management, the same discounted lodging rates provided state employees. However, unless a consultant has tax exempt status, we also will pay for hotel taxes in excess of the allowable hotel per diems.

2. **Lunch**: Lunch expenses are not reimbursable.

3. **Incidentals**: Incidental expenses such as tips to porters or other such hotel guest services employees continue to be included in the allowances.

4. **Required Documentation on Invoices**: The invoice must note beginning date and time of travel, ending date and time of travel, and purpose of each trip. For curriculum development, invoice must list dates development was done along with the number of development hours. Please note that invoices will not be adjusted in cases where the Contractor is in overnight status and submits with the receipted method for meals. In this case, reimbursement will be the actual cost, up to the per diem, instead of the per diem rate.

5. **Meal Receipt Requirements for Day Trips:** Consultants must submit receipts for meals when in *non-overnight travel*, documenting the actual meal cost. Reimbursement cannot exceed per diems. Consultants may not input or alter the dollar amount or any information on the receipt. The meal receipt must contain:
    - provider name with either full address or phone number
    - date of service
    - number of persons served

    If the receipt does not include this information, the consultant must include this information in an attachment to the receipt.

6. **Requirements for Lodging Receipts**: Receipts must be submitted containing the following information:
    - consultant name
    - lodging establishment name, address and telephone number
    - room number
    - date of occupancy
    - rate paid
    - number of people in the room
    - method of payment

TRANSPORTATION

1. **Use of Common Carrier:** Consultants are required to use the most efficient common carrier (bus, train or airplane) for all transportation. However, other forms of transportation such as rental cars or taxis may be used if appropriately justified (in writing) on a cost or timeliness basis.

   The established reimbursement rate for personal cars is $0.565/mile effective January 1, 2013. All mileage claims *must* state beginning point and destination point.

2. **Receipts Required**: Receipts or travel coupons must be submitted for all common carrier transportation expenses and must detail the dollar amount, name of provider, address or phone number, and date of service as explained below:

   Common Carrier: Ticket receipt (air passenger coupon, Amtrak ticket stub, etc.) must detail type and date of service provided.

   Rental Vehicle: The use of all rental vehicles must be justified, including the purpose of the rental. The paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return.

   Tolls: No receipt needed for expenses up to $75. Indicate on invoice the date, location and amount of toll.

   Parking: No receipt needed for expenses up to $75. Indicate on invoice the date, location and amount of parking.

   Taxicabs: The use of a taxi instead of public transportation must be justified and all receipts must include driver and/or cab ID number. You do not need receipts for taxis (up to $75.00) between home and transportation terminals.