



Part C – AEPA Member Agency (State) Terms and Conditions AEPA Solicitation #025

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1. AEPA Member Agency Terms and Conditions

A solicitation is being published and distributed on behalf of the Member Agencies in many states. Differences in contract implementation and operation will exist between the Member Agencies. Each state may have special laws relating to this procurement that must be adhered to in addition to the previously stated constraints. *When Member Agency/State-Specific Terms and Conditions differ from the AEPA General Terms and Conditions, the Member Agency/State-Specific Terms and Conditions will prevail in that Member Agency/State, unless an overriding specification is noted in Part A of the category solicitation.*

2. Common Terms and Conditions

Active Promotion of Contract: Agencies require that the Vendor Partner take ownership and actively promote the contract in cooperation with the AEPA Member Agency to all of the Agencies' qualified Participating Entities.

Sales to Participating Entities: AEPA Member Agencies require that all awarded Vendor Partners offer the Member Agency contract opportunity to all qualified Participating Entities of the cooperative.

Legal Obligations: All Vendor Partners shall comply with all applicable Federal, State, and Local Laws, Codes, and Regulations while fulfilling the contract. It is the Bidder's responsibility to be aware of and comply with all state and local laws governing this procurement. Applicable laws, codes, and regulations (etc.) must be followed even if not specifically identified herein.

Administrative Fees: AEPA Member Agencies charge Vendor Partners an administrative fee (a percentage of sales in their respective state or states that they extend the AEPA pricing to). Administrative Fees are generally paid to each Member Agency quarterly. Additional details of how these fees are charged may be found under each state's Terms and Conditions.

A summary of each State's Administrative Fee requirements are listed here for the convenience of the Bidders.

State	Administrative Fee	Other States Member Sells In
California	2%	AZ, NV
Colorado	2%	
Connecticut	2%	ME, NH, NY, RI, VT
Florida	2%	AL
Georgia	2%	

Illinois	2%	
Indiana	2.25%, see state Ts&Cs	
Iowa	2%	
Kansas	2%	OK
Kentucky	2%	AL, LA, MS, NC, TN
Massachusetts	2%	
Michigan	2%	
Minnesota	2%	SD
Missouri	2%	AR, LA, SD
Montana	2%	ID
Nebraska	2%	
New Jersey	2%	
New Mexico	2%	
North Carolina	2%	
North Dakota	2%	SD
Ohio	2%	
Oregon	2%	
Pennsylvania	2%	DE, HI, MD, NY
South Carolina	2%	NC
Texas	2%	
Virginia	2%	
Washington	2%	AK, ID
West Virginia	2%	
Wisconsin	2%	
Wyoming	2%	SD, UT

AEPA State Members reserve the right to vary the administrative fee as long as it does not exceed 2% of sales volume.

3. State Specific Terms and Conditions

1. California, Monterey County Office of Education ("MCOE") – for the Programs CalSave and CalBuy

1. Governing Law and Venue

The laws of the State of California govern and prevail in the interpretation and administration of the Contract. California-specific Terms and Conditions prevail over any General Terms and Conditions. Every provision of law and clause required to be included in the Contract shall be deemed inserted, and the Contract shall be read and enforced as though included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.

The venue for any litigation arising out of or related to the Contract shall be either the Superior Court in and for the County of Monterey, State of California, or the Federal District Court for the Northern District of California, San Jose Division.

2. Authority

For California, this IFB is issued under the authority of the elected Monterey County Superintendent of Schools administering MCOE located at 901 Blanco Circle, Salinas California, 93912. In this document, MCOE may be referred to as "Agency," being distinct from other public entities, as identified in California Public Contract Code §20118 who may use this Contract who are hereinafter referred to as "Local Education Agencies ("LEAs"), regardless of their hierarchy or their political and organizational status as educational agencies or any other type of public agency or public entity..

3. CalSave, Administration, and Agent

Contracts awarded and Awarded Vendors will automatically be part of the CalSave program (or the alternatively named CalBuy program). CalSave is the cooperative purchasing program founded by MCOE and administered by the Epylon Corporation under an agreement with MCOE. MCOE is the lead agency for all contracts, and MCOE is the authority for the solicitation, evaluation, and award of all contracts. Epylon serves as MCOE's agent, but only MCOE has the authority to award contracts. Correspondence and communication related to the Contract award or administration of the program should be directed to Epylon, 630 San Ramon Valley Blvd., Suite 210, Danville, CA 94526.

MCOE reserves the right to change agents or to change the contact name of existing Agent's personnel administering the Contract. If Agent or Agent's personnel changes, Awarded Vendors will be notified with new instructions.

4. Transaction Fees

As Transaction Fees are the funding source for the operation of the self-supporting CalSave cooperative purchasing program, Awarded Vendors shall be required to pay a Transaction Fee for all purchases by LEAs made through the awarded Contract. For the purpose of this bid and all contracts awarded using this document, the Transaction Fee shall be 2 percent of Net Sales, which means gross sales less returns and canceled orders within thirty days, shipping and sales, and other taxes (excluding taxes based on net income). Transaction Fees will not be charged to or paid by the buyers.. Neither Awarded Vendor nor its designated Authorized Reseller(s) shall include any additional amount corresponding to the Transaction Fees in the awarded Contract prices. This Transaction Fee applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.

The CalSave Administrator, Epylon Corporation, will collect the Transaction Fee on behalf of the CalSave program. The Awarded Vendor shall make all participation fee payments within two weeks after sending the quarterly report. Checks are to be made payable to the Epylon Corporation and sent to 630 San Ramon Valley Blvd., Suite 210, Danville, CA 94526.

5. Non-Conforming Jurisdictions

The Transaction Fee shall is not authorized to be charged to Awarded Vendors for sales within any jurisdiction where prohibited by law or local-government policy. Instead, the cost of products, services, licenses, and goods sold under this Contract in such jurisdictions shall be the same as for all school districts in all other counties of California. However, any LEA using this Contract where Transaction Fees are not permitted will pay a 2 percent fee for use of the Contract, imposed by MCOE on the authority of Public Contract Code §20118 and §20652, which allow MCOE to charge reasonable costs to the public corporation or agency for furnishing the services incidental to the purchase of items under Contract.

6. Reports

The Awarded Vendor shall compile a quarterly report listing each purchase made by an AA under this Contract, and send them by the 15th of April, July, October, and January to Racquel Landolf at rlandolf@epylon.com. These reports shall be in Microsoft Excel format and shall have file names that identify the Awarded Vendor and the month being reported. The file at a minimum shall include the fields listed below and shall allow for sorting on any of these fields:

- Date of Order
- Name of Participating Agency or other (LEA)
- Description of Item and Services Purchased
- Manufacturer's SKU Number
- Quantity or Job Order Units
- Contract Unit Price
- Extended Price
- List Price Before AEPA Discount

7. Length of Term

The term of the Contract commences on the date of the award and continues until the end date as stipulated in the General Terms and Conditions unless otherwise terminated, canceled, or extended. California statutory term limits and extensions shall apply. The Contract may be extended month by month for up to six months by written agreement of the parties, if allowed by law.

8. Marketing and Advertising Under This Agreement

Awarded Vendor will actively promote the use of this Contract by LEAs in California. Awarded Vendor must comply with the marketing plan offered as part of its bid submission. Unless other arrangements are made with the CalSave Administrator, Awarded Vendor also agrees to do the following:

- Include the approved CalSave logo and web address in all print, electronic mail, and other advertising and promotion intended for release to California K-12 schools, excluding national marketing releases.
- Provide CalSave with a copy or proof sheet of the advertisement or promotion material. Awarded Vendor will provide CalSave with the date of release and name of publication, journal, etc.
- Place a CalSave Vendor sign on booths, tables, etc. of any or all exhibits for which the Awarded Vendor displays/participates at California tradeshows, conventions, and the like.
- Insert the approved CalSave logo and web address on any Awarded Vendor's website promoting the Contract or a specific CalSave landing page and providing a link to the CalSave website.
- Supply product catalog information, product description, pricing, etc., in a spreadsheet format as specified by CalSave for inclusion on the CalSave website.
- Cooperate in developing appropriate website content to promote its products, services, and their advantages to school districts.
- Requested materials will be submitted to CalSave within thirty days.

9. Conformance to Public Contract Code §20111

An award by MCOE under this solicitation will be for the purchase of equipment, materials, supplies, services or repairs to be furnished, sold, or leased in accordance with Public Contract Code §20111 and §20650 or other California code sections as may be allowed by law. Awards shall include allowance for installation and assembly services incidental and necessary to the use of the equipment, materials, supplies, and repairs purchased or leased.

10. Conformance to Public Contract Code §20118 and §20652

All public agencies (LEAs) are authorized by law to purchase off a contract awarded by an agency that has itself gone to bid, including all K-12 school districts, community college districts, special districts, and JPAs, pursuant to Public Contract Code §20118 and §20652. Per these statutes, MCOE hereby declares its intent and authorization to make all contracts awarded under this Contract "piggybackable" by other agencies in the state. The Agency waives any right to receive payment from other California agencies making purchases off the awarded Contracts and those agencies should make payment directly to the Awarded Vendors. Any legislative changes to Public Contract Codes §20118 and §20652 during the term of the Contract(s) with Awarded Vendor(s) shall apply to the Contract(s) immediately when such changes become law.

11. Piggyback and Standard School Supply & Equipment Authority

MCOE declares that items, materials, personal property, equipment and licenses under Contract as a result of this Invitation to Bid will qualify as items to be included within its Standard School Supply and Equipment List. Because many County Offices of Education have banded together to support the CalSave program for the purpose of collectively creating both a standard School Supply & Equipment List and cooperative contracts, the items solicited and awarded through this bid may also constitute a portion of an official Standard School Supply and Equipment List for other participating County Offices of Education and County Superintendents of Schools. Purchases by other County Offices of Education and LEAs may be made, not only in accordance with Public Contract Code §20118 and §20652, but also in accordance with Education Code §38110 and §38112 dealing with cooperatives and Standard School Supplies & Equipment.

12. Intended for Personal Property

An award by the MCOE under this solicitation will be for the purchase of equipment, materials, supplies, services or repairs to be furnished, sold, or leased in accordance with Public Contract Code §20111 and §20650. Awards shall include allowance for installation and assembly services incidental and necessary for use of the equipment, materials, supplies and repairs purchased or leased. When any services or repairs fall into a category of Public Works as defined in Public Contract Code §22002, an LEA may be required to conduct a separate bid for labor and services but may use this Contract for an unlimited dollar amount for any supplies, materials, equipment or personal property to be staged and ready for use in a local Public Works project.

13. Public Works Limitations

When Public Works services cost \$15,000 or more, an LEA, under most situations, must bid independently for the services and labor related to the public work, but may use this Contract for the contracted supplies, material or equipment related to the project. If circumstances allow, LEAs may also combine this competitively bid Contract with other alternative authorities for Public Works projects as may be allowed by law, such as Public Contract Code §22030, Education Code §17406 or Government Code §1466. LEAs may consult with their own legal counsel to see if such statutes apply to their Public Works projects.

14. Job Order and Unit Price Contracting

Notwithstanding, Sections I.9 through I.13, the Awarded Vendors and any authorized resellers or subcontractors, may extend bid pricing from AEPA IFB 025 to other agencies in California, including school districts, community colleges, state colleges, cities, and counties to the extent allowed by law under job-order-contracting statutes, including but not limited to Public Contracts Codes §20919.20 through §20919.33, §20665.20 through §20665.35 and §10710. Agency allows any school district, community college, college, or public agency to use this Contract and its competitively bid unit pricing as an alternative to other contracting procedures that the school district or agency is otherwise authorized or required by law to use. In using this Contract and pursuing a job-order-contracting project, a participating agency is obliged to conform to contracting steps spelled out in their respective code sections, college trustee policies, or local board policies.

15. Start Date

Once the award is made to the Awarded Vendor and signatures have been placed on the Contract from both parties, the Awarded Vendor is authorized to begin selling to eligible LEAs. MCOE will begin informing LEAs of the Contract once the Contract has been signed.

16. Prices and Requests for Quotes

The Awarded Vendor, in cooperation with MCOE's agent, must make provision for LEAs to quickly ascertain bid prices by posting prices, posting a link or contact for prices, distributing catalogs and price lists, responding to requests for quotations, or participating in eCommerce. (The 2 percent Transaction Fee on all sales is a cost of doing business to the Awarded Vendor and the requirement for the fee is publicly disclosed in these bid documents for the edification of all buying agencies and LEAs. Transaction fees should not appear as a line item on a quotation or on listed bid pricing. The final price quoted or displayed must be inclusive of the participation fee on all pricing and quotations.)

17. Submission of Orders and Delivery

After entering into an agreement with MCOE, an LEA electing to use this Contract will enter into a Separate Contract with the Awarded Vendor by way of a purchase order or separate contracting document ("Separate Contract"). Purchase orders will be issued by participating LEAs to Awarded Vendor.

LEAs will fax or mail purchase orders directly to the CalSave office fax at (866) 488-3729 unless other arrangements have been made and agreed to by the CalSave Administrator. LEAs may also use Epylon eCommerce software for transmission of purchase orders. Standard business practice is for all purchase orders received by 3:00 p.m. Pacific Time to be logged and forwarded to the appropriate Awarded Vendor on the same day received unless unusual circumstances occur. It is the responsibility of the Awarded Vendor to track any purchase order received directly from an LEA and to include that order on quarterly reports. Awarded Vendor will deliver goods, services, and corresponding invoices directly to the participating LEAs and receive payments directly from the participating LEAs as per bid specifications.

18. Other Agencies' Right to Purchase

CalSave is a self-supporting contracting program led by MCOE. Contracts are made available to all California public school districts,

private and nonpublic schools registered with a county office of education or state Department of Education, charter schools, community college districts, eligible state agencies, special districts, Joint Powers Authorities, counties, municipalities, and non-profits (particularly those such as PTAs buying on behalf of schools or government), and any Other Agency allowed by Public Contracts Code §20118. all referred to as LEAs.

Subject to the following Terms and Conditions, MCOE consents to LEAs purchasing items at the same unit price(s) or pricing formula under the Terms and Conditions of this Contract, as may be authorized by §20118 and §20652 of the Public Contract Code or other legal authority:

- a) Any Other Agency (LEA) authorized by law to use this Contract for its own purchase(s) from the Awarded Vendor or their authorized resellers shall by default enter into a standard agreement with MCOE, which *inter alia* will include the terms, conditions, and information set forth in this paragraph a) and paragraphs b through i) below.
- b) After entering into a standard agreement with MCOE, any Other Agency electing to use this Contract will enter into a Separate Contract or purchase order ("Separate Contract") with the Awarded Vendor. The Separate Contract is subject to and includes and/or incorporates all applicable terms of this Contract and the specific requirement that the Awarded Vendor comply with the provisions set forth in the paragraph regarding payment of the 2 percent Transaction Fee (or the non-conforming jurisdiction fee) to be collected by Epylon. MCOE will not be a party to any Separate Contract but will be considered a third-party beneficiary of such Separate Contract.
- c) The Awarded Vendor understands and agrees that failure or refusal to comply with the provisions set forth in this agreement regarding payment of the 2 percent Transaction Fee in connection with any Separate Contract or any other use of this Contract by an "Other Agency" is grounds for cancellation of the Contract. The Awarded Vendor also understands and agrees that if the Contract is canceled for this or any other reason, MCOE may give notice of such cancellation by any other means appropriate to inform LEAs of that cancellation.
- d) MCOE waives any right it may have to require any LEA using this Contract to draw its warrants for the purchase(s) in its favor and consents to each agency making such payment(s) directly to the Awarded Vendor.
- e) Sales tax and freight/shipping charges included in the Contract apply to MCOE only. Additional sales tax and freight/shipping charges may be required on purchases by any LEA and are outside the scope of this Contract unless specifically addressed elsewhere in Part A or Part B of the Terms and Conditions.
- f) This Contract and any Separate Contract are for the purchase of the items covered by the Contract. An LEA may, however, exercise its authority under Education Code §17597 or 81645 or other legal authority to sell and lease back any item owned, or to be owned, by it pursuant to any Separate Contract. The Awarded Vendor agrees to take any and all actions requested by any LEA that are necessary to affect any such transfer, by way of example only, accepting payment under the Separate Contract from any third party to whom any such transfer is made.
- g) Both the Awarded Vendor and any LEA using this Contract agree that the MCOE makes no representation that use of this Contract by any Other Agency is, in fact, authorized by law. In this regard, the MCOE suggests that, at a minimum, Awarded Vendor and any LEA considering such use consult with their own legal counsels before doing so.
- h) Both the Awarded Vendor and any LEA using this Contract agree to defend, indemnify and hold MCOE, the Monterey County Superintendent of Schools, and the Monterey County Board of Education and its members, as well as all of their respective officers, employees, and agents, free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any such use.
- i) MCOE reserves the right to cancel the whole or any part of this Contract due to failure by the contractor to carry out any obligation, term or condition of the Contract. MCOE will issue written notice to the contractor for acting or failing to act in any of the following:
 - a) The Vendor fails to adequately perform the services set forth in the Contract
 - b) The Vendor fails to make progress in the performance of the Contract and/or gives MCOE reason to believe that the contractor will not or cannot perform to the requirements of the Contract
 - c) The contractor fails to observe any of the Terms and Conditions of the Contract
 - d) The contractor fails to pay Transaction Fees
 - e) The contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the MCOE. MCOE shall follow the following procedure if the Contract is to be terminated:
 - Step 1 - Issue a letter of concern outlining the violations and the length of time to correct the problem(s).
 - Step 2 - Issue a letter of intent to cancel the Contract, if the problem(s) is not resolved by a given date.
 - Step 3 - Issue a letter to cancel the Contract.
 - Upon receipt of the written letter of concern, the contractor shall have ten (10) business days to provide a satisfactory response to MCOE. Failure on the part of the contractor to address adequately all issues of concern may result in Contract cancellation.

19. Conversion to a California Multiple Awards Schedule (CMAS) Contract

Because of its multiple-award provisions, this Contract may qualify for adoption as a California Multiple-Award Schedule contract. If the Awarded Vendor uses this Contract for the purpose of obtaining a separate CMAS contract from the State of California, the Vendor is responsible for paying and agrees to pay both the CMAS fee and the 2 percent Transaction Fee described in Section I.4 for all orders submitted under the authority of the CMAS program based on this contract. If an Authorized Reseller uses this Contract to apply for a CMAS contract, the Authorized Reseller must enter into a written agreement with Awarded Vendor and MCOE agreeing to be responsible

for paying the CMAS Fee and the 2 percent Transaction Fee, unless in that same written agreement Awarded Vendor agrees to pay such fees. In exchange for this fee, the Vendor (or if applicable, the Designated Reseller) is given a license to use and duplicate MCOE/AEPA Terms and Conditions for the purpose of applying for a CMAS contract. Also, CalSave or CalBuy will post pricing allowing prospective buyers to check for pricing that is compliant with the MCOE Contract and CMAS requirements. Vendor (or Authorized Reseller) must comply with MCOE's quarterly reporting requirements. Any report to the Department of General Services for CMAS-authorized purchases must simultaneously be reported to CalSave.

20. Other Agencies, Constitutionally Independent Agencies, & Out-of-State Agencies

Other agencies and out-of-state agencies and LEAs may use the Contract as allowed by California Government Code §6502, which says, "If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies may be located outside this state. It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised. For purposes of this section, two or more public agencies having the power to conduct agricultural, livestock, industrial, cultural, or other fairs or exhibitions shall be deemed to have common power with respect to any such fair or exhibition conducted by any one or more of such public agencies or by an entity created pursuant to a joint powers agreement entered into by such public agencies."

2. Colorado, Colorado BOCES Association (CBA)

A. Additional Agency Terms and Conditions

Advertising: CBA will require a marketing flyer, in electronic format, and timely updates from each vendor promoting the contract and AEPA/CBA relationship. CBA will assist in the development of the marketing flyer and other appropriate materials which will include logos representing the vendor/AEPA/CBA. This flyer will be for distribution and dissemination to all qualified customers through the CBA website and other appropriate and available methods.

Sales to Qualified Customers: Boards of Cooperative Educational Services (BOCES) in Colorado are legislatively created cooperative organizations directed by Colorado state statute 22-105 to serve all qualified agencies in a cooperative manner. BOCES are governed by publicly elected officials and by state and federal laws. No agency is obligated to use these services and contracts, but they find the benefits of low price and the satisfied bidding process most advantageous. Qualified agencies in Colorado include all public or private educational institutions, K-12 and higher education, all non-profit organizations, and all county or local governmental agencies. CBA requires that all participating vendors offer the Agency contract opportunities to all qualified customers.

B. Procedure for Processing Orders: Once the award is made to the vendor.

- CBA will inform its members of the contract by:
 - i.* Including the contract in the agency database that is available on the CBA website
 - ii.* Announcing the award through normal communication channels, CBA member presentations as well as regular electronic and direct mail communications.
 - iii.* Offering the opportunity to the vendor to publish their marketing information on the CBA website link to cooperative purchasing opportunities.
- A listing of CBA members, institutional names, contact names, addresses and phone numbers is available to the vendors through the CBA website. At this point the vendor must contact the members and qualified customers; and the customers have the right to contact the vendors directly. Note: CBA requires the awarded vendors to take ownership and actively promote the contract in cooperation with CBA to all members and qualified customers.
- When the customer identifies a desired product or service as available through the AEPA/CBA contract and agrees on price as presented to the customer by the awarded AEPA/CBA vendor, the customer then issues to the vendor a purchase order for that item or service.
- The awarded price must include an additional two percent (2%) administrative fee in the total cost (not as a separate line item), based on the total cost of goods and services including installation. This fee is to be forwarded by the vendor to CBA after the sale and payment is made to the vendor. Payment shall be made to CBA on a quarterly basis along with the complete sale report as specified in the general terms and conditions.
- The sale and transaction may continue without delay or anticipation of the CBA denial of said transaction.
- The administrative fee percentage (2%) is based on the total sale of goods and services including installation and must be included in the original cost quoted to the customer. In the event of a lease, the total administrative fee for the value of goods and services shall be paid to CBA by the vendor at the front end of the lease.
- Vendor makes all deliveries and installation of products and services. CBA does not warehouse items nor provide services.

3. Connecticut, Capitol Region Education Council (CREC)

A. ADDITIONAL MEMBER AGENCY GENERAL TERMS AND CONDITIONS

Affirmative Action - The Contractor must have an employment policy that there shall be no discrimination against anyone on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, intellectual or physical disability or sexual orientation in the hiring, upgrading, demotions, recruitment, termination and selections for training, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Contractor further agrees to be an "affirmative action-equal opportunity employer."

An Act Concerning Student Data Privacy

Contractor shall comply in all material respects with the provisions of Public Act 16-189, as amended (the "Act"), applicable to it. In connection therewith, the Contractor shall not use any so-called "student information" as defined in the Act and provided to it by or on behalf of CREC ("Student Information") for any purpose other than in connection with the performance of its obligations under this Agreement. The Contractor shall take commercially reasonable actions designed to ensure the security and confidentiality of all Student Information in its possession. The Contractor shall provide written notice to CREC within fourteen (14) days of Contractor's becoming aware of any unauthorized release, disclosure, or acquisition of Student Information in the possession of the Contractor. The Contractor and CREC shall each comply in all material respects with the requirements of the federal Family Educational Rights and Privacy Act of 1974, as amended ("FERPA").

Conflict of Interest

The Contractor shall disclose any relationship with a CREC employee that would not be considered an "arms-length" or independent transaction, as described below. This disclosure must be made in writing to CREC for an evaluation. CREC will respond to this disclosure in writing.

A CREC employee (including independent contractors for purposes of this definition) placing an order or recommending a vendor must disclose any relationship with that vendor which would not be considered an "arms-length" or independent transaction. This disclosure must be made in writing to CREC for an evaluation. CREC will respond to this disclosure in writing.

For a transaction to be considered "arms-length" or "independent", a CREC employee should not be influenced, dependent upon, guided or controlled by a vendor into choosing that vendor, or item to purchase; nor should it appear to a third party that a CREC employee made a purchasing decision which appears to be based upon a personal relationship between the CREC employee and vendor.

The following are examples when a transaction is NOT considered arms-length or independent: (1) when there exists a personal relationship between a CREC employee and a vendor, (2) when there exists the potential for a personal benefit to a CREC employee, or (3) the parties to a business deal are dependent upon one another for "something" other than the purchase itself.

In addition, the Contractor shall, if given a copy of the potential Participant's conflict of interest policy, follow the process in that policy, or otherwise disclose to a potential Participant any relationship that would not be considered an "arms-length" or independent transaction with that Participant, as described above. This disclosure must be made in writing to the chief official (for example, the Superintendent at a board of education) at the potential Participant.

Determination of the existence of a conflict of interest does not prohibit CREC and/or a Participant from entering into the contract and purchase order, respectively.

Financing Arrangements - Any financing arrangements (including lease purchasing arrangements) will be made directly between the Contractor and a Participant. Financing arrangements may be subject to additional laws, rules and regulations, terms and conditions not described in this document and are subject to separate negotiation with each Participant that is interested in such an arrangement. Each Participant should seek its own legal advice prior to entering into a financing arrangement. CREC must receive a report annually summarizing the executed lease purchases along with the summary of the customer purchases. CREC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Contractor and the Participant only.

Freedom of Information Act - The Contractor acknowledges that CREC and some Participants are subject to the Freedom of Information Act, Connecticut General Statutes Sections 1-200 et seq., and submitted to CREC and/or such Participants may be made available to the public under the provisions of the Freedom of Information Act.

Independent Contractor - The Contractor shall not be held or deemed in any way to be the agent or employee of CREC and/or a Participant. It is the intention of the parties that the Contractor shall be and is to be considered an independent contractor.

Modification to Bid Language in the AEPA Invitation for Bid - The Bidder by submitting its bid hereby declares that this Bid is made without any connection with any other person or persons making any proposal for the same items, that it is in all respects

fair and without collusion or fraud and that no person acting for or employed by CREC or a Participant is directly or indirectly interested in the proposal or in the goods or services to which it relates, or in any portion of the profits therefrom.

A. ADDITIONAL MEMBER AGENCY TERMS AND CONDITIONS FOR NON-CONSTRUCTION PRODUCTS AND SERVICES

None

B. ADDITIONAL MEMBER AGENCY TERMS AND CONDITIONS FOR CONSTRUCTION PRODUCTS AND SERVICES

CT Commission on Human Rights and Opportunities

Municipal Public Works contracts funded in whole or in part by the State of Connecticut are subject to contract compliance requirements and set-aside goals as follows:

The contractor who is selected to perform this State project must comply with CONN. GEN. STAT. §§ 4a-60, 4a-60a, 4a-60g, and 46a-68b through 46a-68f, inclusive, as amended by June 2015 Special Session Public Act 15-5.

State law requires a minimum of twenty-five (25%) percent of the state-funded portion of the contract for award to subcontractors holding current certification from the Connecticut Department of Administrative Services ("DAS") under the provisions of CONN. GEN. STAT. § 4a-60g. (25% of the work with DAS certified Small and Minority owned businesses and 25% of that work with DAS certified Minority, Women and/or Disabled owned businesses.) The contractor must demonstrate good faith effort to meet the 25% set-aside goals.

For municipal public works contracts and quasi-public agency projects, the contractor must file a written or electronic non-discrimination certification with the Commission on Human Rights and Opportunities. Forms can be found at:

http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav_GID=1806

C. AGENCIES ALLOWED TO PURCHASE UNDER THE MEMBER AGENCY

There are 169 school districts in Connecticut and all are eligible for membership. No district is obligated to use these services. Additional members may include other public educational institutions, independent schools, colleges or universities, libraries, municipal governments, and other governmental, quasi-governmental, or non-profit organizations.

Work in Other States

CREC is making the CT AEPA contract available for vendors to use in all New England states – CT, ME, NH, RI, VT – and New York, and any other state without AEPA member representation. Our contract is also available in MA for vendors who TEC has not signed a contract with.

Sales made in any of these states using the AEPA contract are to be reported to CREC, with the 2.0% administrative fee made payable to CREC. The Contractor must advise CREC its intent to use the contract in any of these states.

All Terms and Conditions for Connecticut apply to work in these states. It is the Contractor's obligation to ensure that the purchaser fully understands the AEPA contract, including whether it is allowable under applicable state regulations.

4. Florida, Panhandle Area Education Consortium/Florida Buy Purchasing Program

A. Additional Agency Terms and Conditions

Vendor Contact: Vendor will designate to the Panhandle Area Educational Consortium Florida Buy, one individual who will represent them during the agreement period. This contact person will correspond with each ordering member for technical assistance, problems, or questions that may arise, including instructions if different contacts for different geographical areas are needed. This information will be distributed to all school districts upon award of this bid. Vendors may use this contract to sell products or services in addition to school districts to any government agency, non-profit organizations or institutions.

Vendor agrees to abide by all federal, state and local laws and regulations. It is the responsibility of the Vendor to determine applicability and requirements of any such laws and to abide by them.

All terms and conditions may be modified and revised by PAEC Florida Buy with the written consent of both PAEC Florida Buy and the Awardee.

PAEC Florida Buy, at its discretion, may offer the use of the awarded agreement to governmental entities such as state agency purchasing programs, to extend the use of the contract to eligible users. This option will be referred to as an Interlocal Agreement. Under such conditions, the participating agency may, with written consent from the Awardee, modify and revise the terms and conditions of the master agreement.

Other state and public agency purchasing program agreements may require additional administrative fees, associated with sales, to be paid by the Awardee for the management of the contract. The Awardee will be notified in writing and will have the option of accepting or rejecting the Interlocal Agreement program fees.

No right or interest in the Contract shall be assigned or transferred by the Contractor without the prior written consent of the PAEC Florida Buy program. No delegation of any duty of the Contractor shall be assigned without prior written permission of PAEC Florida Buy. If the original Vendor/Contractor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. PAEC Florida Buy reserves the right to reject the acquiring person or entity as a Vendor/Contractor. A change of name agreement will not change the contractual obligations of the Vendor/Contractor.

The Awardee, may, upon entering into negotiations with qualified buyers, amend their prices to offer volume discounts below the lowest unit rates established in the pricing portion of this agreement.

The Awardee(s) agrees to sign contact acknowledgement form with the Florida Buy State Cooperative Purchasing and pay an administrative fee for sales and services generated from this contract. This fee is not to be added to the invoice of any entity choosing to use this agreement and will be equal to 2% of the invoice and be paid to Florida Buy State Cooperative Purchasing on a quarterly basis. The Awardee will be provided a template for reporting sales, and it will include the entity using the contract, the date of service, and the savings to the school district and other eligible users. Florida Buy State Cooperative Purchasing extends the authority for the Awardee to use the contract for eligible entities outside of Florida provided 2% administrative fee is paid.

B. Procedures For Processing Orders

Once the award is made to the Vendor, PAEC Florida Buy will inform all school districts of the contract by:

1. Including the award information on the PAEC Web site at www.floridabuy.org
2. Announcing the award in its PAEC Florida Buy website
3. Announcing the award via electronic mail to all members

Any members, contact names, addresses and phone numbers will be available at the PAEC Web site www.floridabuy.org. At this point, the Vendor may contact the members and the members may contact the Vendor. The member will identify a desired product or service available through the AEPA contract and agrees on the price and conditions as presented to the member by the awarded AEPA Vendor. A final copy of the customer purchase order or sales summary must be sent to PAEC Florida Buy by the Vendor after completion of the service or installation. The Vendor has (30) thirty days to forward this purchase order. This will insure compliance of the contract.

Vendor makes all deliveries and installations of products and services. PAEC Florida Buy does not warehouse items. All participating Vendors agree to and are subject to audit proceedings of the AEPA sales to members.

The Vendor will produce and provide to PAEC Florida Buy quarterly reports ending March 31, June 30, September 30 and December 31 throughout the contract period. The reports shall identify the Vendor and the quarter being reported, shall include a minimum of the fields listed below:

1. Date of Order
2. School district
3. List or academic price sales totals
4. PAEC Florida Buy price sales totals
5. Member savings total

Quarterly reports and administrative fee payments to PAEC Florida Buy are due the 15th of the succeeding month, and all checks are to be made payable to the Panhandle Area Educational Consortium and sent to: PAEC, 753 West Blvd, Chipley, Florida 32428 and Attention: Florida Buy. PAEC may designate another agent for collecting and administrative fee that will be negotiated with Vendor for e-commerce transactions.

C. Agency Members Purchasing Under The Member Agency

The Panhandle Area Educational Consortium is a fourteen-member consortium that includes a voluntary purchasing program developed for schools in Florida. All other school districts in Florida are participating members in the programs of the Panhandle Area Educational Consortium (PAEC), including participation in the statewide cooperative purchasing program. Agencies that use this contract will be in compliance with FS1001.42. PAEC was established to provide easily accessible information for our member and participating public school districts and the communities we serve. Since the creation of PAEC in 1967, our school districts have benefitted from shared services made available through leading edge technology. While school districts access our teaching and learning, training and technology, and business operations services in varying degrees of need, all come for the mutually beneficial purpose of reaching their goals together.

5. Georgia, Cooperative Purchasing Agency (CPA)

1. General Overview

- a. Cooperative Purchasing Agency is the AEPA representative for the state of Georgia. In Georgia we advertise our bids on the state procurement registry website: <https://ssl.doas.state.ga.us/gpr/index> (this is the new link to the registry website).
- b. In 1971 several small school systems in North Georgia decided to work together & form **Cooperative Purchasing Agency (CPA)**, a non-profit organization built by & for the school systems to combine their purchasing power. As a division of North Georgia, Northeast Georgia, & Pioneer RESA; Pioneer RESA serves as our fiscal agent and as such we currently show up on the Georgia Procurement Registry as Pioneer RESA. CPA serves as a purchasing agent for classroom & office supplies for its 35-member school systems plus neighboring ones who choose to take advantage of cooperative buying. CPA also serves as a recipient agency for USDA commodities that member systems receive through the USDA school lunch program. In addition to items included in our catalog & website, CPA has access to brands, custom items, & entire product categories that meet systems' office & classroom needs – including furniture options (indoor & outdoor), playground equipment, shelving installations, print supplies, & more.

c. The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to the Cooperative Purchasing Agency on a quarterly basis.

2. Additional Participating Agency Terms and Conditions for Construction Related Products and Services

- a. Georgia requires all local school boards to post any bids requiring capital improvements / public works construction over \$100,000.00 to be posted on the Georgia procurement website, regardless of who they are purchasing through.
- b. Pursuant to O.C.G.A. § 50-5-85, the state shall not enter into a contract related to construction or the provision of services, supplies, or information technology with a total value of \$100,000 or greater with a company that employs more than five persons, unless the contract includes a written certification that such company is not currently engaged in, and agrees for the duration of the contract, not to engage in a boycott of Israel.

3. Local Government Provisions - Provisions Applicable to Counties, Municipal Corporations, And Other Governmental Entities

§ 36-91-20. Written contract required; advertising; competitive sealed bidding; timing of addendums; prequalification

- a. All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.
- b. Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or an Internet website identified by the governmental entity which may include the Georgia Procurement Registry as provided by Code Section 50-5-69.
 - i. Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.
 - ii. Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.
 - iii. Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:
 1. A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and
 2. A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.
 - iv. Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.
 - v. The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.
 - vi. All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22.

Any advertisement which provides notice of a mandatory prebid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.

- c. Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:
 - i. Place the bidder or offeror at risk for construction; and
 - ii. Require labor or building materials in the execution of the contract shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.
 - d. No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.
 - e. Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.
 - f. Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:
 - i. Criteria for prequalification must be reasonably related to the project or the quality of work;
 - ii. Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;
 - iii. Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and
 - iv. Any prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror cannot be later disqualified without cause. History Code 1981, § 36-91-20, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, §
- 4. All contracts must follow current State of Georgia Contracting provisions as per O.C.G.A § 50-5-50**

6. Illinois

The following State Specific Terms and Conditions shall apply to all contracts involving public schools and/or other educational entities operating in Illinois, (hereinafter "Illinois Customers") and shall prevail over any General Terms and Conditions if/when they differ.

Illinois Law to Govern.

The Agreement, as modified by these Illinois Terms & Conditions, is (and shall be) governed by, construed under, subject to compliance with, and interpreted in accordance with, the laws and regulations of the State of Illinois, expressly including, (but not limited to): the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; its procurement and bidding standards and prerequisites delineated at 105 ILCS 5/10-20.21; the Illinois Public Officer Prohibited Activities Act, 50 ILCS 105/0.01 *et seq.*; the Illinois Criminal Code, 720 ILCS 5/1-1 *et seq.*; its prohibitions against interference with public contracting delineated at 720 ILCS 5/33E-1, *et seq.*; the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/1 *et seq.*; the Illinois Public Officer Prohibited Activities Act, 50 ILCS 105/1 *et seq.*; the Illinois Drug-Free Workplace Act, 30 ILCS 580/1 *et seq.*; the Illinois Business Enterprises for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/0.01 *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/2-105 *et seq.*; and policies of the Illinois Customer relating to the subject matter of the Agreement with Contractor.

When Contractor and/or its agents will be on an Illinois Customer's premises (whether for delivery, installation, the provision of contractual services, or otherwise), Contractor shall also comply in all respects with: all background check requirements set forth at 105 ILCS 5/10-21.9; the Illinois Smoke Free Illinois Act, 410 ILCS 82/1 *et seq.*, and the Illinois Firearm Concealed Carry Act, 430 ILCS 66/1 *et seq.*

Any contractual payment requested of an Illinois Customer shall be invoiced, processed, and remitted to a Contractor in accordance with the requirements and provisions of the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*

This Agreement shall be construed and incorporated in accordance with the laws of the State of Illinois, regardless of any choice of law provision that might otherwise authorize construction of its terms in accordance with the law(s) of another state, states, or federal law.

By entering into this Agreement with an Illinois Customer, the Contractor's signature on the executed contract shall serve as Contractor's certification of Contractor's compliance with the foregoing laws and all requirements thereunder.

The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to the Illinois Learning Technology Purchase Program on a quarterly basis.

Entire Agreement and Construction

The Agreement, as modified by these Illinois Terms & Conditions, represents the entire agreement between Contractor and the Illinois Customer, and supersedes all prior negotiations or agreements, written or oral, which are not included herein. This Agreement may only be amended by written instrument executed by the Illinois Customer and Contractor. In the event of a conflict between the Agreement, as modified by these Illinois Terms & Conditions, and a proposal from Contractor, the terms of this modified Agreement will take precedence.

Each party has reviewed and approved the Agreement, and no rule of construction that resolves ambiguities against the drafting party will be employed in the interpretation of this Agreement.

Dispute Resolution.

Any dispute arising in any manner hereunder shall be subject to resolution by litigation, unless all involved parties consent to an alternative means of dispute resolution. Venue for any legal action brought hereunder shall be the Illinois state circuit court of the county in which the Illinois Customer's administrative office is located or (if different and only if the Illinois Customer so elects) the Illinois state circuit court of the county where the Project is performed. Any provision of the General Terms purporting to change, limit, restrict, or shorten any Illinois period of repose and/or the duration of any applicable Illinois statute of limitation shall be of no force or effect against an Illinois Customer, it being understood by the parties that the Illinois periods of repose and statutes of limitation applicable to the subject matter hereof shall govern actions relating to this Agreement. No provision from the General Conditions shall limit, restrict, or shorten the duration of any period of repose or statute of limitation applicable under Illinois law.

Termination of the Agreement.

The Illinois Customer may terminate this Agreement at any time, in whole or in part, with or without cause, upon providing written notice to Contractor. If this Agreement is terminated by the Illinois Contractor for cause, the Contractor shall be liable to

the Owner for any increase in cost incurred by the Owner in replacing the goods under contract and/or completing the contractual work, and for any additional or other damages the Illinois Customer suffers. In the event this Agreement is terminated by the Illinois Customer solely for the Illinois Customer's convenience, Contractor shall be compensated for items properly provided and/or work properly rendered through the date of termination, as can be documented to the reasonable satisfaction of the Illinois Customer. The Illinois Customer shall have no liability to Contractor beyond the date of termination. In no event shall Contractor be compensated for anticipated profit or lost opportunity.

Insurance and Indemnification Provisions.

Contractor hereby agrees to indemnify and hold the Illinois Customer, its board members, officers, agents, employees, administrators, attorneys, and any other parties designated by the Illinois Customer (hereinafter collectively called the Indemnitees) harmless from all losses, claims, liabilities, injuries, damages and expenses, including (but not limited to) all attorneys fees and defense and court costs and expenses, that the Indemnitees may incur arising out of, or occurring in connection with, the performance, acts, omissions, negligence, willful and/or wanton behavior, and/or breaches by Contractor of its duties and obligations under or pursuant to this Agreement. This indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers or workmens compensation acts, disability benefit acts or other employee benefit acts.

Contractor shall procure, at no expense to the Illinois Customer, the insurance coverages set forth in the General Conditions. In each such instance, Contractor shall, by endorsement, name the Illinois Customer as an additional insured and shall provide copies of said policies and endorsements to the Illinois Customer prior to commencement under this Agreement.

Funding Contingencies for Multi-Year Projects.

All contracts with Illinois Customers that call for performance, or otherwise extend, beyond the Illinois Customers' current fiscal year, are, and shall be, expressly contingent upon annual appropriations. In the event an Illinois Customer's entry into an Agreement with Contractor constitutes a lease purchase (whether for financing purposes or otherwise), that Agreement shall be subject to the provisions of 105 ILCS 5/10-22.25a in addition to all other terms set forth in this Agreement.

Warranties and Claims.

No provision(s) set forth in the General Conditions shall serve to limit the Contractor's liability with respect to damages of any sort (whether actual, incidental, consequential, or otherwise) suffered by an Illinois Customer, nor will any disclaimer of warranties be effective against an Illinois Customer.

Attorney Fee Provisions.

No provision providing for the payment of prevailing party costs and expenses (including legal fees) resulting from litigation or other method of dispute resolution shall be applicable to Illinois Customers.

Automatic Renewals.

No provision calling for automatic renewals or "evergreen" renewals, (wherein the term of the agreement automatically renews for a period beyond the initial term unless a party provides affirmative advance notice of termination to the other party) shall be effective in an Agreement with an Illinois Customer, it being the parties' understanding, instead, that the contractual arrangements with Illinois Customers will terminate upon completion of the initial term or satisfaction of the original scope, unless the parties subsequently and affirmatively agree to supplemental renewal provisions.

Successors and Assigns: No Subcontracting.

Contractor shall not assign any rights under, or interest in, this Agreement, nor may Contractor subcontract any duties arising hereunder, without the prior written consent of the Illinois Customer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. Indiana, Wilson Education Service Center (WESC)

A. Additional Agency Terms and Conditions

Participating entities and approved vendors must be in full compliance with statutory requirements of all applicable federal, state, and local laws, rules, regulations, and ordinances including applicable public works and prevailing wage projects. All provisions required thereby to be included herein and are hereby incorporated for reference. This contract shall be construed in accordance with and governed by the laws of the State of Indiana. Awarded pricing must be made available to all participating entities regardless of size.

B. Procedure for Processing Orders

Wilson Education Service Center will inform all public school corporations, private/parochial schools, charter schools, nonprofit entities, municipalities, other governmental entities and higher education entities of contract awards via web sites and various marketing strategies. Vendors will have the primary responsibility to market contracts to eligible buyers within Indiana. After contracts are awarded and product information is available on our e-procurement sites vendors are free to contact eligible buyers and vice versa. The Wilson Education Service Center utilizes an e-procurement facilitation system as the primary mechanism for ordering and the primary method of marketing. Vendors are required to use the IAESC Procurement System and GovPro systems upon award. A 2.25% administrative fee will be assessed on gross monthly sales for IAESC Procurement (used by schools), and a 3.25% administrative fee will be assessed on gross monthly sales on GovPro (all other entities) after a 1% price increase. Vendors shall not include shipping and handling charges, federal excise tax, or state sales tax on invoices. Taxes do not apply to purchases by the participating entities. All participating entities have a "Not for Profit Tax Exemption Certificate" which will be furnished by the buyer upon request by the vendor. Quantities shipped in excess of quantities designated in the Purchase Order, or unapproved product substitutions will be returned at the vendor's expense.

C. Members Purchasing Under the Agency

All public school corporations, private/parochial schools, charter schools, nonprofit entities, municipalities, other governmental entities and higher education entities are eligible buyers. The Wilson Education Center as established by Indiana Code 20-1-11.3-1 with Inter-local Agreement Powers as established by Indiana Code 36-1-7-2 represents all eligible buyers in this program within Indiana.

8. Iowa, AEA Purchasing

1. Right to Assign

AEA Purchasing specifically reserves the right, in its sole discretion, to assign and transfer its interest in the Contract with the Vendor Partner, consistent with the terms and conditions of said Contract, to any organization, along with all corresponding duties, responsibilities, and obligations of both parties, and under the terms provided herein.

2. Additional Member Agency Terms and Conditions for Non-Construction Products and Services None.

3. Additional Member Agency Terms and Conditions for Construction Products and Services

AEA Purchasing may participate in Construction Products and Services bids through AEPA on a limited basis due to the restrictions mandated in the Iowa Code, Chapter 26 and 573.

4. Procedure for Processing Orders

AEA Purchasing's eligible clients follow a standard or electronic ordering process. The awarded Contractor will invoice and deliver products and services directly to AEA Purchasing's eligible clients. All invoices for payment shall be sent directly to the AEA Purchasing eligible client ordering under the terms and conditions of this agreement. The AEA Purchasing eligible client will make payment directly to the awarded Vendor Partner(s). AEA Purchasing does not process any orders.

The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to AEA Purchasing on a quarterly basis.

5. Agencies Expressly Allowed to Purchase under the Member Agency

- K-12 Public & Private Schools
- Iowa Area Education Agencies

6. Non K-12 Governmental Agencies

The following non K-12 Governmental agencies may be eligible to use awarded contracts but are NOT actively solicited by AEA Purchasing:

- Public Colleges & Universities
- Public Libraries
- City, County & State Government and departments

9. Kansas, Greenbush-Southeast Kansas Education Service Center (SEKESC)

A. Additional Member Agency General Terms and Conditions that apply for all categories **Kansas Mandatory Contract Provisions**

Terms Herein Controlling Provisions: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

Kansas Law and Venue: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

Disclaimer Of Liability: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

Anti-Discrimination Clause: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Acceptance Of Contract: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

Arbitration, Damages, Warranties: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

Representative's Authority To Contract: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

Responsibility For Taxes: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

Insurance: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

Information: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

The Eleventh Amendment: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

Campaign Contributions / Lobbying: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Assignment - SEKESC Right to Assign

In the event of a cancellation, the SEKESC specifically reserves the right, in its sole discretion, to assign and transfer its interest in any contract, consistent with the terms and conditions of any contract, to any organization, along with all corresponding duties, responsibilities for both parties and provisions contained herein.

Purchase Orders

Any purchase order issued by SEKESC, or one of its eligible entities, is cancelable under provisions of K.S.A. 10-1113. All purchase orders shall be issued by the SEKESC or its participating eligible entities desiring to acquire the products or services under the contract. Said purchase order shall include adequate reference to identify the bid to which it relates.

Marketing

- Awarded Vendor will proactively market the awarded contract to all eligible entities. The SEKESC will enhance the Awarded Vendor's marketing efforts through communication and meetings with eligible entities, participation in marketing events and tradeshow, through its website and social media resources and through day-to-day customer support activities.
- Awarded Vendor will train its professional staff and sales force in the provisions and benefits of the awarded contract. The SEKESC will enhance such effort by providing joint trainings and participating in joint sales calls as needed.
- The SEKESC and Awarded Vendor will jointly design presentations, documents, and other promotional material to assist in the promotion of the awarded contract.
- Awarded Vendor will include the SEKESC (Greenbush) logo on all sales materials targeted to eligible entities for the awarded contract. The SEKESC hereby grants to Awarded Vendor a non-exclusive, revocable, non-transferable, permission to use the SEKESC (Greenbush) name and logo during the term of this Agreement. Likewise, during the term of this agreement, the Awarded Vendor grants the SEKESC (Greenbush) permission to reproduce their name and logo in connection with marketing and promotion of the awarded contract.

B. Additional Member Agency Terms and Conditions for Non-Construction Products and Services

SEKESC has no additional terms and conditions for non-construction products and services.

C. Additional Member Agency Terms and Conditions for Construction Products and Services

K.S.A. 60-1111. Public works bond. (a) Bond by contractor. Except as provided in this section, whenever any public official, under the laws of the state, enters into contract in any sum exceeding \$100,000 with any person or persons for the purpose of making any public improvements, or constructing any public building or making repairs on the same, such officer shall take, from the party contracted with, a bond to the state of Kansas with good and sufficient sureties in a sum not less than the sum total in the contract, conditioned that such contractor or the subcontractor of such contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with or in or about the construction of such public building or in making such public improvements.

A contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer. A public official entering into a contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer.

(b) Filing and limitations. The bond required under subsection (a) shall be filed with the clerk of the district court of the county in which such public improvement is to be made. When such bond is filed, no lien shall attach under this article. Any liens which have been filed prior to the filing of such bond shall be discharged. Any person to whom there is due any sum for labor or material furnished, as stated in subsection (a), or such person's assigns, may bring an action on such bond for the recovery of such indebtedness but no action shall be brought on such bond after six months from the completion of such public improvements or public buildings.

(c) In any case of a contract for construction, repairs or improvements for the state or a state agency under K.S.A. 75-3739 or 75-3741, and amendments thereto, a certificate of deposit payable to the state may be accepted in accordance with and subject to K.S.A. 60-1112, and amendments thereto. When such certificate of deposit is so accepted, no lien shall attach under this article. Any liens which have been filed prior to the acceptance of such certificate of deposit shall be discharged. Any person to whom there is due any sum for labor furnished, materials, equipment or supplies used or consumed in connection with or for such contract for construction, repairs or improvements shall make a claim therefor with the director of purchases under K.S.A. 60-1112, and amendments thereto.

44-1030. State and local government contracts; mandatory provisions. (a) Except as provided by subsection (c), every contract for or on behalf of the state or any county or municipality or other political subdivision of the state, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

(1) The contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;

(2) in all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;

(3) if the contractor fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;

(4) if the contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and

(5) the contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas human rights commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas act against discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

(1) Who employs fewer than four employees during the term of such contract; or

(2) whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

D. Procedure for Processing Orders

The SEKESC utilizes the following ordering/delivery procedures:

- Purchase orders will be issued by the individual eligible entity.
- Vendors must issue invoices directly to the ordering eligible entity as specified on each purchase order.
- Delivery of all items included in this solicitation will be made to the locations within each eligible entity as will be specified on the purchase order.
- Each order shall contain a packing slip of its contents to assist in prompt processing of payments to Vendor.
- The SEKESC reserves the right to implement a Vendor Quotation Number process for contract awards related to, but not limited to, project-based and construction related proposal activities.
- The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to SEKESC on a quarterly basis.

E. Agencies Allowed to Purchase under the Member Agency

Eligible Entities: Entities eligible to purchase from Southeast Kansas Education Service Center (Greenbush) cooperative

purchasing contracts include but may not be limited to:

- K-12 Public Schools
- K-12 Private Schools
- Colleges & Universities
- City, County, and State Governments
- Public Libraries
- Non-profit organizations holding form #501C3

10. Kentucky, Green River Regional Educational Cooperative (GRREC)

A. Additional Member Agency General Terms and Conditions that apply for all categories The Green River Regional Educational Cooperative, Inc. (GRREC) is one of eight educational cooperatives in Kentucky, all of which are participants in the AEPA bids. GRREC serves as contact agency for all AEPA correspondence for all eight educational cooperatives. For the Kentucky Educational Cooperatives, the collective bidding process is conducted consistent with KRS Chapter 45A, the Kentucky Model Procurement Code. Contracts with GRREC shall include the provision granting GRREC employees the right to access to the Contractor's records. Vendor Contact: Vendor will designate to GRREC one individual who will represent them to Kentucky Bidding Cooperative members during the agreement period. This contact person will correspond with each ordering member for technical assistance, problems, or questions that may arise. Include instructions if different contacts for different geographical areas are needed; this information will be distributed to Kentucky Bidding Cooperative members upon award of this bid. The following Federal Clauses are required as a part of KY bid documents: 1. CLEANAIR/CLEANWATER A. Vendor Partner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq). Vendor Partner agrees to report each violation to the USDA and the appropriate EPA Regional Office.

B. Vendor Partner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Vendor Partner agrees to report each violation to the USDA and the appropriate EPA Regional Office. 2. SUSPENSIONANDDEBARMENT Vendor Partner understands that a contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by GRREC. If it is later determined that Vendor Partner knowingly rendered an erroneous certification, in addition to remedies available to GRREC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Vendor Partner agrees to comply with the requirements of 2 CFR 180.220 while the above referenced contract is valid. Vendor Partner further agrees to include a provision requiring such compliance in its lower tier covered transactions. 3. LOBBYING Vendor Partner will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and the New Restrictions on Lobbying and has signed and attached to this Addendum the Certificate Regarding Lobbying and, if applicable, the Disclosure of Lobbying Activities (Forms SF-LLL) and annually will sign and submit a certificate, if applicable, Form SF-LLL to GRREC. 4. PROCUREMENTOFFRECOVERED MATERIALSPURSUANTTO 2 C.F.R. § 200.322 Vendor Partner agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. 5. BUYAMERICAN "Domestic Commodity or Product" are defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards School Food Authorities ("SFAs") must comply with when purchasing commercial food products served in the school meals programs. Buy American: AEPA Member Agencies or Participating Entities participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (atleast51percent) using agricultural commodities that are produced in the US. Federal regulations require that all foods purchased for Child Nutrition Program be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when: the product is not produced or Manufactured in the US in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product. ALL products that are normally purchased by Vendor Partner as non-domestic and proposed as part of this contract must be identified with the country of origin. Vendor Partner shall outline their procedures to notify GRREC when products are purchased as non-domestic. Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by GRREC, prior to the delivery of the product to the AEPA Member Agency or Participating Entities. Any non-domestic product delivered to the AEPA Member Agencies or Participating Entities, without the prior, written approval of GRREC will be rejected. Vendor Partner must affirm its willingness to assert its best and reasonable efforts to ensure compliance with this federal rule.

6. COST REIMBURSEMENTCONTRACTS Solicitation Requirements for cost reimbursable contracts:

- A. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;
- B. Contractor will separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or (B) Contractor will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;
- C. Contractor's determination of its allowable costs will be made in compliance with the applicable

Departmental and Program regulations and Office of Management and Budget cost circulars;

D. Contractor will identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit;

E. Contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and F. Contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

B. Additional Member Agency Terms and Conditions for Construction Products and Services

The Contractor and subcontractors shall pay all laborers, workmen and mechanics performing work under this contract not less than the rate of wages set forth in the prevailing wage schedule incorporated in the contract conditions as determined by the Kentucky Department of Labor in accordance with the provisions of KRS 337.505 through KRS 337.550. Bidders are informed that construction contracts of the Commonwealth of Kentucky and political subdivisions are not exempt from the provisions of the Kentucky Sales and/or Use Tax. Current sales and/or Use Tax shall be provided for and included in the bid amount as no adjustments will be permitted nor made after receipt of bids.

1. It should be noted that where performance bonds are required, it should include both performance and payment bonds.

2. State Prevailing Wages shall apply for projects of \$250,000.00 or more, or Davis Bacon wages (when federal funds are utilized) if higher than State Prevailing Wages.

3. All work shall be in accordance with necessary approvals from the Kentucky Department of Housing, Buildings and Construction and the Kentucky Building Code.

4. All processes of the project comply with 702 KAR 4:160, the Capital Construction Process, including necessary approvals from the Kentucky Department of Education.

5. Performance and payment bond on AIA document 312 must be provided for all projects that exceed \$25,000. (Also provide that the Surety shall comply with state requirements.)

6. In accordance with 702 KAR 4:160, AIA and KDE documents be utilized on all projects including but limited to:

a. A 101 Standard form of Agreement between Owner and Contractor (including KDE amendments)

b. A 201 General Conditions of the Standard Form of Agreement between Owner and Contractor (including KDE amendments)

c. AIA A701 Instructions to bidders, with KDE amendment and KDE Form of proposal (may require editing AEPA instructions to bidders to eliminate conflicts).

d. KDE purchase Order (for direct purchase of materials with tax number, to exempt materials from state sales tax)

e. If applicable, where architectural services are provided by the Owner, Form B141, Standard Form of Agreement between Owner and Architect

7. Architectural services shall be provided in accordance with KRS 322.360 and other relevant Kentucky Revised Statutes by the vendor or the Owner at the Owner's preference.

C. Procedure for Processing Orders Once the award is made to the Contractor/vendor, GRREC and Kentucky's other cooperatives will inform their members (school districts and other entities) of the contract by: 1) including the contract in the Current Bids section on their websites and 2) publishing the contract information in catalogs disseminated to all members. A list of members, contact names, addresses and phone numbers is made available to the Contractor. At this point the Contractor/vendor contacts the members and members may contact the Contractor/vendor. When the member identifies a product or service, it will issue a purchase order for that item to the vendor. The vendor's price will include a two percent (2%) administrative fee that the vendor will collect from the member and remit to GRREC on a quarterly basis. Municipal and county governments, and other governmental, quasigovernmental, or nonprofit organization price will reflect a two percent (2%) administrative fee. On the occasion that an AEPA contract awarded by Kentucky is utilized by public school and public non-school entities in other states, purchases in these instances will also reflect a two percent (2%) administrative fee. The vendor will also compile and provide to GRREC a quarterly report showing all purchases made by Kentucky members (with specific detail as to what purchases were made by which members) under this contract. Further, if no purchases are made in any given quarter, the Vendor shall remit a "No Activities" statement to GRREC for that quarter. The vendor will also produce and provide to GRREC an annual summary report for all purchases made under this contract for a period of beginning with the award of the contract through December 31st and all consecutive annual periods if contract is extended. The vendor will make all administrative fee payments to the GRREC by the 15th of the month following the end of the quarter (i. e. April 15th, July 15th, October 15th and January 15th). All checks are to be made payable to GRREC and sent to GRREC, 230 Technology Way, Bowling Green, KY 42101 and Attention: Finance Director. GRREC may designate another agent for collecting an administrative fee that will be negotiated with vendor for e-commerce transaction. GRREC will share information from the quarterly and annual reports and distribute the administrative fee among the other KY Educational Cooperatives according to membership.

D. Members Purchasing under the Agency: Currently there are 8 Bidding Cooperatives in Kentucky and all are participating in this invitation through GRREC's solicitation. There are 170+ independent and county school districts and all are eligible for membership in a Bidding Cooperative and approximately 98% of the districts are members of one of the cooperatives. No district

is obligated to use these services. Additional members may include other public educational institutions in the state, public colleges or universities, community colleges, vocational or technical schools, municipal and county governments, and other governmental, quasi- g o v e r n m e n t a l or non- profit organizations. Kentucky currently shares its AEPA contracts with the following states: AL, LA, MS, NC, and TN. Only those districts or institutions listed on an approved Bidding Cooperative membership list are eligible to purchase under these contracts. This list may change during the contract period

11. Massachusetts, The Education Cooperative

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. ***Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.*** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

1. Contract Effective Start Date. Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

2. Payments And Compensation. The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to The Education Cooperative on a quarterly basis.

3. Contractor Payment Mechanism. All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

4. Contract Termination Or Suspension. A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

5. Written Notice. Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

6. Confidentiality. The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the

Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

7. Record-keeping And Retention, Inspection Of Records. The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

8. Assignment. The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

9. Subcontracting By Contractor. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

10. Affirmative Action, Non-Discrimination In Hiring And Employment. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

11. Indemnification. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

12. Waivers. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. Risk Of Loss. The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

14. Forum, Choice of Law And Mediation. Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration. Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and

OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

Prior to award, the Contractor must **certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory.**

INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: ***Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108*** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

12. *Michigan, Oakland Schools, (OS)*

A. **Additional Member Agency General Terms and Conditions that apply for all categories:**

1. Conflict of Interest

Contractor shall disclose in writing to Buyer any conflicts of interest with Board members, administrators, and or employees of any Participating Entity (as defined below). A conflict of interest may include, but is not limited to, a financial ownership interest in, or employment with Contractor or Subcontractor by a Participating Entity' Board member, administrator, or employee or their family member. A "family member" means a person's spouse or spouse's sibling or child; a person's sibling or sibling's spouse or child; a person's child or child's spouse; or a person's parent or parent's spouse, and includes these relationships as created by adoption or marriage. Determination of the existence of a conflict of interest does not prohibit the Participating Entity from entering into a contract with the Contractor (MCL 380.634; MCL 15.322 et seq).

2. Iran Economic Sanctions Act

Public Act 517 of 2012, commonly known as the "Iran Economic Sanctions Act" (the "Act"). The Act provides that beginning April 1, 2013, an "Iran Linked Business" is not eligible to submit a bid on a request for proposal with a "public entity" (OS). The Act also requires that a person that submits a proposal in response to an OS request for proposal must certify to the public entity that it is not an Iran Linked Business. This requirement applies to all requests for proposals issued by OS, and not just to construction projects.

The Act defines an Iran Linked Business as:

- a. A person engaging in investment activities in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran;
- b. A financial institution that extends credit to another person, if that person will use the credit to engage in investment activities in the energy sector of Iran.

If the OS determines, using credible information available to the public, that a person or entity has submitted a false certification, OS must provide written notice to the person or entity of its determination and of its intent not to enter into or renew the contract. The notice must include information on how to contest the determination. The notice must also specify that the individual or entity may become eligible for future contracts with the public entity if the activities that caused it to be an Iran Linked Business are ceased.

3. Hazardous Materials

If any hazardous chemicals are supplied under a contract/purchase order arising out of this solicitation, a Material Safety Data Sheet (MSDS) shall accompany the delivery of any hazardous chemicals supplied by the Contractor. All MSDS sheets shall be sent to the attention of the Participating Entity. Ref: State of Michigan Act 154, Section 14, P.A. 1974 as amended. Copies of MSDS for all purchased hazardous materials must be provided prior to delivery of any items by the Contractor. Additionally, the MSDS needs to be attached to the invoice and all products delivered must be labeled according to Section 14 of Act 154, of the public Acts of 1974, as amended. Any appropriate products not labeled will be refused and the Contractor will be responsible for additional freight charges. Payment may be withheld until the Participating Entity receives the MSDS.

4. Modifications to Contracts

No modifications to a contract/purchase order with a Participating Entity shall be binding upon such Participating Entity unless agreed to in writing signed by an authorized representative of the Participating Entity.

5. Governing Law

Any contract arising out of this solicitation shall be governed by and construed under the laws of the State of Michigan. In the event of any legal action to enforce or interpret any contract arising out of this solicitation, the sole and exclusive venue shall be the state or federal court of the local jurisdiction where the Participating Entities located.

B. **Additional Member Agency Terms and Conditions for:**

1. Non-Construction Products and Services:

All supplies, materials, and equipment sold or leased to Michigan intermediate school districts or K-12 public school districts must be in accordance with MCL 380.623a and 380.1274, respectively. The procurement of supplies, materials and/or equipment in a single transaction costing more than the State of Michigan Competitive Bidding threshold set forth in MCL 380.623a and 380.1274 by an intermediate school districts or K-12 public school districts requires the district to obtain competitive bids and the purchase must be approved by the district's Board of Education.

2. Construction Products and Services:

All Contractors understand and agree that the use of AEPA contracts is not intended for use by Michigan intermediate school districts or public K-12 school districts for construction, renovation or remodeling projects under MCL 380.1267 and agree to

comply with all applicable standards and statutes for said construction projects. Based on MCL 380.1267, labor must be bid. However, intermediate school districts or public K-12 school districts can choose to buy material only from a cooperative purchasing contract. The AEPA cooperative contract has been bid in accordance with Michigan statute. It was advertised as required in the state and a material price book meeting the requirement of providing a discount for the opportunity of responding to a multi-state bid for goods and services with a national scope was submitted at the time of bidding by the vendor and awarded to the lowest responding vendor. To be able to purchase material only for a project, the board of a school district or board of directors of a public-school academy needs to adopt a written policy governing the procurement of supplies, materials, and equipment. Material only fits into the classification of MCL 380.1267 of a cooperative bulk purchasing program.

MCL 380.11a(4) allows for intermediate school districts or public K-12 school districts to enter into agreements or cooperative arrangements with other entities, public or private, or join organizations as part of performing the functions of the school district which allows the Intermediate school districts or public K-12 school districts to utilize the Oakland Schools awarded contract. In addition, under MCL 380.1274 (4), a school district or public school academy is not required to obtain competitive bids for items purchased through the cooperative bulk purchasing program.

A material only purchase is a direct purchase to the manufacturer for materials. This will require the intermediate school districts or public K-12 school districts to issue two purchases orders—one for the labor which will be awarded through a traditional competitive bid process and one for the material.

All other governmental agencies can utilize the Oakland Schools awarded contract for material and labor solutions pursuant to 18.1261.

C. Procedure for Processing Orders:

Once the award is made to a Contractor, OS will inform the Participating Entities and Other Agencies of the award by announcing the award through its general and usual methods of disseminating information.

1. OS follows the AEPA Standard Ordering Process (see Part A, General Terms and Conditions for All Agencies, “Ordering Procedures”).
2. Contractors shall be required to pay a two percent (2%) administrative fee (the “Fee”) based on the total cost of goods or services purchased, including installation and freight, if applicable. In the event of a lease arrangement, the total Fee for the value of goods leased shall be paid to OS by the Contractor at the front end of the lease. Contractor or its designated authorized reseller(s) shall not include any additional amount corresponding to the Fee in the bid responses or awarded prices.

D. Agencies Allowed to Purchase under the Member Agency:

OS serves all local school districts located in Oakland County, Michigan. In addition to, and in accordance with the terms and conditions set forth in this solicitation, all **public school districts, private schools, public school academies, intermediate school districts colleges, universities, counties, cities, townships, villages, and non-profit organization** in the State of Michigan shall be permitted to use AEPA solicitations approved by OS.

It should be clearly understood that OS is assisting these Participating Entities as a service to procure selected supplies, materials and equipment and services desired by the Participating Entity. Both the Contractor and any Participating Entity using this solicitation agree that the OS makes no representation that use of this solicitation by any Participating Entity is, in fact, in compliance with rules, regulations, policy or procedures of the Participating Entity. In this regard, the OS strongly suggests that, at a minimum, the Contractor and any Participating Entity considering such use consult with their own legal counsels before doing so. All Participating Entities using AEPA solicitations shall be responsible for adhering to their own applicable rules, regulations, policies, procedures and state statutes, etc., which may govern the use of cooperative purchasing contracts within their respective jurisdictions.

13. Minnesota, Cooperative Purchasing Connection (CPC)

1. General Terms and Conditions (All Categories)

- a. **Governing Law:** The laws of the State of Minnesota govern all contracts resulting from this solicitation. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
- b. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Otter Tail County, Minnesota. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Otter Tail County, Minnesota.
- c. **Hazardous Substances:** All hazardous products purchased by participating agencies shall include a Safety Data Sheet (SDS) with the delivery.
- d. **Lease and Rental Agreements:** The Vendor may allow participating agencies to enter into a rental, lease, or lease-purchase agreements, providing such agreements comply with Minnesota Statutes and guidelines. CPC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Vendor and the participating agency. The Vendor agrees that leases will comply with the Uniform Commercial Code. The applicable administrative fee must be included in the lease cost based on the total value of the goods and applicable services purchased. This fee is referred to under the Technical Specifications. The Vendor should attempt to work with CPC's current leasing vendor. Should the Vendor be required to utilize their own financial leasing company, this should be noted/requested as an exception. In the event of a lease, the total administrative fee for the value of goods shall be paid to CPC by the vendor at the front end of the lease. CPC reserves the right to review all purchase orders, lease documents and invoices to ensure contract compliance.
- e. **Non-Discrimination:** Any resulting contract for on or behalf of participating agencies, said Vendor agrees to:
 - i. That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, because of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
 - ii. That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
 - iii. That a violation of this section is a misdemeanor; and
 - iv. That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, shall be forfeited for a second or any subsequent violation of the terms or conditions of this contract.
- f. **Participating Agency:** A participating agency shall be defined under Minnesota Statutes M.S. §471.59, and M.S. §123A.21, Sub. 11 and South Dakota Statutes §5-18A-37. An eligible agency includes any school, higher education, city, county, other governmental agency, nonprofit organization, or other entity contracted to conduct business on behalf of a participating agency provided that they are required to follow state and local procurement regulations.
- g. **Prompt Payment:** Participating Agencies will follow M.S. §471.425 regarding prompt payment of local government bills.
- h. **Substance Use and Conduct:** All Vendor partners and subcontractors must adhere to local substance (alcohol, drug, smoking, etc.) and conduct (dress code, language, parking, etc.) policies while on a participating agencies' premises.
- i. **Vendor Orientation (CPC 101):** The Vendor and their participating resellers/sub-contractors will be required to participate in an online training session that is designed to educate the Vendor and resellers/sub-contractors on the purpose and nature of CPC. The Vendor will not be marketed to participating agencies until they have completed the vendor orientation session.

2. Additional Participating Agency Terms and Conditions for Non-Construction Products and Services

If requested by CPC, the contracted vendor will work with CPC to develop an order form, or order forms, containing the most purchased items, that CPC can utilize to market the contracted vendor to its participating agencies.

3. Additional Participating Agency Terms and Conditions for Construction Related Products and Services

Upon acceptance and approval of the Vendor's offer by AEPA, CPC will independently consider the offer and consult with the Vendor to determine if the Vendor can meet the requirements for construction-related products and services and to enter and execute a contract in the state of Minnesota. The contracted vendor will be required to work with CPC's participating agencies and require that an architect's signature or certification is noted on the specifications as required by Minnesota Statute

§326.12 subd. 3. With certain exceptions, **Minnesota Rules part 1800.5200, subpart 1**, requires a licensed architect or engineer to prepare and certify specifications for building alterations or renovations. Once CPC and the Vendor can confirm that business can be conducted in Minnesota, CPC will make a final decision to complete the contract execution process.

For all quotes provided to participating agencies, for construction-related projects, products, and services, the contracted vendor must also send a duplicate quote to CPC. The quote provided to CPC must include the contact information of the participating agency.

Performance Bond (for construction and/or installation related projects): As defined by state statute, performance bonds will be required on all projects valued great than:

1. One hundred seventy-five thousand dollars (\$175,000) or more in Minnesota;
2. One hundred thousand dollars (\$100,000) or more for public improvement in South Dakota; or
3. Otherwise requested by the participating agency.

All performance bonds will be issued by a corporate surety authorized to do business in the state in which the work will be conducted and by a surety listed in the US Treasury Circular 570. Performance bonds will be posted by the Vendor and submitted to the specific participating agency for the assigned project. Should the contract be the result of a piggyback agreement, performance bonds will reflect each state's bonding requirements.

The Vendor will execute a performance bond in an amount equal to one hundred percent (100%) of the value specified in the contract between the participating agency and the Vendor unless the participating agency requires less to be posted. This bond will protect all persons supplying labor and material to the Vendor for the performance of the work provided in the contract. Subcontractors who may work on the contract may have to provide the Vendor with a performance bond. If the contract price increases after the bond is provided, the participating agency may consider obtaining additional bonds from the Vendor.

The Vendor will deliver the performance bond to the eligible participating agency at the time the contract is executed between the agency and the Vendor. Work will not commence between the Vendor and the eligible participating agency until the performance bond is received by the participating agency and a copy has been sent to CPC via email (info@purchasingconnection.org). The Vendor will be responsible for providing CPC with a copy of all contracts and bonds in accordance with CPC purchasing procedures. Should the Vendor fail to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to pay the dollar amount of the bond to the participating agency.

It is the Vendor's responsibility to ensure that they can obtain the required bonding for all construction products based on an awarded contract arising from this solicitation. Payment will not be issued for any project for which the required bonds have not been received.

With said construction-based project, the participating agency may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this solicitation and resulting Master Contract Agreement (i.e. project timeline, completion dates, progress payments, delivery requirements, invoice requirements, etc.). Any supplemental agreement developed because of the Master Agreement is exclusively between the Vendor and the participating agency. CPC, its agents, members, and employees shall not be a party to any claim for breach of such agreement.

4. **Insurance:**

The Vendor shall purchase, maintain, and provide certification from the insurer for minimal coverage during the life of an awarded contract, to include, but not limited to, comprehensive public and/or commercial liability, errors and omissions, workman's compensation, unemployment, and other insurance coverage required by and applicable to each of CPC's individual state's statutes and federal laws which proposed products and services will be offered and provided. The Vendor shall provide a Certificate of Insurance (COI) from the issuing company or their authorized agent, identifying the coverage required below and identifying CPC as a "Certificate Holder". Any required insurance that is canceled before the expiration date of the contract agreement, the issuing company will send immediate notice to CPC. Respondents shall provide a statement of insurance from the issuing company or their authorized agent with their proposal. The Vendor shall meet the following requirements:

- a. Commercial General Liability: \$1,000,000 each occurrence, \$500,000 annual aggregate
- b. Automobile Liability: \$1,000,000 each occurrence
- c. Workers Compensation: \$100,000

CPC reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. The Vendor must provide the COI upon receipt of a signed contract.

5. Procedure for Contract Award, Notification and Processing Orders

Once the award is recommended by the AEPA Review Committee, CPC considers the recommendation based on the value of the potential contract for its participating agencies. In the event of an award by the CPC Board of Directors, CPC will inform its participating agencies of the award.

- a. The contract will be listed on the CPC website (www.purchasingconnection.org).
- b. Announcement of the contract award.
- c. Upon award and completion of the vendor orientation, CPC will promote the contract opportunity to its membership in one or more of the following ways: websites; agency newsletters; hard copy marketing flier; Email announcements; contract catalog; and trade shows.
- d. CPC will require a marketing flyer, brochure, or other similar marketing pieces, in an editable, electronic format, from each vendor promoting the available contract with the vendor, and/or a web page or link. CPC may assist in the development of the marketing flier and material (if requested by the vendor), but in all cases shall have the authority to review and approve any marketing materials. If a web site is used, the link will be made available from the CPC web page. Any web page or link, or other marketing tools shall be dedicated to CPC and/or AEPA information only.
- e. When a participating agency identifies a desired product or service, the agency and the Vendor may negotiate with each other to establish a description of items and/or services. The Vendor shall quote a price to the member, using AEPA established discounts including the two percent (2%) administrative fee in the quoted price not as a separate line item. The administrative fee shall be based upon the total cost of goods and/or services including installation costs.
- f. Ordering Methods.
 - i. All orders will be executed by participating agencies, directly, with the Vendor. The Vendor may offer a variety of options for agencies to place orders. The Vendor will make all deliveries and installation of products and services. CPC will not warehouse items or provide services.
 - ii. Participating agencies may use two (2) different methods of placing orders from the resulting contract: Purchase Orders (PO's) and procurement cards. The method of payment is at the discretion of the participating agency. Additional surcharges for the use of a procurement card must be clearly outlined (see Vendor Questionnaire).
 - iii. A PO may be issued to the Vendor on behalf of the participating agency ordering the services covered under the resulting contract. An issued PO will become part of the resulting contract. The PO indicated that sufficient funds have been obligated toward the purchase.
 - iv. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
 - v. Performance under this contract is not to begin until receipt of a PO, procurement card order, or other notification to proceed by the participating agencies to proceed.
- g. CPC requires that all participating vendors offer the contract opportunity to all CPC participating agencies.

6. Administrative Fees & Reporting

The administrative fee is to be paid by the Vendor to CPC, quarterly, within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to CPC a sales report, in Excel format, listing the following information:

- a. Name of purchasing agency
- b. Address of purchasing agency (city, state, zip code)
- c. Date of purchase
- d. Invoice number
- e. Amount of purchase
- f. Administrative fee generated by sale
- g. Savings generated by sale

This report shall include all sales made and payments received by the vendor in said quarter. The sales report shall be emailed to Melissa Mattson at mmattson@lcsc.org and copied to Lori Mittelstadt at lmittelstadt@lcsc.org. Payments must be received either via check or authorized ACH. An ACH enrollment/authorization form must be provided to CPC for completion. ACH remittance notification must be sent to the individual indicated on the ACH enrollment/authorization form prior to ACH payment. If mailing a check, the payment shall be delivered to Melissa Mattson, CPC, 1001 East Mt. Faith, Fergus Falls, MN 56537. The check shall be made out to Lakes Country Service Cooperative.

7. Express Online Marketplace

CPC provides participating agencies with an online purchasing platform called Express. Through Express, agencies can search for and purchase items. Essentially, Express is a one-stop-shop for many of CPC's commodity-based contracts. The Vendor does not have to have an e-commerce site to be included in Express. Express offers integration into two (2) of the main K-12 school financial systems in Minnesota. CPC expects growth in the number of agencies utilizing the

marketplace and the volume of sales to grow significantly. CPC will work with the Vendor to determine if the contract agreement is suitable for the online platform. If deemed suitable, CPC will require integration into Express promptly as outlined in the solicitation.

14. **Missouri, EducationPlus (EDPLUS) [Formerly Cooperating School Districts of the Greater St. Louis Area (CSD)]**

A. Additional Agency Terms and Conditions

Lease and Rentals: Vendor may allow EDPLUS customers to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with Missouri statutes and Missouri Department of Elementary and Secondary Education policies, rules and regulations. EDPLUS must receive a copy of the executed leasing documents prior to processing a purchase order. EDPLUS will not collect lease payments. Bidder agrees that leases will be in compliance with the Uniform Commercial Code. All terms of leasing must be included in the proposal, with interest rates described as related to a government standard. Bidder must indicate in its response to this solicitation if the shipping costs for the return of leased or rented equipment are the responsibility of the EDPLUS customer, and what that cost will be. No sale of a contract to a third party will be made without first informing EDPLUS and the EDPLUS customer of the sale. If Bidder sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original vendor. A 2% administrative fee must be included in the lease cost based on the total value of the goods purchased. This fee is referred to under ordering process.

B. Procedure for Processing Orders

(1.) Once the award is made to the vendor, EDPLUS will inform its members and other potential customers of the contract by announcing the award on its website by including the award in presentation comments and in other communications.

(2.) EDPLUS may require marketing materials from each vendor promoting the contract and AEPA relationship. EDPLUS will assist in the development of the marketing materials, if requested. Materials will be for distribution as well as posting on the EDPLUS website and disseminated to potential customers. Note: EDPLUS requires the awarded vendor to take ownership and actively promote the contract in cooperation with EDPLUS to all qualified customers.

(3.) When the customer identifies a desired product or service as available through the AEPA contract and makes a purchase on the EDPLUS online Marketplace or agrees on price as presented to the customer by the awarded AEPA vendor, the member then issues to the vendor a purchase order for that item or service.

(4.) The purchase order must include an additional two percent (2%) administrative fee in the total cost, based on the total cost of goods and service including installation and freight if applicable. This fee is to be forwarded by the vendor to EDPLUS after the sale and payment is made to vendor. Payment shall be made to EDPLUS on a quarterly basis along with complete sales history during that period.

(5.) Vendor makes all deliveries and installations of products and services. EDPLUS does not warehouse items nor provide services.

(6.) All participating vendors agree to and are subject to audit proceedings of AEPA member sales.

C. Customers Purchasing Under the Agency

We take great pride in the fact that EDPLUS is providing a complete line of purchasing services to our 50+ member school districts and hundreds of additional school districts, educational institutions, and nonprofit organizations. EDPLUS was created in 1928 with its primary focus aimed at improving educational opportunities for all students. Our goal is to promote efficient use of educational dollars, and simultaneously provide an ongoing market for those vendors doing business with EDPLUS. EDPLUS

D. Governing Law

MO. REV. STAT. §70.220. 1. Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision.

E. Prohibition Against Boycotting Israel

Vendors signing a contract with EDPLUS will be required to sign a certification stating that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, pursuant to Revised Statutes of Missouri (RSMo) 34.600, known as the "Anti-Discrimination Against Israel Act."

15. Montana, Montana Cooperative Services (MCS)

1. General Standards: Purchases by public entities in excess of \$80,000 are subject to public bid; purchases under this amount are subject to requirements of public contracts. See Sections 7-5-230 I and 7-5-2304, Montana Code Annotated (Counties); Sections 7-5-4302 and 7-5-4303, Montana Code Annotated (Municipalities).

Note: purchases of less than \$80,000 are not subject to public bid requirements, which provides local government entities with considerable flexibility to make purchases. Public bidding requirements do not appear to prohibit local government entities who are members of AEPA or MCS from soliciting bids from approved vendors for purchases in excess of \$80,000.

2. Local Government Cooperative Purchasing Authority: Local governments may also elect to purchase cooperatively through the Montana Department of Administration in lieu of soliciting their own bids. 51 A.G. Op. 15 (2006). Procurement by government entities generally falls within the Montana Procurement Act, Section 18-4-10 I, MCA, et seq.

A. Local Governments are authorized to adopt and implement the rules and standards of the Act:

18-4-124. Local government adoption of procurement provisions -- alternative project delivery contracts. (1) A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

B. Local governmental entities and school districts are specifically authorized to purchase cooperatively in the public interest:

18-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States, or a tribal procurement unit.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

(5) "Tribal procurement unit" means a tribal government, tribal entity, or official of a tribal government located in Montana that expends tribal funds or funds administered by a tribe for the procurement of supplies and services to the extent provided by tribal or federal law.

18-4-402. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units, open-ended state public procurement unit contracts that are made available to local public procurement units, and competitive contracts established by for-profit, not-for-profit, or nonprofit cooperative entities. (emphasis added).

Note: Cooperative purchasing by local governmental entities may require reentering into an agreement with the Montana Department of Administration. This requirement does not appear to preclude local entities from participating as members of purchasing groups.

C. Local governmental entities are authorized to enter agreements with each other in order to purchase cooperatively. 7-11-104. Authorization to create interlocal agreements -- issuance of bonds for joint construction -- hiring of

teacher, specialist, or superintendent. One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-401, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties. (emphasis added).

3. School and school district cooperative purchasing authority: Schools and school districts are specifically authorized to purchase cooperatively utilizing qualifying purchasing entities:

"A [school] district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of [soliciting public bids and awarding a contract] if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list." Section 20-9-204(4), Montana Code Annotated (emphasis added).

Note: Montana's AEPA member, Montana Cooperative Services, meets all of the statutory requirements of Section 20-9-204(4), MCA, with respect to cooperative purchasing groups.

The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to MCS on a quarterly basis.

Cooperative purchasing is another tool in the bag for local governmental entities, including school districts, to acquire services and supplies at better prices than may otherwise be available. Membership in MCS provides access to AEPA-approved vendors as well as in-state suppliers who have been carefully vetted for reliability and quality.

Disclaimer: The above discussion is for informational purposes only and does not constitute legal advice.

16. North Carolina, Carolinas Alliance 4 Innovation (CA4I) dba Carolina BUY

1) General Overview

- a. Carolinas Alliance 4 Innovation (CA4I) became the AEPA representative for the state of South Carolina in 2020 and for the state of North Carolina in 2024.
- b. CA4I is a 501.c.6 non-profit public benefit corporation whose mission is to promote innovative solutions for saving money, time, and hassles in education and government for the purpose of community and economic development.
- c. CA4I does business as "Carolina BUY".

2) Eligible Entities

- a. CA4I is able to serve all AEPA eligible members, including City, County, and State Government Agencies and Special Purpose Districts; K-12 Public and Private Schools; Colleges and Universities; Public Libraries; and Non-Profit Organizations.

3) General Terms and Conditions that apply for all categories

a. Governing Law: The laws of the State of North Carolina govern all contracts resulting from this solicitation. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.

b. Governing Venue: The resulting contract award shall be deemed to have been made and performed in Catawba County, North Carolina. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Catawba County, North Carolina.

c. Hazardous Substances: All hazardous products purchased by members shall include a Safety Data Sheet (SDS) with the delivery.

d. Award: Upon acceptance and approval of the Vendor's offer by AEPA, CA4I will independently consider the recommendation based on the value of the potential contract for its participating agencies and the Vendor commitment to emphasize AEPA established discounts and Carolina BUY local advocacy in making sales proposals. In the event of a Vendor award, CA4I will inform its members of the award and contract by posting information on its website, in newsletters, and announcements to affinity partners along with contract instructions and ordering process.

e. Processing Orders: When an eligible educational, governmental or nonprofit member identifies a desired product or service, the member and the vendor may negotiate with each other to establish a description of items and/or services. The vendor shall quote a price to the member, in writing, using AEPA established discounts and including the two percent (2%) administrative fee or payment in the quoted price. The administrative fee shall be based upon the total cost of goods and/or services including installation costs. The administrative fee shall not be listed as a separate line item on the quote. When a member decides to purchase through the CA4I-AEPA contract, the member issues the purchase order directly to the vendor. The purchase order must include the total invoiced cost, based on

i. The total cost of goods, service, and installation, including the AEPA established discounts and a 2% administrative fee.

ii. Notification will be made to the vendor in the event the purchase order is not in compliance with the contract and adjustments will be made at that time. CA4I and the Vendor will mutually resolve any issues concerning past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by CA4I otherwise. All sales and transactions may continue without delay or in anticipation of the CPC purchase order verification.

iii. Once all the items and services on the purchase order have been delivered to the member completely and satisfactorily, the Vendor then files a copy of the final invoice, which is available to CA4I by request in support of the quarterly sales summary.

iv. The Vendor makes all deliveries and installations of products and services. CA4I does not warehouse items or provide installation services.

v. This administrative fee is to be paid by the vendor to CA4I, quarterly within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to CA4I a sales report, in Excel format, listing the following information:

1. Name of purchasing agency
2. Address of purchasing agency (city, state, zip code)
3. Date of purchase
4. Invoice number
5. Amount of purchase

6. Administrative fee generated by sale
7. Savings generated by sale

This report shall include all sales made and payments received by the vendor in the said quarter.

The sales report shall be emailed to Fred Payne, fred.payne@ca4i.org, to OpaPyle1946@gmail.com, and to Operations@carolinabuy.com.

17. Nebraska, Educational Service Unit Coordinating Council (ESUCC)

A. Additional Agency Terms and Conditions

1) Bid Award Determination: The bidder hereby agrees to these bidding conditions by virtue of submitting this signed document on or before the Bid Opening date as specified below.

2) Natural Gas Contractors: Any bids relating to natural gas shall be based upon an awareness of NEB. REV. STAT. § 75-501, adopted in conformity with Rules, Regulations, and Interpretations of Federal Agencies with authority to regulate pipeline common carriers and interstate commerce.

3) Performance and Payment Bonds: Upon execution of a contract between an ESUCC member and the prime contractor for construction or public improvement, performance and payment bonds described above in the AEPA General Terms and Condition shall be provided to the member. Performance and payment bonds between the member and the prime contractor shall be on standard forms. The prime contractor shall deliver copies of both the performance and payment bonds to ESUCC at the time the contract between the member and the prime contractor is executed. All suits for nonpayment or nonperformance shall be filed as allowed under Nebraska law.

4) Insurance: Contractors shall secure and keep in force during the term of any awarded agreement the following insurance coverages from insurance companies authorized to do business in Nebraska:

- Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person for any number of claims arising out of a single occurrence and \$5,000,000 for all claims arising out of a single occurrence.
- Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$1,000,000 per person for any number of claims arising out of a single occurrence and \$5,000,000 for all claims arising out of a single occurrence.
- Workers compensation coverage meeting all Nebraska statutory requirements.

5) Debarment and Suspension: Contractors shall comply with Executive Orders 12549 and 12689 as applicable. Contractors may be debarred for a period of two (2) years, unless earlier modified by the Special Awards Committee of ESUCC for any of the following conduct: (a.) Repeatedly not following the bid process. (b.) Repeatedly submitting non-responsive bids. (c.) Any behavior, which has as its effect injuring the integrity of the bid process. (d.) Failure to deliver goods pursuant to a successful bid. (e.) Repeated lack of acceptable handling and delivery of goods pursuant to a successful bid. (f.) Repeatedly not meeting delivery deadlines. (g.) Repeated failure to timely rectify damages of goods, or shortages of goods when it is the responsibility of the contractor to take such action. (h.) Conviction of a crime of dishonesty. (i.) Debarment or suspension by any agency or

Federal Agency by the contractor or any of its key employees. (j.) Other conducts which materially and adversely affects the services of ESUCC Cooperative Purchasing program.

6) Statement Filed: A bidder who is awarded a contract for any goods or services for public works pursuant to this IFB shall file with ESUCC a statement as required by NEB. REV. STAT. § 73-102.

7) Nondiscrimination: The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of any awarded bid or agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, national origin, or other protected status.

8) Employment Eligibility Verification: Consistent with NEB. REV. STAT. § 4-108, the Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with any awarded bid or agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

9) Federal Funding. It is understood that purchases may be funded in whole or in part with funds allocated by the Federal government, including the U.S. Department of Education and/or the Office of Elementary and Secondary Education and is therefore subject to those regulations, restrictions, and conditions normally associated with federally funded programs and any other requirements that the state or federal government may prescribe including, but not necessarily limited to, the following:

- **Equal Employment Opportunity:** (All Contracts) The parties shall comply with the Equal Employment Opportunity Clause required under Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- **Copeland "Anti-Kickback" Act:** The parties shall comply with the Copeland "Anti-Kick Back" Act (40 U.S.C. 3145), as supplemented in Department of Labor regulations (29 CFR 3).
- **Davis-Bacon Act:** (Contracts that exceed \$2,000) The parties shall comply with 40 U.S.C. 3141-3148, the Davis-Bacon Act, as supplemented by Department of Labor Regulations 29 CFR 5. This Act provides that contractors and their subcontractors are to pay workers (laborers and mechanics) employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character as determined by the Secretary of Labor. In addition, contractors must be required to pay wages

not less than once a week.

- **Contract Work Hours and Safety Standards Act:** (Contracts that exceed \$100,000) The parties agree to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).
- **Reporting Notice:** The USDOE's and any other federal agency's requirements and regulations pertaining to reporting include, but are not necessarily limited to, 34 CFR Part 80.
- **Patent Rights:** The USDOE's and any other federal agency's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Agreement include, but are not necessarily limited to, 34 CFR Part 80.
- **Copyrights and Right in Data:** The USDOE's and any other federal agency's requirements and regulations pertaining to copyrights and rights in data include, but are not necessarily limited to, 34 CFR Part 80.
- **Access to Documents:** The Owner and its grantees and subgrantees, the USDOE and/or other federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
- **Record Retention:** The parties shall retain all required records for at least 3 years after the Owner makes final payments and all other pending matters are closed.
- **Clean Air and Federal Water Pollution Control Acts:** (Contracts that exceed \$150,000) The parties shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- **Energy Policy and Conservation Act:** The parties shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- **Work Hours:** The parties agree to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) which requires each contractor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- **Debarment and Suspension:** (All Contracts) The parties agree and understand that under Executive Orders 12549 and 12689 that a contract award (see 2 CFR 180.220) must not be made to any party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM).
- **Lobbying:** The parties agree and understand that under the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) that contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
- **Termination for Cause and Convenience:** (Contracts that exceed \$10,000) Termination for cause and convenience are governed by the Agreement. To the extent not addressed by the Agreement, the Agreement may not be terminated for convenience and may be terminated for any cause allowed by law.
- **Solid Waste Disposal Act:** The parties agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- **Remedies:** Contracts for more than the simplified acquisition threshold (currently set at \$150,000 but is subject to inflation adjustment) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- **Energy Policy and Conservation Act:** (All Contracts) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- **Domestic Preference for Procurements.** As appropriate and to the extent consistent with law, Owner should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

11) **Governing Law and Venue:** All bids and contracts shall be governed by and construed in accordance with the laws of

the State of Nebraska. The venue for any litigation arising out of or related to a bid or contract will be in any eligible state or federal court of Nebraska.

12) Public Records: The Contractor acknowledges that the ESUCC and its affiliated schools and members must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include any bid documents or contracts and all records created and maintained in relation to them. The ESUCC does not and will not agree that any bidder or contractor will be notified of any public record request submitted to the ESUCC or its Members.

13) Conflict of Interest: By submitting a proposal, Contractor certifies that there does not now exist any relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal. The Bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest. The Bidder certifies that it will not employ any individual known by Bidder to have a conflict of interest.

The Contractor shall not, at any time, recruit or employ any employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

The submission of the offer did not involve collusion or other anti-competitive practices. Neither signatory nor any person on his behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the matter of the bidding or award of a contract under this solicitation.

The Contractor, by submitting a bid, certifies that it has not had a contract with education organizations in State of Nebraska terminated early. If Contractor has had a contract terminated early within the State of Nebraska, Contractor must provide the contract number, along with an explanation of why the contract was terminated early.

Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

Contractor certifies that Contractor and Contractor's employees, officers, and associates directly involved in obtaining contracts with the State of Nebraska, ESUCC, or any subdivision of the state have not been convicted of false pretenses, attempted false pretenses, or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985

ESUCC may cancel any contract if it is found that gratuities in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any employee of ESUCC with a view toward securing a contract or with respect to the performance of this contract. Paying the expenses of normal business meals, which are generally made available to all eligible school and government employees, shall not be prohibited by this paragraph. Samples of software, equipment or hardware provided to ESUCC for demonstration or evaluation are not considered gratuities.

14) Exclusion of Persons with Criminal Record. ESUCC requires and Contractor agrees not to assign any individual or agent to perform any work under this contract on ESUCC property, any ESUCC Member's property, or a Nebraska school district's property with a criminal conviction of a serious nature as determined by ESUCC, including but not limited to any of the following convictions: (a) a felony; (b) rape, including statutory rape, or any other sexual assault; (c) sexual conduct with a minor of any kind; (d) abuse of a minor or child of any kind; (e) endangerment of a child or debauching a minor; (f) public indecency; (g) prostitution, pandering, or keeping a place of prostitution; (h) assault or battery (i) kidnapping, false imprisonment or abduction; (j) child pornography; or (k) any offense in which a minor was a victim or a witness. Contractor authorizes and gives consent, and agrees to cooperate in obtaining any additional authorization or consent necessary to assure compliance with this requirement; to actively continue and implement this policy throughout the contract period and to require implementation of this policy by any subcontractors and/or agents involved by contractor in the performance of the contract.

15) Scrutinized Company. Pursuant to federal and state law, the Company hereby certifies that: (1) the Company is not a "scrutinized company" (as defined by state and federal law); (2) the Company will not subcontract with any "scrutinized company" for any aspect of the performance of this Agreement; and (3) that any products or services to be provided under this Agreement do not originate with any "scrutinized company."

B. Procedure for Processing Orders

ESUCC affiliated schools or members send their purchase orders both directly and electronically to the vendor, the vendor ships directly to the school/member, and direct bills the schools/members the cost of merchandise plus the ESUCC 2% administrative fee. Vendors must provide a quarterly report to ESUCC Cooperative Purchasing. The report will include: Date of sales, school name, ESU affiliation, selling price, list price and savings. The ESUCC Cooperative Purchasing administrative Fee of 2% will accompany each quarterly report.

C. Members Purchasing Under the Agency

ESUCC represents 17 Educational Service Units statewide who in turn service Nebraska school districts with over 300,000 students. ESUCC is authorized to coordinate purchases for public school districts, nonpublic school systems, other ESUs, and other public agencies, including any county, city, village, school district, or agency of the state government, any drainage district, sanitary and improvement district, or other Municipal Corporation or political subdivision of the State of Nebraska.

D. Procedure for Processing Orders

All purchase orders will be submitted directly from the purchasing entity to the vendor. ESUCC will not facilitate the processing of purchase orders unless the offering is service related. If it is a service related purchase then the purchase order shall be submitted by ESUCC.

E. Agencies Allowed to Purchase under the Member Agency

Purchases through ESUCC contracts are to be primarily for K-12. However other state entities may use the ESUCC contracts. All inquiries to purchase on the behalf of a non-profit group not in state statute or receiving state funding must be approved by ESUCC.

18. New Jersey, Educational Services Commission of New Jersey (ESCNJ)

Applicability of Contract Provisions to New Jersey Participants

ESCNJ is the AEPA Member Agency. Any entity that uses the contract awarded by ESCNJ under this document is referred to as a "New Jersey Participant." To be a New Jersey Participant the entity must be a member of the ESCNJ Cooperative Pricing System. The bidder that is awarded the contract by ESCNJ is referred to as the "Contractor."

Once a contract is awarded by ESCNJ, a New Jersey Participant may enter into a purchase order agreement directly with the Contractor. To the extent not otherwise described below or in this document, once a purchase order is issued by a New Jersey Participant to a Contractor, all of the provisions of the contract shall benefit and be enforceable by such New Jersey Participant, unless specifically identified as applying to ESCNJ only.

1. The Bidder by submitting its bid hereby declares that this Bid is made without any connection with any other person or person making any proposal for the same items, that it is in all respects fair and without collusion or fraud and that no person acting for or employed by ESCNJ or a New Jersey Participant is directly or indirectly interested in the proposal or in the goods or services to which it relates, or in any portion of the profits there from.

2. Event of default and termination of Contract:

ESCNJ shall have the right to cancel the contract based upon a default by Contractor. A New Jersey Participant shall have the right to cancel its purchase arrangement based on a default by the Contractor with regard to such purchase arrangement. In addition, ESCNJ and each New Jersey Participant reserves the right to withhold payments for goods and services that are not in compliance with the terms of the contract or if the Contractor is in default. Any of the following shall be a default under the contract: 1) The Contractor fails to adequately perform the services set forth in the contract; 2) Contractor fails to deliver all or any part of the goods, or delivers defective goods; 3) The Contractor fails to make progress in the performance of the contract and/or does not deliver within the agreed-upon schedules; 4) The Contractor fails to observe any of the terms and conditions of the contract, including, without limitation, assigning the contract and/or failing to deliver required insurance or performance bonds; 5) The Contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the New Jersey Participant; or 6) the Contractor has become insolvent, makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy or is subject to an involuntary petition in bankruptcy not discharged within thirty (30) days. ESCNJ and each New Jersey Participant shall follow the following procedure if the contract or purchase order is to be terminated:

Step 1 - Issue a warning letter of concern outlining the violations and length of time to correct the problem(s). The length of time to correct the problem shall be determined by ESCNJ or the New Jersey Participant, as applicable, in its sole discretion, based on the problem.

Step 2 - Issue a letter of intent to cancel the contract or purchase order, if the problem(s) is not resolved by the given date.

Step 3 - Issue the letter to cancel contract or purchase order.

Upon receipt of the written notice of concern, the Contractor shall have ten (10) business days to provide a satisfactory response to ESCNJ and the New Jersey Participant that provided the notices. Failure on the part of the Contractor to address adequately all issues or concerns may result in contract cancellation.

The remedy to terminate and withhold payments is in addition to any other remedies ESCNJ and the New Jersey Participants may have. In the event of Contract termination by a New Jersey Participant, such New Jersey Participant's payment obligation shall cease as of the final date on which services in accordance with this Contract are last performed by the Contractor. Upon termination of this Contract under this section, the Contractor (and its surety) will be responsible for all of such New Jersey Participant's expenses, losses and damages incurred in replacing Contractor for the remainder of the term of the Contract.

3. Assignment:

Contractor shall not subcontract, assign, transfer, convey, sublet or otherwise dispose of its/his/her contractual duties to any other person, firm, or corporation, without the previous written consent of ESCNJ and any New Jersey Participant that has an outstanding open purchase order or financing arrangement. If the Contractor wants to assign its/his/her right to payment of the Contract, Contractor shall notify ESCNJ and any New Jersey Participant that has an outstanding open purchase order or financing arrangement immediately, in writing, of such assignment of right to payment. In no case shall such assignment of Contract relieve the Contractor from its/his/her obligations or change the terms of the Contract.

4. Indemnification:

Contractor shall indemnify, defend, keep and save harmless ESCNJ, each New Jersey Participant and its respective agents, officials, employees and volunteers (each an "Indemnified Party") against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses (including attorneys' fees) which result from, arise out of, or in connection with the performance, or breach of performance, under the Contract of Contractor and any of its/his/her employees, agents or personnel. The Contractor shall, at its/his/her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the Indemnified Party in any such action, the Contractor shall, at its/his/her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Party as herein provided.

5. **New Jersey Participant Policies:**

The Contractor must be familiar with a New Jersey Participant's policies or regulations which affect the services provided under this Contract and that have been or will be distributed during the term of this Contract. Policies and regulations include, but are not limited to, New Jersey Public Contracts Law, school district policies, municipality policies, charters school policies, and county ordinances.

As each board of education, municipality governmental agency, educational institution in the State of New Jersey may have or may be required to have individual policies and procedures for the procurement of goods and services; and as one of the aforementioned institutions/agencies may be dependent upon the policies/procedures of another institution or agency, it is required for the Contractor to be familiar with the policies of the New Jersey Participant that impact the purchase. In limited situations, there may be State statutes which govern the allowability of purchases to be reimbursed by State funding. The New Jersey Participant should obtain its own legal advice on these statutes prior to purchasing under a contract.

The following documentation will be required prior to the award of any contract for New Jersey Participants:

1. New Jersey Business Registration Certificate - Before award in NJ not at time of bid
2. New Jersey Contractors Registration Certificate (All time and material bids.) Before award in NJ not at time of bid
3. New Jersey Pay-to-Play Documentation (Political Contribution Disclosure)
4. Statement of Ownership (Ownership Declaration Certification)
5. New Jersey Mandatory Equal Employment Opportunity Language (Exhibit A)
6. New Jersey Mandatory Equal Employment Opportunity Language Construction Contracts (Exhibit B)- (All time and material bids.)
7. New Jersey Certificate of Authority (All time and material bids.)
8. Certification of Non-Debarment for Federal Government Contracts (All time and material bids.)
9. Equipment Certification Form (All time and material bids.)
10. Acknowledgement of the Contractor's/Vendor's responsibility to pay prevailing wage.
http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html
(Time and material bids.)
11. New Jersey Affirmative Action Questionnaire/Documentation (Certificate of Employee Information Report)
12. Prohibited Russia-Belarus Activities & Iran Investment Activities Form - Before award in NJ not at time of bid
13. Years of experience is not a criterion for the evaluation of bids to be awarded for the State of New Jersey. For additional information visit www.nj.gov/dca/divisions/dlgs
14. W9
15. Certificate of Insurance with the ESCNJ named as insured and the bid title/# listed - Before award in NJ, not at time of bid
16. DPMC Notice of Classification- (All time and material bids.)
17. Total Amount of Uncompleted Contracts (All time and material bids.)
18. Americans with Disabilities Act of 1990
19. Statement of Suspension or Debarment Form
20. Sworn Contractor Certification; Qualifications Credentials (All time and material bids.)
21. Subcontractor Disclosure Statement (All time and material bids.)
22. Prevailing Wages Certification—Submission with Bid (All time and material bids.)
23. Pre-Qualification Affidavit/No Material Adverse Change (All time and material bids.)
24. Certificate of Authority (All time and material bids.)
25. Assurance of Compliance
26. Contractors licenses (All time and material bids.)
27. New Jersey School Development Authority (All time and material bids.)

6. **Performance Bonds:**

Each New Jersey Participant may require a performance bond in the case of services to be performed under the Contract if required. The Contractor shall furnish to the New Jersey Participant a Surety Performance Bond ("Performance Bond") with an option to renew each succeeding year of the Contract in a form satisfactory to the New Jersey Participant assuring the faithful performance of the Contract. The Bond shall be equal to one hundred percent (100%) of each year's estimated Contract price as reviewed and agreed upon by the New Jersey Participant and shall be continued for the life of the Contract in amounts equal to one hundred percent (100%) of each year's estimated Contract price as reviewed and agreed upon by the New Jersey Participant. The Contractor must send such Performance Bond to the New Jersey Participant prior to the commencement of any services under the Contract. Each such Performance Bond shall be furnished by a surety company acceptable to the New Jersey Participant and licensed or authorized to do business in New Jersey. Failure to deliver the bond shall be considered a default under the Contract, at the discretion of and upon notice by the New Jersey Participant.

7. **Governing Law:**

This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey without regard to its conflicts of laws principles.

8. Financing Arrangements:

Any financing arrangements (including lease purchasing arrangements) may be made directly between the Contractor and a New Jersey Participant or with the free ESCNJ Leasing Program. Financing arrangements may be subject to additional laws, rules and regulations, terms and conditions not described in this document and are subject to separate negotiation with each New Jersey Participant that is interested in such an arrangement. Each New Jersey Participant should seek its own legal advice prior to entering into a financing arrangement. ESCNJ must receive a report annually summarizing the executed lease purchases along with the summary of the customer purchases. ESCNJ will not collect lease payments or be involved in the terms and conditions of the Contractor lease. All lease arrangements are between the Contractor and the New Jersey Participant only.

9. Affirmative Action:

The Contractor/Vendor must have an employment policy that there shall be no discrimination against anyone on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, physical disability or sexual orientation in the hiring, upgrading, demotions, recruitment, termination and selections for training, in any manner prohibited by the laws of the United States or of the State of New Jersey. The Contractor/Vendor further agrees to be an "affirmative action-equal opportunity employer." The Contractor/Vendor must provide one of the following: "Letter of Federal Affirmative Action Plan Approval", "Certificate of Employee Information Report" or a completed "Employee Information Report Form AA302" prior to award of bid.

10. Independent Contractor:

The Contractor shall not be held or deemed in any way to be the agent or employee of ESCNJ and/or a New Jersey Participant. It is the intention of the parties that the Contractor shall be and is to be considered an independent contractor.

11. Incorporation of Bid Documents:

The bid documents, including all appendices executed by Contractor that have been accepted by ESCNJ (the "Bid") are specifically incorporated into this Contract.

12. New Jersey Public Records Act:

The Contractor acknowledges that ESCNJ and New Jersey Participants are subject to the New Jersey Public Records Act, New Jersey Public Contracts Law and information submitted to ESCNJ and/or such New Jersey Participants may be made available to the public under the provisions of this Act.

Marketing and Advertising under this Contract - applicable to Member Agency (ESCNJ) contract only:

1. Contractor agrees to provide ESCNJ with a copy or proof sheet of all advertisements, customer communications or promotional material for approval. Contractor will provide ESCNJ with date of release and name of publication, journal, etc. if applicable.
2. Contractor will include the approved ESCNJ logo, web address, bid #, bid title, bid term, NJ State Approved Co-op #65MCESCCPS and contact information in all print, electronic mail and other advertising and promotion intended for release in New Jersey.
3. The ESCNJ logo and information shall be of a clearly readable size and in appropriate proportion to other elements in the print material.
4. Contractor agrees to make available ESCNJ supplied brochures or other promotional materials on booths, tables, etc. of any or all exhibits for which the Contractor displays/participates at tradeshow, conventions and the like. Contractor will supply scheduled exhibit dates in advance.
5. Contractor agrees to insert the approved ESCNJ logo, web address, NJ State Approved Co-op #65MCESCCPS bid #, bid term and contact information on the Contractor's website promoting and providing a link to the ESCNJ website. Contractor will also provide ESCNJ with text, links and logos to be posted on the ESCNJ website.

B. Procedures for Processing Orders

1. Once the award is made to the Contractor, ESCNJ will inform the potential New Jersey Participants of the Contract, including a webpage dedicated to the contract on the ESCNJ website. At this point, the Contractor may directly contact any potential New Jersey Participant and any potential New Jersey Participant may directly contact the Contractor.
2. Purchase orders will not be accepted or processed by ESCNJ. All business will be contracted directly with the New Jersey Participant, which will issue a purchase order and provide payment for the applicable good or service directly to the Contractor.
3. The total cost of ESCNJ's program is funded through a 2.0% participation fee paid to ESCNJ quarterly by the participating Contractors. The administrative fee percentage is based upon the total sale or lease of goods and services, including installation, if included. This fee shall be included in all price quotations to New Jersey Participants and shall not be printed as a line item on the quotation.
4. Along with the participation fee, the Contractor will produce and provide to ESCNJ quarterly reports ending March 31, June 30, September 30 and December 31 throughout the contract period. The reports shall be in Microsoft Excel and be available in electronic form, shall identify the Contractor and the quarter being reported, shall be delivered to ESCNJ on the 15th of the month, shall include a minimum of the fields listed below and shall allow for sorting on any of these fields:
 1. Date of order.
 2. The name of the New Jersey Participant.

3. ESCNJ Bid Number
 4. ESCNJ Co-op Number (New Jersey State Approved Cooperative Pricing System #65MCESCCPS)
 5. List (or academic) price sales totals.
 6. New Jersey Participant price sales totals.
 7. New Jersey Participant savings totals to be sent to the ESCNJ in summary and to each individual New Jersey Participant.
5. Quarterly reports and administrative fee payments are to be made payable to ESCNJ and sent to ESCNJ, 1660 Stelton Road, Piscataway, NJ 08854, Attn: Bookkeeper, or such other address that ESCNJ will provide from time to time.
 6. If no purchases are made in any given quarter, the Contractor shall remit a "No Activities" statement to ESCNJ for that quarter. The Contractor will also produce and provide to ESCNJ an annual summary report for all purchases made under each contract awarded by ESCNJ pursuant to this document for a period beginning with the award of the contract and ending December 31 and all consecutive annual periods, if the contract is extended.
 7. New Jersey School Districts and other eligible New Jersey Participants are normally exempt from sales tax. The Contractor/Vendor should confirm this exemption and collect a tax-exempt letter from each New Jersey Participant.

C. Members Purchasing Under the Agency

There are 686 operating school districts in New Jersey and all are eligible for membership. No district is obligated to use these services. Additional New Jersey Participants may include other public educational institutions, public colleges or universities, community colleges, vocational or technical schools, municipal governments, and other governmental, quasi-governmental, or non-profit organizations. The ESCNJ Cooperative Pricing System currently has 1,400+ New Jersey Participants located in all 21 Counties of the State of New Jersey.

CONFLICT OF INTEREST

An ESCNJ employee (including independent contractors for purposes of this definition) placing an order or recommending a vendor must disclose any relationship with that vendor which would not be considered an "arms-length" or independent transaction. This disclosure must be made in writing to the Business Administrator and/or Chief Financial Officer for an evaluation. The Business Administrator and/or the Chief Financial Officer will respond to this disclosure in writing.

For a transaction to be considered "arms-length" or "independent", an ESCNJ employee should not be influenced, dependent upon, guided or controlled by a vendor into choosing that vendor, or item to purchase; nor should it appear to a third party that an ESCNJ employee made a purchasing decision which appears to be based upon a personal relationship between the ESCNJ employee and vendor.

The following are examples when a transaction is NOT considered arms-length or independent: (1) when there exists a personal relationship between an ESCNJ employee and a vendor, (2) when there exists the potential for a personal benefit to an ESCNJ employee, or (3) the parties to a business deal are dependent upon one another for "something" other than the purchase itself.

The Contractor shall disclose any relationship with an ESCNJ employee that would not be considered an "arms-length" or independent transaction, as described above. This disclosure must be made in writing to the Business Administrator and/or the Chief Financial Officer for an evaluation. The Business Administrator and/or the Chief Financial Officer will respond to this disclosure in writing.

In addition, the Contractor shall, if given a copy of the potential New Jersey Participant's conflict of interest policy, follow the process in that policy, or otherwise disclose to a potential New Jersey Participant any relationship that would not be considered an "arms-length" or independent transaction with that New Jersey Participant, as described above. This disclosure must be made in writing to the chief official (for example, the Superintendent at a board of education) at the potential New Jersey Participant.

Determination of the existence of a conflict of interest does not prohibit ESCNJ and/or a New Jersey Participant from entering into the contract and purchase order, respectively.

American Goods - American Goods Clause—N.J.S.A. 18A:18A-20 - American goods and products to be used where possible

All contracts for work for which it will pay any part of the cost or work which by contract it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available, to be used in such work.

Anti-discrimination - All parties to any contract with the ESCNJ agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

Debarment/Suspension - N.J.A.C. 17:19-1.1 et seq. The ESCNJ will not enter into a contract for work with any person, company or firm that is on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List, or the State of New Jersey Consolidated Debarment Report (www.state.nj.us/treasury/debarred) or the Federal System for Award—SAM (www.state.nj.us/treasury/debarred) or the Federal System for Award—SAM

For Time and Material bids - DPMC - There is a non-refundable fee of \$100.00 which must be submitted to the State with your application. All payments must be made on company checks (no-cash) made payable to "Treasurer, State of New Jersey". No

application will be processed without the fee. If you have any questions, please contact the Contractor Classification unit by accessing the DPMC web site at www.state.nj.us/treasury/dPMC/. NOTE: It is suggested that a photocopy of this completed form be retained for your records. Please submit the completed application and all required documentation to the Treasurer, State of New Jersey. Upon review and approval of this application, your firm will be notified by mail of the effective and expiration dates, type of work, and rating assigned to your firm. Please submit your certificate with your bid package.

Any contractor who submits a bid for a public works contract the amount which exceeds **\$20,000**, pursuant to N.J.S.A. 18A:18A- 26, 27 et seq., shall be classified by the Department of Treasury, Division of Property Management (DPMC) as to the type of work and trades (character) and the aggregate rating (amount) of public work they are qualified to submit bids.

The ESCNJ may only accept bids from contractors that are qualified.

Notice of Classification—DPMC-27

The Notice of Classification is a document issued by the DPMC that provides the following information about the qualified contractor:

- Trade(s) classification held by the contractor

The contractor is classified by the trade and trade number as found in Form DPMC-27. For example

Trade Number	Trade
C030	Plumbing
C032	HVACR

The contractor is therefore qualified to submit bids (exceeding \$20,000) to the board of education that pertain to plumbing and heating, ventilation, air conditioning and refrigeration.

For Time and Material Bids Equipment Certification 18A:18A-23. A certificate showing that the bidder owns, leases, or controls all the necessary equipment required by the plans, specifications and advertisements under which bids are asked for and if the bidder is not the actual owner or lessee of any such equipment, his certificate shall state the source from which the equipment will be obtained, and shall be accompanied by a certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.

For Time and Material bids - Total Amount of Uncompleted Contracts - DPMC 701

This document is completed by the contractor submitting a bid, on the form provided by the DPMC. The document lists the amount of uncompleted contracts held by the contractor and a certification that the amount of uncompleted contracts, added to the bid amount for the ESCNJ Participant project, does not exceed the Aggregate Amount rating as assigned by the DPMC.

For Time and Material bids - Pre-Qualification Affidavit/No Material Adverse Change

Pursuant to N.J.S.A. 18A:18A-32, no bidder is qualified to bid on any public work contract unless they provide an affidavit that there has been no material adverse change in his qualification information pursuant to N.J.S.A. 18A:18A-28.

For Time and Material bids - Prevailing Wages Certification; Alterations and repairs - The State of New Jersey Prevailing Wage Act, Chapter 150 Laws of 1963 with applicable statewide wage rates and for the wage rates for the county of the location of the New Jersey Participant, as published by the Department of Labor and Workforce Development in conformance with N.J.S.A. 34:11-56- 25 et seq. Copies of these wage rates may be obtained from the State Department of Labor and Workforce Development, and/or viewed at <http://lwd.dol.state.nj.us/> the Prevailing Wages Determination Section.

For Time and Material bids - Compliance with New Jersey Prevailing Wage Act

Every contractor and subcontractor performing services in connection with this project, shall pay all workers a wage rate not less than the published prevailing wage rates, for the locality the work is being performed, as designated by the New Jersey Department of Labor and Workforce Development.

For Time and Material bids - Certified Payrolls

Every contractor agrees to submit to the New Jersey Participant a certified payroll for each payroll period within ten (10) days of the payment of wages. The contractor further agrees that no payments will be made to the Contractor by the New Jersey Participant, if certified payrolls are not received by the New Jersey Participant. It is the Contractor's responsibility to insure timely receipt by the district of certified payrolls.

For Time and Material bids - Submission of Affidavit

Before final payment, the contractor shall furnish the New Jersey Participant with an affidavit stating that all workers have been paid the prevailing rate of wages in accordance with State of New Jersey requirements. The contractor shall keep an accurate record showing the name, craft, or trade and actual hourly rate of wages paid to each workman employed by him in connection with this work. Upon request, the Contractor(s) and each Subcontractor shall file written statements certifying to the amounts then due and owing to any and all workmen for wages due on account of the work. The statements shall be verified by the oaths of the Contractor or Subcontractor, as the case may be.

For Time and Material bids – Certificate of Authority

All bidders are to submit their Sworn Contractor Certification, a current valid “Certificate of Authority” as issued by the New Jersey Department of Treasury. Reference—N.J.S.A. 18A:7G-37.

Sample Certificate of Authority



For Time and Material bids – Contractor Trade Licenses

All bidders are to submit with their proposal all current, valid contractor or trade licenses as issued by the New Jersey Division of Consumer Affairs, for any trade or specialty area the contractor seeks to perform work for this particular proposal.

Sample Contractor Trade License



For Time and Material bids – Contractor’s Registration evidence “Public Works Contractor Registration Act”

A. Valid Certificate – Receipt of Bid

All Contractors must adhere to the provisions of the Public Works Contractor Registration Act - N.J.S.A. 34:11-56.48 et. seq. The PWCRA requires that “*No contractor shall bid on any contract for public work as defined in N.J.S.A.34:11-56.26 unless the contractor is registered pursuant to this act.*” The law requires that all contractors and sub-contractors named in the proposal possess a valid certificate at the time the proposal is received by the contracting unit, in this case the ESCNJ.

B. Submission of Certificate – Receipt of Bid: Prior to Award--Mandatory

All bidders are requested to submit with the bid package or prior to the award of contract, a current Public Works Contractor Registration Certificate that was issued prior to the receipt of the bid.

The vendor(s) who is deemed to receive the contract award must submit a copy of the current New Jersey Department of Labor and Workforce Development Public Works Contractor Registration Certificate, and if applicable, copies of certifications of all listed subcontractors, prior to the award of contract. **If the successful vendor fails to provide copies of certificates prior to the award of contract, the bid shall be rejected as non-responsive.**

For more information contact:

Contractor Registration Unit
Division of Wage and Hour Compliance
New Jersey Department of Labor & Workforce Development
PO Box 389
Trenton, New Jersey 08625-0389
Tel: 609-292-9464
Fax: 609-633-8591
E-mail: wage.hour@dol.nj.gov
Web site: lwd.dol.state.nj.us/labor/wagehour/content/contact_us.html

For Time and Material bids – NJSDA Prequalification---Pursuant to N.J.S.A. 18A:7G-33, all contractors bidding on any contract for a School Facilities Project as defined in N.J.A.C. 6A:26-1.2, shall be prequalified with the New Jersey School Development Authority in the major construction trades listed in N.J.S.A. 18A:7G-33. Bidders will have to submit a Sworn Contractor Certification attesting to the NJSDA prequalification. Named subcontractors shall also be pre-qualified with the NJSDA—N.J.A.C. 6A:26-4.7 (b) (3).

Maintenance Projects—Contractors are reminded that maintenance projects solely to achieve the design life of a school facility and routine maintenance do not constitute a school facility project and therefor NJSDA prequalification is not a requirement. Reference N.J.A.C. 6A:26-1.2002E

For Time and Material bids – Sworn Contractor’s Certification - (Bidder’s Certification)

Pursuant to N.J.S.A. 18A:7G-37, a pre-qualified contractor seeking to bid school facilities projects, and any subcontractors, that are required to be named under N.J.S.A. 18A:7G-1 et seq. shall, as a condition of bidding, submit this Sworn Contractor Certification regarding qualifications and credentials. **Failure to complete, sign and submit the certification shall lead to the bid being rejected.**

Term of Contract and Extensions: Multiyear contracts – 18A:18A-42

All contracts for the provision of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12 consecutive months. Any Board of Education may award a contract for longer periods of time for the listed goods/services as stated in 18A:18A-5. Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year extensions, subject to the following limitations: a. the contract shall be awarded by resolution by the ESCNJ Board Members upon a finding by the ESCNJ that the services are being performed in an effective and efficient manner; b. no such contract shall be extended so that it runs for more than a total of five consecutive years; c. any price included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. the terms and conditions of the contract remain substantially the same. All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts for insurance coverages, insurance consultant or administrative services, participation or membership in a joint self-insurance fund, risk management programs or related services of a school board insurance group, participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6 or contracts for thermal energy authorized pursuant to subsection a. above and contracts for the provision of performance of goods and services to promote energy conservation through the production of renewable energy, authorized pursuant to subsection o. of this section, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause. All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the “Public School Contracts Law” N.J.S.18A:18A-1et seq., except that a contract may be extended by mutual agreement of the parties to the contract when a board of education has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

19. New Mexico, Cooperative Educational Services (CES)

The following are terms and conditions that apply to CES Members' and Participating Entities' use of products, services and/or construction services procured by this Request for Proposal (RFP) or Request for Bid (RFB). By making use of any products, services and/or construction services procured by this RFP or RFB, the Member or Participating Entity agrees to the following conditions.

Use Conditions

1. The contract terms to be followed by the Contract Holder are those contained in the above referenced RFP or RFB, and Contract Holder will agree to furnish all Products, Services and/or Construction Services in compliance with all terms, conditions, specifications of and amendments to this RFP or RFB. Contract Holder will agree that his obligations under this RFP or RFB contract extend to CES Members and Participating Entities who are third party beneficiaries of this RFP or RFB procurement process. The Members or Participating Entities may negotiate with Contract Holder certain additional terms and conditions relating to the scope of services and other performance details. However, the terms and conditions of the RFP or RFB may not be altered or amended except with the approval of CES and in accordance with the State Procurement Code.

2. CES Member or Participating Entity acknowledges and agrees that CES' purpose and function is to act as a cooperative procurement agent on behalf of its Members and Participating Entities so that they may take advantage of these procurement efforts. CES does not have any subsequent responsibility relating to the quality and fitness of any Products, or the performance of any Services and Construction Services by Contract Holder. A CES Member or Participating Entity may place purchase orders for Products, Services and/or Construction Services und with the contract holder or in the case of construction CES which, in turn, shall place the purchase order with the Contract Holder. However, any resulting contract between the Contract Holder and a CES Member or Participating Entity does not create any additional obligations on the part of CES.

3. For transactions which involve CES transmitting purchase orders from a Member or Participating Entity to Contract Holder, CES volunteers to act as a payment facilitator to make payments to Contract Holder with funds transferred to CES by the Member or Participating Entity in accordance with CES Member or Participating Entity's written instructions and to provide an accounting of all monies paid or received by CES. For purchase orders sent directly to the contract holder or purchase orders sent by CES to the contract holder, CES also volunteers to provide informal mediation services between Contract Holder and CES Member or Participating Entity in the event any dispute arises between them.

4. For purchase order sent to contract holder by CES, upon CES' receipt of funds from the CES Member or Participating Entity, CES has shall apply those funds only as instructed by CES Member or Participating Entity. CES shall incur no liability to CES Member or Participating Entity except for liability arising from CES' own gross negligence or willful misconduct, to the extent allowed by New Mexico law. CES has no obligation or right to involve itself with the manner or method by which Contract Holder provides these Products, Services or Construction Services. Performance is the sole responsibility of Contract Holder.

5. CES Member or Participating Entity agrees that it will not assert any claim against CES in the event a dispute arises regarding the alleged failure of Contract Holder or a CES Member or Participating Entity to perform as provided for any purchase order or other contract between Contract Holder and a CES Member or Participating Entity. This does not include claims against CES based upon the alleged gross negligence or intentional acts of CES.

6. Any liability alleged to lie with CES shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, §§ 41-4-1 et seq, NMSA 1978, as amended.

DEFINITIONS AND TERMINOLOGY:

For the purposes of this solicitation the following terminology shall be defined as indicated below:

"Agency", "CES Eligible Agency" and "Eligible Agency" are defined as a CES Member, Participating Entity and other entities that may utilize any contract created through this solicitation. Therefore, Agency, CES Eligible Agency, Eligible Agency, Member and Participating Entity are interchangeable.

AEPA" is defined as Association of Educational Purchasing Agencies as the agency that conducts and performs procurement activities on behalf of CES and CES Agencies in accordance with a CES Joint Power Agreement, and/or a Cooperative Purchasing Agreement and CES policies and procedures.

"Offeror" is defined as contractor, contract holder, vendor, or supplier and can be used interchangeable.

"Cooperative Educational Services" is defined as "CES", "CES Members and Participating Entities". Therefore, CES, Members and Participating Entity are interchangeable.

"Buyer": as used in this solicitation (RFP) is defined as "CES" as the agency that conducts and performs procurement activities on behalf of CES Agencies in accordance with a CES Joint Power Agreement, and/or a Cooperative Purchasing Agreement and CES policies and procedures.

CES Members: Are the parties to the CES Joint Powers Agreement (JPA) and consist of public educational institutions within the State of New Mexico and include public school districts as defined in NMSA 1978, § 22-1-2, State Institutions as defined in NMSA 1978, § 22-1-2, State Educational Institutions defined under Article XII, Section 11 of the New Mexico Constitution, most of the community colleges defined by the “Community College Act” as defined in NMSA 1978, § 21-13-1 et seq., their branch community colleges as defined in NMSA 1978, § 21-14-1 et seq., technical and vocational institutes defined in NMSA 1978, § 21-16-1, area vocational schools defined in NMSA 1978, § 21-17-4, off campus community colleges or instructional facilities as defined in NMSA 1978, § 21-14A-1, charter schools as defined in NMSA 1978, § 22-8A-1, Regional Center Cooperatives as set forth in Section 22-2B-1 et seq., and 638 schools and grant schools. Each public educational institution is authorized by its governing body and the Procurement Code NMSA 1978, § 13-1-135 to enter into cooperative purchasing agreements, pursuant to NMSA 1978, § 11-1-1 and Sec. 108 of Ch. 65 of the Laws of 1984 (The Procurement Code).

CES Participating Entities: Are defined as public agencies and/or organizations classified as follows that may participate in and purchase tangible personal property, professional, non-professional and construction services through their cooperative purchasing agreement with CES.

- a) Federal Agency [25 USC 3001 (4)] is defined as any department, agency, or instrument of the United States, any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of government, including the Executive Office of the President or any independent regulatory agency established through legislative and/or administrative action.
- b) State Agency NMSA 1978, § 13-1-190 is defined as any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or office of the executive, legislative, or judicial branch of the government of this State. “State agency” includes the purchasing division of the General Services Department (GSD) and the state purchasing agent but does not include local public bodies.
- c) Local Public Body [NMSA 1978, § 13-1-67] is defined as a political subdivision of the State and the agencies, instruments, and institutions thereof, including: two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code [NMSA 1978, § 13-1-28].
- d) Non-Profit, Non-Public Educational Institutions and other Non-Profit Organizations (Section 501(c)(3) of the Internal Revenue Code, Federal Tax Code) is defined as charitable, religious, educational, public service, support and scientific organizations, entities, corporations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of the Federal Tax Code.

CES Regions: New Mexico is a large state geographically. For this solicitation (RFP), CES is dividing the State into eight (8) service regions. Offerors will be required to indicate within their response to which of these service regions of the State they wish to provide services, and prioritize the areas, in order, that their firm intends to concentrate its efforts, if given an award. The first eight (8) service regions are listed below with the Public-School Districts located in each. Any public educational institution, i.e., BIA schools, charter schools, colleges, universities, community colleges or participating entities physically located within these regions are considered as part of that region.

1. **Region One (1)** – Aztec, Bloomfield, Central, Dulce, Farmington, Gallup-McKinley, and Zuni School Districts; Navajo Preparatory School, Pine Hill Schools, San Juan College, Shiprock Associated Schools, and University of New Mexico - Gallup Branch
2. **Region Two (2)** – Chama Valley, Cuba, Española, Jemez Mountain School, Los Alamos, Mesa Vista, Pecos, Peñasco, Pojoaque Valley, Questa, Santa Fe and Taos School Districts; New Mexico School for the Deaf, Northern New Mexico College, Santa Fe Community College, Santa Fe Indian School, University of New Mexico- Los Alamos Branch, and University of New Mexico – Taos Branch
3. **Region Three (3)** – Cimarron, Clayton, Des Moines, Las Vegas City, Maxwell, Mora, Mosquero, Raton, Roy, Santa Rosa, Springer, Wagon Mound and West Las Vegas School Districts; Luna Community College and New Mexico Highlands University
4. **Region Four (4)** – Albuquerque, Belen, Bernalillo, Estancia, Grants-Cibola, Jemez Valley, Los Lunas, Magdalena, Moriarty-Edgewood, Mountainair, Quemado, Rio Rancho, Socorro, and Vaughn School Districts; Alamo Navajo School, New Mexico CFYD, New Mexico Institute of Mining and Technology, New Mexico State University at Grants, University of New Mexico and University of New Mexico - Valencia Campus
5. **Region Five (5)** – Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico, and Tucumcari School Districts; Clovis Community College, Eastern New Mexico University and Mesalands Community College
6. **Region Six (6)** – Artesia, Carlsbad, Dexter, Eunice, Hagerman, Hobbs, Jal, Lake Arthur, Loving, Lovington, Roswell, and Tatum School Districts; Eastern New Mexico University-Roswell, New Mexico Junior College, New Mexico Military Institute and New Mexico State University at Carlsbad
7. **Region Seven (7)** – Alamogordo, Capitan, Carrizozo, Cloudcroft, Corona, Hondo Valley, Ruidoso, and Tularosa

School Districts; Mescalero Apache School, New Mexico School for the Blind and Visually Impaired, New Mexico State University at Alamogordo

8. **Region Eight (8)** – Animas, Cobre, Deming, Gadsden, Hatch Valley, Las Cruces, Lordsburg, Reserve, Silver and Truth or Consequences School Districts; New Mexico State University and Western New Mexico University

Contract: Any agreement for the procurement of items of tangible personal property, construction, professional services and other services.

Contractor: An Offeror who has been awarded a contract for delivery of items of tangible personal property, professional services and other services.

Cooperative Procurement: Is authorized under NMSA 1978 § 13-1-135 and this contract is based on the need for CES to provide the economic benefits of volume purchasing and reduction in administrative costs through cooperative purchasing for Public Educational Institutions, Participating Entities, Local Public Bodies, and other external procurement units.

Cooperative Procurement Agreement: Is an agreement between CES and a Participating Entity for establishing the procurement method by which Participating Entities may join in cooperative multi-jurisdictional contract to ensure the commitment of each Participating Entity. Further, the Agreement provides an understanding of the contracting process and the organization and operation of this purchasing cooperative (CES).

New Mexico Gross Receipts Tax (NMGRT): Taxes for non-professional and professional services, software and licensing agreement, construction services, leasing, and selling of real property.

Prime Contractor: Any Contractor paid directly by CES or its Member and Participating Entity is a prime contractor; a subcontractor is paid by the prime contractor. Prime contractors using subcontractors are responsible for all actions of their subcontractors.

Procurement Code: NMSA 1978, §§ 13-1-21 through 13-1-199 may be cited as the "Procurement Code".

Work for Hire: A work for hire, or work made for hire, refers to works whose ownership belongs to a third party rather than the creator.

CES GENERAL TERMS AND CONDITIONS:

Acceptance of Delivered Services: The CES Member or Participating Entity will be the determining judge of whether materials and services delivered under the contract satisfy the requirements as identified in the contract order. If there is a dispute between the Offeror and the CES Member or Participating Entity, CES will make the final determination.

Accounts Payable: This is the amount owed to an Offeror by CES or the CES Member/Participating Entity due to an accepted delivery of products or services by a CES Member/Participating Entity pursuant to a contract executed as a result of this solicitation.

Administrative Fee: CES' two percent (2%) administrative fee must be included in the Offeror's net price for all services and deliverables (material, labor rates, reimbursable, New Mexico Gross Receipts Tax (NMGRT), and other fees/charges) that are invoiced to CES' member. The CES administrative fee will be paid by the Offeror to CES once payment is received from the CES or CES Member or Participating Entity according to the payment schedule established by CES.

Applicable Law: Any contract executed as a result of this solicitation will be governed by the laws of the State of New Mexico, both as to interpretation and performance. Suits pertaining to this contract can be brought only in courts in the State of New Mexico. Offerors doing business with CES must be in compliance with the Federal Civil Rights Acts of 1964 and Title VII of that Act, Rev. 1979. All work under any contract entered into as a result of this solicitation will be done in strict accordance with the most recent edition of any relevant regulation, standard, document or code that relates to these laws. Where conflict among the requirements or with these specifications exists, the most stringent requirement will be used.

Arbitration: Any contract executed as a result of this solicitation which requires arbitration, is subject to the extent required by the New Mexico Uniform Arbitration Act, Sections 44-7A-1 to 44-7A-32 NMSA 1978.

Assignment: No right or interest in any contract executed as a result of this solicitation will be assigned or transferred by the Offeror without notification and approval to AEPA and CES, and no delegation of any duty of the Offeror will be made

without notification to AEPA and CES.

Assignees, Mergers, Dissolution and Successors: The Offeror agrees that during the term of the contract, it will adhere to the terms and provisions of said contract. The parties will be bound by and inure to the benefits of the successors and the respective parties involved. The surviving, resulting, or transferred business structure shall:

- A. Qualify to do business in the State of New Mexico and holds the appropriate licenses, registrations, etc.;
- B. Agree in writing to perform all of the existing and future obligations of the original Offeror's CES Contract.
- C. Provide CES with all of the documents required for said assignment, merger or dissolution for the CES procurement file.

Assignment of CES Payments: If the Offeror requests that its payment from CES, its Members or Participating Entities be issued to a third party or that a joint check be issued to the Offeror and a third party, this request must be submitted and approved by CES prior to the Offeror accepting a purchase order. CES reserves the right to assess a special handling charge of Thirty-Five Dollars (\$35) per check. The special handling charge will be deducted from the amount of the invoice being paid.

Audit Rights: In accordance with applicable State of New Mexico and federal law, the Offeror's books and records related to any process and/or activity that occurs as a result of a contract executed as a result of this solicitation may be inspected by CES and/or the New Mexico State Auditor. Offeror must retain payment records received from CES for a period of (3) years from the date of final payment.

Authority: Any executed contractual agreement, is issued under the New Mexico Procurement Code, CES Board Policies, and CES Procurement Guidelines.

Billing/Invoicing: Upon acceptance of the delivery of goods and/or services, the Offeror will invoice, either CES or the CES Member/Participating Entity, referencing the purchase order number issued. If CES issues the purchase order, the CES Member's/Participating Entity's name must be on the invoice. The Offeror will only issue invoices to CES, CES Member or Participating Entity from which the purchase order was issued. The Offeror will only accept a purchase order from a Member or Participating Entity in accordance with the CES Direct Purchase process. Goods and services will be invoiced at the current contract pricing on file with CES. At a minimum, the invoice must include: the CES contract number, the hourly rate or the catalog/list unit price, the CES discount and the final CES price. All pricing must include the CES AEPA administrative fee of two percent (2%) or lower fee negotiated by CES embedded into the final CES price. Except for adding shipping or freight costs, the invoice amount cannot exceed the amount of the CES or CES Member/Participating Entity purchase order total. New Mexico Gross Receipts Tax (if applicable) must be shown as a separate line.

Bonds: Bid, Performance and or Payment Bonds, if required, are to be issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code and be a surety listed in the US Treasury Circular 570.

Bribes, Gratuities and Kickbacks: The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities, and kickbacks.

Campaign Contribution Disclosure Form: Documents used to disclose whether they, a family member, or a representative of the prospective Offeror has made a campaign contribution to an applicable public official of the State or a local public body during the two years prior to the date on which the Offeror submits a proposal (NMSA 1978, § 13-1-191.1). Prior to the Offeror entering into a contract with an individual CES Agency, the Offeror must provide the CES Member or Participating Entity with a Campaign Contribution Disclosure Form.

CES eProcurement System: CES has online procurement and contract management system called CES eProcurement System. This system allows CES to manage Bid and RFP submission, contract holder's business and contract information, all into one web-based application. If recommended for a contract award, the bidder or offeror will need to create a user profile for their company in the CES eProcurement System. This allows CES to maximize the efficiencies of the contract and solicitation process through a web-based solution.

Confidential Information and Disclosure of Proposal Contents: For the purposes of this procurement, the provisions of the "New Mexico Inspection of Public Records Act NMSA 1978, Chapter 14, Article 2, will be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection. Proposers are reminded, that while trade secrets and other proprietary information they submit in conjunction with this procurement may not be subject to public disclosure, protections must be claimed by the proposer at the time of submission of its Technical Proposal. Proposers should refer to the New Mexico Inspection of Public Records Act for further clarification.

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of your proposal. Your cost proposal will not be considered confidential under any circumstance. Any proposal copyrighted or marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse. The Offeror must clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as "CONFIDENTIAL" in order to claim protection, if any, from disclosure. Further, to protect such data, each page containing such data shall be specifically identified and marked "CONFIDENTIAL" within the required electronic submission.

The CES Procurement Manager will review the statement and will determine in writing whether the information will be withheld. If the Procurement Manager determines that the information should be disclosed, the Offeror will be informed in writing of such determination and, should the Offeror object in writing within five (5) days after notification thereof, no disclosure will be made, and the bid or RFP may be rejected.

Confidential Information Disclosure: Any confidential information provided to the Offeror by CES, its Members or Participating Entities or developed by the Offeror based on information provided by CES, its Members or Participating Entities in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Offeror without the prior written approval of CES, its Members or Participating Entities. Upon termination of this Agreement, Offeror shall deliver all confidential material in its possession to CES, its Members, or Participating Entities within thirty (30) business days of such termination. Offeror acknowledges that failure to deliver such confidential information to CES, its Members, or Participating Entities will result in direct, special, and incidental damages.

Conflict of Interest: Any contract executed related to this solicitation is subject to cancellation by CES if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of a CES Member or Participating Entity is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or as a consultant to any other party of the contract with respect to the subject matter of the contract.

Conflict of Interest - Disclosure of Employment: Offerors submitting proposals will disclose any and all owners, contractors, or employees who are active employees of CES or are immediate relatives of an employee of CES.

Contract: Any agreement for the procurement of items of tangible personal property, construction, professional services and other services.

Contract Award: CES reserves the right to make single or multiple awards or to reject one or all of the contract recommendations made by Educational Purchasing Agencies (AEPA). All contract awards with CES are based upon the terms, conditions, scope of work and specifications contained in AEPA solicitation and CES General and Construction Terms and Conditions. All solicitation documents and responses become the basis for a CES contract. A contract will be executed between CES and the AEPA Offeror(s) and shall become a binding agreement upon signatory approval by all parties.

Contract Month-to-Month Extensions: CES reserves the right to offer month-to-month extensions if that is determined to be in the best interest of CES, its Members, and Participating Entities but, in any case shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150 and the Association of Educational Purchasing Agencies (AEPA).

Contract Non-Exclusive: Any contract resulting from this solicitation with the understanding and agreement that it is for the sole convenience of CES, its Members or Participating Entities in New Mexico. CES reserves the right to obtain like goods and services from another source when necessary.

Contract Term and Extension: The contract term shall be for up to four (4) calendar years and shall continue until terminated, canceled, or extended by either CES or Association of Educational Purchasing Agencies (AEPA). CES reserves the right to renew the Agreement through a written amendment signed by all required signatories but, in any case shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150. "Perpetual" Software Licensing Service Agreements executed under any contract awarded as a result of this solicitation are subject to the provisions of NMSA 1978, § 13-1-150.

Contract Type: Subject to the limitations of Sections 123 through 127 [13-1-150 to 13-1-154 NMSA 1978] of the Procurement Code, any type of contract, including but not limited to definite quantity contracts, indefinite quantity contracts and price agreements, which will promote the best interests of CES, CES Members and Participating Entities may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance. A cost-reimbursement contract may be used when such contract is likely to be less costly or it is impracticable to otherwise obtain the services, construction or items of tangible personal property required. NMSA 1978 § 13-1-149.

Credit Hold: The Offeror must agree not to place CES, its CES Member/Participating Entity on “credit hold” without ten days advanced notice in writing, either by e-mail, letter, or facsimile. Before CES can pay an Offeror’s invoice, it must collect payment from the CES Member/Participating Entity that received the product. CES believes it is better for the Offeror if CES places the slow-paying agency on “credit hold”. If an Offeror places CES on “credit hold,” agencies that pay promptly are penalized. If, on the other hand, CES places the offending agency on “credit hold”, payment is more likely to result and only the offender is punished. When it involves a direct purchase from a CES Member/Participating Entity, the contract holder agrees to copy CES on all collection correspondence.

Data Ownership of Materials, and Privacy: The terms of this section apply if Offeror receives, has access to or analyzes CES or CES Member/Participating Entity’s data. As between the parties, CES or the CES Member/Participating Entity will own, or retain all of its rights in, all data and information provided by CES or the CES Member/Participating Entity to the Offeror, as well as all data and information managed by Offeror on behalf of CES or the CES Member/Participating Entity, including all output, reports, analyses, and other materials relating to, derived from, or generated pursuant to any agreement generated through this solicitation, even if generated by the Offeror, as well as all data obtained or extracted through CES or the CES Member/Participating Entity or Offeror’s use of such data or information. CES or the CES Member/Participating Entity’s data includes all data and information provided directly to the Offeror.

All CES or CES Member/Participating Entity data will be CES’s or the CES Member/Participating Entity’s Intellectual Property (IP) and Offeror will treat it as “Confidential Information”. Offeror will not use access, disclose, or license, or provide to third parties, any CES or CES Member/Participating Entity data, except to fulfill the obligations of the Contract IP. Without limitation, the Offeror will not use any CES or CES Member/Participating Entity data whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product demonstration, without in each case, CES or the CES Member/Participating Entity’s prior written consent. Offeror will not, directly or indirectly attempt to re-identify or de-aggregate, de-identified or aggregated information; or transfer de-identified and aggregated information to any third party.

Default in One Installment to Constitute Total Breach: Offeror will deliver conforming materials in each installment, or lot of any contract; and may not substitute nonconforming materials. CES reserves the right to declare a breach of contract if the Offeror delivers nonconforming materials to any CES Member or Participating Entity under this contract.

Debarment Disclosure: If the Offeror has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government or agency, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall include a letter with its response identifying the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances must be provided by the Offeror, including the details enumerated above. A response from an Offeror who is currently debarred, suspended, or otherwise lawfully prohibited from any public procurement activity may be rejected. Failure of an Offeror to disclose a debarment or suspension in accordance with this section may result in their response being disqualified for award of the solicitation.

Defective Goods: Every tender of materials must fully comply with all provisions of this solicitation and resulting contract. If tender is made which does not fully conform, this will constitute a breach, and Offeror will not have the right to substitute a conforming tender without written consent of all parties involved. Offeror agrees to pay for return shipment on goods that arrive in a defective or non-operable condition as determined by the CES Member or Participating Entity. Offeror agrees to arrange for return shipment of damaged goods at no cost to the CES Member or Participating Entity.

Delivery of Goods and Services: Offeror agrees to supply and deliver the Goods or Services to CES, its Members or Participating Entities and to perform the Services, as applicable per the scope of work. Offeror shall, at its own expense, pack, load, and deliver Goods or Services to the Delivery Point and in accordance with the delivery terms, shipping, packing, and other instructions printed on the CES or CES Member or Participating Entity purchase order or otherwise provided to the Offeror by CES, its Members or Participating Entities in writing. No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in the purchase order or otherwise agreed to in writing by CES, its Member or Participating Entity.

Offeror must immediately notify CES, its Members or Participating Entities if Offeror is unable to meet a Delivery Date. At any time prior to the Delivery Date, CES, its Members or Participating Entities may, upon notice to Offeror, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of CES, its Members or Participating Entities or due to failure of Offeror to comply with this Agreement, unless otherwise noted.

Title and risk of loss or damage shall pass to CES, its Members or Participating Entities upon receipt of Goods at the Delivery Point, unless otherwise agreed to by the CES, its Members or Participating Entities in writing. CES, its Members or Participating Entities has no obligation to obtain insurance while Goods are in transit from Offeror to the Delivery Point.

Descriptive Literature and Brand Names: Contractor, as required by CES, its Members or Participation Entities include a complete set of the manufacturer's descriptive literature regarding the equipment and software offered. Brand names, trade names and/or catalog numbers are intended to describe and identify equipment and software.

Electronic Data: The product and service provider must be willing and capable of providing to the CES and its Member or Participating Entity, upon request, documents i.e., proposals, communications, test results, reports, design/as-built drawings, presentations, specifications, etc. in an acceptable electronic format as approved by CES or CES Member or Participating Entity.

Estimated Quantities: CES does not guarantee quantities or usage. Usage depends on the actual needs of the CES Members/Participating Entities.

Force Majeure: Except for payments of sums due, neither party shall be liable to the other, nor deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the either party affected and occurs without fault or negligence, including, but not limited to, the following: acts of nature; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; earthquakes; famine; volcanic eruptions; meteor strikes; pandemics; lockouts; injunctions-interventions-acts or failures; or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement. Force majeure shall not include late deliveries of software or materials caused by congestion at a manufacturer's plant or elsewhere, an over-sold condition of the market, inefficiencies and poor management practices, or similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party in writing of such delay within 48 hours.

Indemnification: To the fullest extent permitted by law, Offeror shall, defend, indemnify and hold harmless CES, its Members, its Participating Entities, its officers and employees, against any and all liability, claims, demands, actions, damages, losses, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, government action and all expenses, including attorneys' fees and litigation expenses, demands or expenses asserted by a third-party, caused by, or resulting from, Offeror's and/or its employees, act(s) or omissions(s) while Offeror, and/or its employees, perform(s) or fails to perform its obligations and duties under any agreement entered into as a result of this solicitation or acts or omissions occurring outside of said agreement. Any equipment or facilities damaged by Offerors' operation shall be repaired and/or restored to their original condition at Offerors' expense. Offeror shall at all times during the life of the contract entered into as a result of this solicitation keep in force the minimum liability insurance limits as outlined in this solicitation. Failure to maintain current coverage in the amounts stated may result in termination of any agreement entered into as a result of this solicitation CES shall be named as a co- insured on the insurance policy and the policy shall provide that the policy cannot be modified or cancelled without the approval of CES. "This provision shall survive any termination of any Agreement entered into as a result of this solicitation Offeror will promptly advise CES in writing of any action, administrative or legal proceedings or investigation as to which defense and indemnification shall apply."

Indemnification Intellectual Property: The Offeror shall defend, at its own expense, CES, its Members and Participating Entities against any claim that any product or service provided under this Agreement infringes any patent, copyright, or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against CES, its Members and Participating Entities based upon Offeror's trade secret infringement relating to any product or services provided under this Agreement, the Offeror agrees to reimburse CES, its Members and Participating Entities for all costs, attorneys' fees, and the amount of the judgment. To qualify for such defense and/or payment, CES, its Members and Participating Entities shall:

- 1) Give the Offeror written notice, within forty-eight (48) hours of its notification of any claim;
- 2) Allow the Offeror to manage the defense and settlement of the claim as permitted by law; and
- 3) Cooperate with the Offeror, in a reasonable manner, to facilitate the defense or settlement of the claim. CES, its Members, and Participating Entities Rights: If any product or service becomes, or in the Offeror's opinion is likely to become, the subject of a claim of infringement, the Offeror shall, at its sole expense:
 - a) Provide CES, its Members and Participating Entities the right to continue using the product or service and fully indemnify CES, its Members and Participating Entities against all claims that may arise out of CES, its Members

- and Participating Entities use of the product or service;
- b) Replace or modify the product or service so that it becomes non-infringing; or
- c) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Offeror. The Offeror's obligation will be void as to any product or service modified by CES, its Members and Participating Entities to the extent such modification is the cause of the claim.

Intellectual Property Ownership (Work for Hire): All Intellectual Property (IP) that Offeror or any of the Offeror's Parties make, conceive, discover, develop or create, either solely or jointly with any other person or persons including CES or a CES Member/Participating Entity, specifically for or at the request of CES or a CES Member/Participating Entity in connection with an Agreement (Contract IP) will be owned by CES or the CES Member/Participating Entity. Intellectual Property means all CES or CES Member/Participating Entity Data, any and all inventions, designs, original works of authorship, formulas, processes, compositions, programs, databases, data technologies, discoveries, ideas, writings, improvements, procedures, techniques, know-how and all patent, trademark, service mark, trade secret, copyright and other intellectual property rights (and goodwill) relating to the foregoing. Offeror will make full and prompt disclosure of the Contract IP to CES or the CES Member/Participating Entity. Offeror will, and will cause the Offeror's Parties to as, and when requested by CES or the CES Member/Participating Entity, do such acts, and sign such instruments to vest in CES or the CES Member/Participating Entity the entire right, title and interest to the Contract IP, and to enable CES or the CES Member/Participating Entity to prepare, file and prosecute applications for, and to obtain patents and/or copyrights on, the Contract IP, and at CES or the CES Member/Participating Entity's expense, to cooperate with CES or the CES Member/Participating Entity in the protection and/or defense of the Contract IP.

Intellectual Property Offeror: Offeror will retain ownership of its pre-existing Intellectual Property (IP), including any that may be incorporated into the Contract IP, provided that Offeror informs CES or the CES Member/Participating Entity in writing before incorporating any pre-existing Intellectual Property into any Contract IP. Offeror hereby grants to CES or the CES Member/Participating Entity a perpetual, irrevocable, royalty-free worldwide right and license (with the right to sublicense), to freely use, make, have made, reproduce, disseminate, display, perform, create derivative works based on such pre-existing Intellectual Property as may be incorporated into the Contract IP or otherwise provided to CES or the CES Member/Participating Entity in the course of performing under any contract resulting from this solicitation.

Information Security: All systems, software, services, and devices that store, transmit, or otherwise process CES or a CES Member/Participating Entity's data must be designed, managed and operated in accordance with the information security best practices and in compliance with all applicable laws, rules and regulations.

Installation: Equipment or products that require professional installation will be installed in coordination with the CES Member or Participating Entity. If delayed, the Offeror will notify in writing both CES and the CES Member or Participating Entity of the revised installation date.

Insurance: Upon contract award, the contractor will, at its own expense, purchase and maintain insurance that will protect it from claims that may arise out of or as a result from its activities under the prospective contract, where those activities are performed by it, by any subcontractor, by anyone directly or indirectly employed by the contractor or by anyone for whose acts the contractor may be liable during the entire performance period of the prospective contract. The contractor must furnish an ACORD Certificate of Insurance to the CES. If policy changes occur during the life of the contract, it is the Offeror's responsibility to provide updated proof of coverage to the CES procurement officer.

1. Offerors will submit proof of coverage under the Workman's Compensation Insurance, as required by the Labor Laws and New Mexico Statutes.
2. Offerors will submit a certificate of comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability. Limits shall not be less than the following:
 - a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
 - b. Property damage or combined single limit coverage: \$1,000,000.
 - c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
3. Umbrella: \$1,000,000. The Offeror will name CES and the CES Member or Participating Entity as co-insured up to the limits required by New Mexico Statutes. Additional punitive damages liability to \$500,000 will be provided naming CES as co-insured.
4. Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars (\$1,000,000) per occurrence combined single limit for both personal injury and property damage.
5. In addition, Offeror must provide, upon request, identical certification of insurance to any CES Member or Participating Entity using this contract. Prior to commencing any work, any subcontractor must procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime

contractor. All subcontractors will provide workers' compensation insurance, which waives all subrogation rights against the prime contractor and CES Member or Participating Entity.

Leasing: Contractor may offer CES Members the option to enter into a lease or lease purchase agreements, providing such agreements are in compliance with New Mexico statutes. CES must receive a copy of the executed leasing documents between the leasing agency and the CES Member or Participating Entity. The contractor providing the equipment(s) to the CES Member or Participating Entity that is funded thru a lease option shall pay CES the two percent (2%) administrative fee on the total cost of the equipment(s), maintenance agreement, extended warranties and any products and services included in the lease agreement. The CES administrative fee is non-refundable should the lease terminate early. CES will not collect lease payments, the CES Member or Participating Entity will make lease payments directly to the leasing agency. All terms of the leasing agreement must be included in the proposal including interest rates as related to a government standard. Contractor must indicate if the shipping costs for the return of leased equipment are the responsibility of the CES Member or Participating Entity and what that cost will be. No sale of a contract to a third party will be made without informing CES and CES Member or Participating Entity of the transfer. If Offeror sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original Offeror.

A purchase option must be available with each scheduled payment. At lease end, an option to purchase the equipment at fair market value must exist or the CES Member or Participating Entity must return the equipment to the Leasing Agency. As required by New Mexico law, the lease agreement with the CES Member or Participating Entity must contain a termination provision for "Non-Appropriation of Funds." In the event no funds or insufficient funds are appropriated and budgeted by the CES Member or Participating Entity (Lessee) or are otherwise unavailable in any fiscal year for the payment of lease and other amounts due under the lease, the lease shall terminate on the last day of the fiscal period for which appropriations were received under the lease without penalty or expense to Lessee. The CES Member or Participating Entity shall make the determination if sufficient funds have been appropriated. The CES Member or Participating Entity shall give Lessor or its assignee written notice at least thirty (30) days prior to termination of lease due to Non-Appropriation of Funds.

Legal Remedies: All claims and controversies are subject to the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199.

Licenses: The contractor will maintain in current status all applicable federal, state, and local licenses, bonds, and permits as required for the performance of any contract awarded. Copies of licenses will be submitted by the contractor as required by CES, its Member or Participating Entity.

Liens: All materials and services will be free of all liens.

Limitation of Liability: The contractor's liability to CES or any CES Member or Participating Entity, for any cause whatsoever shall be for the total amount of damages resulting from the Offeror, sub-contractors and/or employees acts that may result in personal injury, property damage or any other damages as identified by CES or its CES Member or Participating Entity caused by the contractor's negligence. The liability of CES or any CES Member or Participating Entity will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, as amended.

Manufacturer's Representative: Dealers or manufacturer's representative of products, services and equipment offered in response to AEPA solicitation, must be able to provide a letter from the manufacturer certifying that they are an authorized dealer for the products, services and equipment presented. Should the dealer or manufacturer's representative fail to satisfactorily fulfill any obligations established as a result of the award of contract, the manufacturer will either assume and discharge such obligations or provide for their competent assumption by one or more representatives or dealers for the balance of the contract period.

Money: All transactions are payable in U.S. currency only.

Negotiations: Negotiations may be conducted with the Offeror(s) recommended for AEPA award. If an agreement cannot be reached, CES will cancel contract negotiation and a contract will not be issued to Offeror(s).

Novation: If the original Offeror sells or transfers all assets or portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. CES reserves the right to accept or reject the new party, with the original Offeror being responsible to fulfill the obligations under the existing contract if the new party fails to perform. A simple change of name agreement will not change the contractual obligations of the Offeror.

Ordering Process: CES currently offers (4) four procurement/purchasing options: the "Traditional Method", the "Online Ordering Method" through Contractor's website and the "Direct Purchase Method" through the CES Blue Book and Leasing.

1. **Traditional method**, CES Members/ Participating Entities will submit signed purchase orders to CES at PO@CES.ORG. CES will then issue a purchase order to the Offeror. The Offeror must agree to never accept a purchase order directly from the CES Member/Participating Entity based on this procurement method. The purchase order you receive must be issued by CES.
2. **Online ordering through Offeror's website**, which allows the CES Members/Participating Entities to go online and create an order through the Offeror's system; the Offeror delivers the product/services; invoices the CES Member/Participating Entity; the CES Member/Participating Entity pays the Offeror; and the Offeror rebates the CES administrative fee to CES, unless an agreement to deviate from this process has been approved in writing by both parties.
3. **Direct Purchase**: For CES Direct Purchase the CES Member/Participating Entity makes their purchase order (PO) out to the Offeror and sends it to CES for contract compliance. CES will stamp the PO "Approved" and will forward the PO to the Offeror and Member. This will serve as the "authorization" for the Offeror to proceed with the purchase. Offeror will invoice the CES Member/Participating Entity directly and collect payment. CES will invoice Offeror the CES 1.25% administrative fee.
4. **Leasing**: The Offeror will rebate the CES administrative fee based on the full amount, of the lease upon payment to the Offeror by the leasing company. CES must be provided a copy of the lease agreement for compliance.

Patent and Copyright Infringement: Offeror will, at their expense, defend CES and its Members and Participating Entities against any claim that any equipment or software supplied hereunder infringe a patent or copyright in the United States, or a U.S. Territory, and will pay all costs, damages and attorney's fees that a court finally awards as a result of such a claim. To qualify for such a defense and payment, CES will:

1. Give Offeror prompt written notice of any such claim after becoming aware of such claim.
2. Allow Offeror to control and fully cooperate with Offeror in the defense and all related settlement negotiations.

CES will be reimbursed for all expenses incurred by CES in fully cooperating with Offeror as specifically requested by contract. CES is not required to incur any expenses specified in this paragraph, which are not reimbursable, by the Offeror. If any CES Member and Participating Entity is involved by any party in a Patent and Copyright Infringement dispute, the same provisions that apply to CES in this paragraph will apply to the CES Member or Participating Entity. Offeror's obligation under this section is conditioned on CES' agreement that if the subject of such a claim, CES will permit the Offeror, at its expense and option, either to procure the right for CES and its Members or Participating Entity to continue using the equipment and/or software, or to replace equipment or software which are functionally equivalent so that they become non-infringing. If neither of the foregoing alternatives is available on terms which are reasonable in Offeror's judgment and satisfactory to CES, CES will request its Members or Participating Entity to return the equipment or software upon written request by Offeror at Offeror's expense.

Offeror agrees to refund CES and/or its CES Member/Participating Entity for returned equipment as depreciated to current market value unless otherwise mutually agreeable in writing. The depreciation will be an equal amount per year over the life of the equipment in accordance to GAAP/GASB guidelines. In the event that an Offeror's written request for return of equipment is made after full depreciation, the Offeror will pay CES, or its CES Member/Participating Entity who purchased the equipment, an amount equivalent to the fair market value of the returned equipment. If CES, or any of its CES Member/Participating Entity, fails to return the equipment, the Offeror is not obligated to that Member under this clause.

Offeror will have no obligation with respect to any such claim based upon a Member's or Participating Entity's modification of the equipment or software or combination, operation or use with apparatus, data or programs not furnished by Offeror. However, one Member's or Participating Entity's action will not preclude Offeror's obligation to other Members/Participating Entities not having modified their equipment or software.

Payments by CES Member or Participating Entities: For the purchase by a CES Member or Participating Entity directly from the Offeror for goods and services that have been received and accepted. Payment from the Member or Participating Entity to the Offeror will be made within forty-five (45) days after the receipt of a correct invoice, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. If a dispute arises or an agency's account becomes delinquent, the Offeror is encouraged to contact and request assistance from CES. *Any offer that requires payment in less than forty-five (45) days may not be considered.*

Payment of Administrative Fee: When a CES Member or Participating Entity issues payment directly to the Offeror for goods and services received and accepted, the Offeror will upon receipt of payment from a CES Member or Participating Entity, issue payment to CES for the CES administrative fee as invoiced by CES.

Price List/Pricing: The Offeror will furnish CES with electronic copies of AEPA approved price list for products and services

offered and upload to the CES eProcurement System for approval. The Offeror must keep current all pricing for any contract issued as a result of this solicitation. Should the Offeror fail to update pricing with AEPA or not upload the approved AEPA pricing to CES eProcurement System, the Offeror shall honor their pricing on file with CES at the time of their quote submittal to the CES, CES Member/Participating Entity. Discount off list price must be clearly noted in the price quote to CES, CES Member/Participating Entity. All pricing must include the AEPA/CES administration fee:

Price Quote/Proposal: When preparing a quote/proposal, the Offeror must clearly identify and break out quantities, descriptions, supplies, materials, equipment, and services into individual line items as they appear on the Offeror's awarded price schedule or pricing methodology. At a minimum, all quotes or proposals shall include the following: description, "hourly labor rate or the list/catalog unit price", "the per cent discount offered" and the final "CES price". All stated prices must include the CES/AEPA administrative fee. Shipping/Freight costs and the New Mexico Gross Receipts Tax as applicable must be stated in separate lines.

Price Reduction, Promotional and Special Pricing: A price reduction can be offered at any time and will become effective upon approval by AEPA and CES.

Progress Payments: Under this solicitation (RFP), CES, its Members, and Participating Entities may allow progress payments to be made on goods and/or services received and accepted under the following conditions:

1. The Member or Participating Entity and the Offeror agree to the terms and milestones of the project for progress payments in writing prior to issuing a purchase order to the Offeror.
2. The quote or proposal in which the purchase order is based must clearly identify and describe the amount(s) to be paid and the date(s) payment(s) are to be made for the service or goods delivered.
3. The Offeror must obtain from the CES Member or Participating Entity written documentation identifying the work completed and goods received to be submitted with progress payment request.
4. Payments will be made only after actual goods and/or services are verified, received, and accepted by the CES Member or Participating Entity.
5. Payments will be made in full compliance with the CES Member or Participating Entity local administrative procedures, policies and any/all other applicable state rules, regulations, and statutes.
6. If the estimate of work and/or goods received are not approved and certified by the Member or Participating Entity. CES, Member or Participating Entity can withhold an amount from the progress payment that reasonably represents the deficiency identified in the Offeror's payment request. In such cases, the Offeror agrees to hold CES harmless for any deficiency of payment.
7. Acceptance of final payment is a waiver of all claims, except unsettled claims previously made in writing.

Provisions Required by Law: Each and every provision of law and any clause required by law to be in the contract executed as a result of this solicitation will be read and enforced as though it were included herein, and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract will forthwith be physically amended to make such insertion or correction.

Public Record: All proposals submitted in response to this solicitation will become the property of CES and be a matter of public record available for review, under the supervision of CES staff from 9:00 a.m. to 4:00 p.m., Monday through Friday, at 10601 Research Rd. NE., Albuquerque, NM 87123.

Quality: Unless otherwise noted in this solicitation, Offeror warrants that for one (1) year after acceptance of the equipment or materials or work performed for the CES Member or Participating Entity, they shall be:

1. Of a quality to pass without objection in the industry or trade normally associated with them;
2. Fit for the intended purpose(s) for which they are used;
3. Of even kind, quantity and quality within each unit and among all units, within the variations permitted by the contract;
4. Adequately contained, packaged, and marked as the contract may require; and
5. Conform to the written promises or affirmations of fact made by Offeror.

Safety Measures: Offerors will take all necessary precautions for the safety of CES, CES Member and Participating Entity Staff and the public in general when installing, delivering goods, or services to CES, CES Members or Participating Entities physical location.

Safety Standards: All items supplied to CES Member or Participating Entity will comply with all current and applicable US Federal and State of NM Safety Standards, Statutes, Rules, and Regulations.

Sample: Samples may be required prior to awarding a contract and/or prior to entering into an individual project contract. Upon request of CES Member or Participating Entity, the Offeror will provide adequate samples and detailed specifications for

any item offered. Samples must be submitted within ten (10) days of request from CES Member or Participating Entity. Samples will be free of charge and submitted and removed at Offeror's expense. Samples will be compared to proposal specifications and evaluated as to materials used in construction, quality and workmanship, durability, adaptability to the use for which the items were intended and overall appearance. Samples received may be held for comparison with deliveries. CES and its Member or Participating Entity will not be held responsible for samples damaged or destroyed in examination or testing. Samples not removed within thirty (30) days after notice to Offeror will be considered abandoned and the CES Member or Participating Entity will have the right to dispose of them.

Serial Numbers: Equipment offered/proposed in this solicitation must have the original manufacturer's serial number.

Severability: The provisions of any contract executed as a result of this solicitation are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract, which may remain in effect without the invalid provision or application

Shipping Errors: Offeror agrees that shipping errors will be at the expense of the contractor. For example, if the contractor ships a product that was not ordered by the CES Member or Participating Entity, it is the responsibility of the contractor to pay for shipping charges back to the manufacturer or distributor, etc., at the convenience of the CES Member or Participating Entity.

Shipping Terms: FOB Destination, "pre-pay and add "unless otherwise indicated by the CES Member or Participating Entity. The receiving agency will notify CES, the Offeror and/or Freight Company promptly of any damaged goods and will assist the Freight Company/Offeror in arranging for inspection.

Smoking: All contract holders and subcontractors must adhere to CES Member or Participating Entity smoking policies.

Stored Materials: Upon prior written agreement between the Contract holder and CES Member or Participating Entity, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to CES Member or Participating Entity prior to payment. Such materials must be stored and protected in a secure location and be insured for their full value by the Contract holder against loss and damage. Offeror agrees to provide proof of insurance coverage and addition of CES Member or Participating Entity as an additional insured upon agency's request. Additionally, if stored offsite, the materials must also be clearly identified as property of a buying CES Member or Participating Entity and be separated from other materials. The buying agency must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary. Until final acceptance by the CES Member or Participating Entity, it shall be the Contract holder responsibility to protect all materials and equipment. The Contract holder warrants and guarantees that title for all work, materials and equipment shall pass to CES Member or Participating Entity upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

Taxes: Prices offered will not include applicable State of New Mexico Gross Receipts Tax (NMGRT) and local taxes. All applicable taxes must be listed as a separate item on all invoices and will be paid by the CES Member or Participating Entity issuing the purchase order to CES or Offeror. NMGRT is required for all non-professional and professional services, software and licensing agreement, construction services, leasing, and selling of real property. No NMGRT can be collected on delivery charges to the agency's location.

Taxes - Indian Reservation or Tribal Tax: If goods or services are subject to Indian reservation or tribal tax, Contract holder shall include such taxes as a separate item on the original invoice to CES.

Termination for Material Breach: Either Party may terminate any Agreement by notice to the other Party, for any material breach of said Agreement by the other Party, if such breach is not cured within ten (10) business days after the breaching Party receives notice of such breach from the non-breaching Party; provided, however, if such breach is not capable of being cured within the ten (10) business day period, the cure period shall be extended for an amount of time that the Parties agree to in writing and is reasonably necessary to cure such breach, so long as the breaching Party is using diligent efforts to do so. In case of Default and/or Breach by the Offeror, for any reason whatsoever, CES or the CES Member or Participating Entity may procure the goods or services from another source and hold the Offeror Contract holder responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and CES or the CES Member or Participating Entity may also seek all other remedies under the terms of said Agreement and under law or equity.

Termination for Convenience: CES, or the CES Member/Participating Entity can, by (30) day written notice to the Offeror terminate any Agreement executed as a result of this solicitation (RFP), for convenience in whole or in part. CES or the CES

Member and Participating Entity shall pay for acceptable work performed prior to the Offeror's receipt or issuance of a notice of termination. The Offeror shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination.

Termination for Default: CES reserves the right to terminate in whole or any part of any contract executed as a result of this AEPA solicitation due to the failure by the Contract holder to carry out any obligation, term or condition of the said contract. CES may issue written notice to the f Contract holder or acting or failing to act under but not limited to the following conditions.

1. The Contract holder provides material that does not meet the specifications of the contract.
2. The Contract holder fails to complete the services set forth in the specifications of the contract.
3. The Contract holder fails to complete the work required or to furnish the materials required within the specified time.
4. The contract holder fails to make progress in the performance of the contract and/or gives CES cause to believe that the Contract holder will not or cannot perform the requirements of the contract.
5. The Contract holder fails to observe any or all of the terms and conditions.
6. The contract holder accepts purchase orders, based on this contract, not my any method as described in Order Process term and condition directly from a CES Member and then invoices them directly.
7. Any other conditions that, in the opinion of CES, warrants such action.
8. Upon receipt of a written notice, the contract holder will have ten (10) business days to provide a satisfactory response in writing to CES. Failure on the part of the contract holder to satisfactorily respond shall result in CES terminating the contract.

Termination for Gratuity: CES shall, by written notice to Contract holder terminate the contract if the Contract holder is found in violation of any of the following: NMSA 1978, § 13-1-191, NMSA 1978, § 30-24-1, NMSA 1978, § 30-24-2, NMSA 1978, § 30-41-1 to NMSA 1978, § 30-41-3.

Termination for Non-Appropriation: Any individual Member's or Participating Entities' project covered by this solicitation and executed through the AEPA/CES procurement process may be terminated for insufficient appropriations or authorizations. If sufficient appropriations and authorization are not made by the Legislature of New Mexico, or the CES Member or Participating Entity's Governing Body, any Agreement executed as a result of this solicitation shall terminate immediately upon written notice being given by CES, or the CES Member or Participating Entity to the Contract holder. CES, its Members or Participating Entity's Governing Body decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Contract holder and shall be final.

Title and Risk of Loss: The title and risk of loss of material or service will not pass to CES Members or Participating Entities until it receives the material or service at the point of delivery, unless otherwise specified within this document.

Trade-In Equipment: Equipment for trade-in shall follow the requirements of NMSA 1978, § 13-1-156 and shall be dismantled and removed at the Contract holder expense.

Warranty: The Contract holder agrees that the tangible personal property or services furnished shall be covered by the most favorable commercial warranties the Contract holder gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to CES and/or the CES Member or Participating Entity and are in addition to and do not limit any rights afforded to CES and/or the CES Member or Participating Entity by any other Clause of this Agreement or order. Contract holder agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

Warranty – Value Added Reseller: If Contract holder is a value added reseller (VAR) for products solicited as part this (RFP) and not the Original Equipment Manufacturer (OEM) or licensor, the Contract holder shall forward all warranties to CES or the CES Member or Participating Entity which are provided to the Contract holder from the OEM, and to the extent granted by the OEM, CES or the CES Member or Participating Entity shall be the beneficiary of the OEM's warranties with respect to the products. Contract holder shall not be a party to any such warranties between CES or the CES Member or Participating Entity and the OEM.

Year-End Procurement: Purchase orders (PO) issued to an Offeror for goods must be delivered and services must be completed five (5) days prior to the CES Member or Participating Entity fiscal year end (June 30th), unless agreed upon in writing by both the CES Member or Participating Entity and the Offeror. CES must receive all invoices dated for the prior fiscal year by the 10th business day in July. The CES Member or Participating Entity may cancel purchase orders not completed by June 25th. The CES Member or Participating Entity may issue new or revised purchase orders dated after July 1st for any goods not delivered or services not completed by June 25th.

CES SUPPLEMENTAL TERMS AND CONDITIONS FOR CONSTRUCTION

The Contract shall be governed by the laws of the State of New Mexico and parties agree that the State of New Mexico District Court of the County where the Project is located shall have jurisdiction to resolve all claims, issues and disputes not otherwise resolved in accordance with contract documents. Each and every provision of law and clause required by law to be inserted in this Contract shall be read and enforced as though it were included herein; and if through error or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall be amended without cost to make such insertion or correction and that the remainder of this Contract shall remain in effect and not be affected thereby.

Americans with Disabilities Act: For any project contracted under this RFP, the Proposer must comply with the Americans with Disabilities Act (ADA) (42 USC Section 12101 et seq.) and the Americans with Disabilities Act Architectural Guidelines (ADAAG), as well as the implementing requirements, 28 CFR Part 36, Federal Register, Vol. 56, No. 144, July 26, 1991, as amended. The Construction Industries Division does not review plans and specifications for compliance with the ADA or ADAAG. The issuance of a building permit and compliance with the minimum codes do not ensure compliance with ADA or ADAAG. It is the Offeror's responsibility for compliance to ADA and ADAAG requirements for Lots under this Category.

Assignment of Antitrust Claims

The Contractor agrees that any and all claims that the Contractor may have or that may inure to the Contractor for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this project are hereby assigned to CES and the Owner but only to the extent that such overcharges are passed on to the Owner.

Bonds: All bid, performance, and payment bonds, if required, are to be issued by a corporate surety company authorized to do business in New Mexico as approved in federal circular 570 published by the United States Treasury Department.

1. Upon RFP submittal, CES requires that the Offeror provide a bid bond or other acceptable bid security in the amount of Twenty-Five Thousand Dollars (\$25,000) in response to this RFP. Acceptable forms are AIA Document A310-2010 Bid Bond or NASBP that includes the same language as the AIA Document A310-2010.
2. Upon execution of a contract the prime Contractor for a project with a value Twenty-Five Thousand Dollars (\$25,000) or more, shall provide AIA Document 312-2010 Performance and Payment bonds in an amount equal to one hundred percent (100%) of the Job Order Amount to CES Member or Participating Entity. These bonds will protect all persons supplying labor and materials and the performance of the prime Contractor for the work provided per the contract. The prime Contractor will deliver AIA Document 312-2010 performance and payment bonds in the name of the CES Member or Participating Entity at contract execution. Copies of the bonds must be provided to CES within five business days of the Contractor's receipt of the CES purchase order.
3. Prime Contract must identify its bonding capacity in the solicitation. Contractor will have the right to refuse work once its bonding capacity has been reached.

Change Orders:

1. A mutually agreed upon system for establishing changes orders must be identified, including changes in scope and changes in compensation for the prime Contractor. All change orders will be agreed to in writing by the Contractor and the CES Member or Participating Entity. No change order or Supplemental Job Order that increases the cost of the project will be permitted without a purchase order to CES from the Member ordering the change.
2. A copy of the approved change order must accompany a revised purchase order to CES. Minor changes mutually agreed upon between the CES Member or Participating Entity and the Contractor that do not involve compensation may be made without informing CES.
3. Minor changes mutually agreed upon between the CES Member or Participating Entity and the Contractor that do not involve compensation may be made without informing CES.

Claims and Disputes

A Claim is a demand or assertion by one of the parties seeking as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

1. Time Limits on Claims. Claims by either party must be initiated within thirty (30) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Owner or if applicable, the Design Professional and the other party.
2. Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing by the Owner and the Contractor, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

Commencement Date/Substantial Completion Date:

CES's purchase order establishes the Notice to Proceed. The Substantial Completion Date refers to a stage of a construction or building project or a designated portion of the project that is sufficiently complete, in accordance with the construction contract documents, so that the owner may use or occupy the building project or designated portion thereof for the intended purpose. The allowed duration for each project will be determined by the Contract Documents between the CES Agency and the Contractor. Upon substantial completion of the project and as part of the project close-out phase, the Contractor will deliver to the CES Member or Participating Entity all associated paperwork to include but not limited to as built drawings, executed warranties, and guarantees applicable to the goods and services provided and any owners and operating manuals.

Construction: As defined in the New Mexico Procurement Code Regulations under 13-1-40 NMSA 1978. Definition: "construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any road, highway, bridge, parking area or related project; building, stadium or other structure; airport, subway or similar facility; park, trail, athletic field, golf course or similar facility; dam, reservoir, canal, ditch or similar facility; sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; sewage, water, gas or other pipeline; transmission line; radio, television or other tower; water, oil or other storage tank; shaft, tunnel or other mining appurtenance; electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners; air conditioning conduit, heating or other similar mechanical work; or similar work, structures or installations. Construction shall also include: leveling or clearing land; excavating earth; drilling wells of any type, including seismographic shot holes or core drilling; and similar work, structures, or installations.

Contract between Owner, Buyer and Contractor: The Owner, Contractor, and CES shall execute a CES Three- Party Agreement for any project that requires a Davis Bacon or NM wage decision This Three- Party Agreement must be signed by all parties prior to the Contractor starting any work. In reference to this document, the Owner is a CES Eligible Agency; the Buyer is CES, which is acting as a conduit through which title to tangible goods may be vested in Owner. CES warrants and assures the Owner that it has complied with the State of New Mexico Procurement Code, Public Works Minimum Wage Act, the Public Works Contract Act, and the Subcontractor Fair Practices Act. The parties may agree to use as a guide the following: American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201, PSFA General Terms and Conditions, or Engineers Joint Contract Documents Committee (EJCDC®).

When using this agreement, the Contractor is responsible for providing CES with the information required to complete the Three-Party Agreement and must be executed prior to the first payment request is submitted to CES by the Contractor. It is at the discretion of the Owner and the Contractor to determine if an additional industry standard contract is to be executed in addition to this contract, including but not limited to, American Institute of Architects (AIA), The Engineers Joint Contract Documents Committee (EJCDC®) or Public School Facilities Authority (PSFA).

Contractor: As defined in Construction Industries Licensing Act, 60-13-1 NMSA 1978: "contractor" means any person who undertakes, offers to undertake by bid or other means, or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes constructing, altering, repairing, installing or demolishing any: road, highway, bridge, parking area or related project; building, stadium or other structure; airport, subway or similar facility; park, trail, bridle path, athletic field, golf course or similar facility; dam, reservoir, canal, ditch or similar facility; sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; sewerage, water, gas or other pipeline; transmission line; radio, television or other tower; water, oil or other storage tank; shaft, tunnel or mining appurtenance; leveling or clearing land; excavating earth; air conditioning, conduit, heating or other similar mechanical works; electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act.

The Act includes subcontractor and specialty contractor; and includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer, and other consultants required for the building project; and who utilizes their skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions, and advise concerning construction.

Contractor License: As defined in Construction Industries Licensing Act 60-13-12 NMSA 1978. A Contractor's license is required for any construction project. Exceptions per the NM Regulations and Licensing Department trades that have been de-classified are as follows:

GS-3 Tile

GS-10 Fencing

GS-11 Fixtures, Cabinets, Millwork

GS-12 Flooring

GS-17 Ornamental Iron and Welding
GS-18 Painting GS-22 Sandblasting
GS-26 Vaults and Depositories
GS-28 Guniting
GS-6 Doors are incorporated into GS-14 Windows and Skylights

1. No person shall act as a Contractor without a license issued by the division classified to cover the type of work to be undertaken.
2. No bid on a contract shall be submitted unless the Contractor has a valid license issued by the division to bid and perform the type of work to be undertaken; provided this subsection shall not prohibit a licensed Contractor from bidding or contracting work involving the use of two or more trades, crafts or classifications if the performance of the work in the trades, crafts or classifications other than the one in which he is licensed is incidental or supplemental to the performance of the work in the trades, crafts or classifications for which he is licensed; and further provided that work coming under the jurisdiction of the mechanical bureau or the electrical bureau of the division must be performed by a Contractor licensed to perform that work.

Contractor's Price List:

Prices offered through the entire term of any contract awarded as a result of this RFP shall be current and will include the CES/AEPA administrative fee. Should the contractor fail to update pricing with CES, the contractor shall honor their pricing on file with CES at the time of their quote submittal to the CES Member or Participating Entity. Price list(s) on file must clearly state and identify any/all products/services offered with their associated costs. When contractor offers a discount off a retail price, Manufacturer's Suggested Retail Price (MSRP), Gordian, JOC Core/RSMean, or line-item pricing if applicable, they must include a complete copy of the document and/or the document must be available to the general public by electronic media or by the internet.

Construction Materials: The prime Contractor will deliver materials to the worksite in new, dry, unopened, and well-marked containers showing product and prime Contractor's name. Damaged or un-labeled materials will not be accepted. The prime Contractor will deliver materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the Agency's contact person.

No products that contain asbestos fibers shall be used. Removal of any vinyl-asbestos tile or other flooring with asbestos fibers will be accomplished following all local, state, and federal laws for the handling and disposal of asbestos.

Cost of the Work: If material costs covered by this solicitation should substantially increase or decrease beyond the prices established at time of AEPA solicitation's due date due to conditions beyond the control of the Contractor, a temporary price increase or decrease may be approved by CES and, upon written request, prior to the development and submitting of a cost proposal to a CES Member or Participating Entity for their approval on an individual project. Upon receipt of such a request, CES will verify and issue a written determination accepting or rejecting the Contractor's request.

Insurance: The Contractor shall ensure that liability insurance is maintained in accordance with the laws of NM (See General Terms and Conditions) and may, at Contractor's option, either insure the activities of Subcontractors or require them to maintain insurance to cover all claims that may occur. If the Owner is damaged by the failure or neglect of the Contractor to maintain insurance as described above, then the Contractor shall be liable for all costs and damages properly attributable thereto.

1. The insurance required shall be written for not less than limits of liability required by law. Coverage shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after final payment.
2. Certificates of Insurance shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least **forty-five (45) days** prior written notice has been given to the Owner. If any of the foregoing insurance coverages are requested to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both shall be furnished by the Contractor with reasonable promptness.
3. The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates, and dates of expiration of policies of Insurance. The Contractor will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate Cordiform.
4. Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged at the site of the Project under this Contract, including Subcontractor employees. In case any class of employee engaged in work

- on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide, and cause each Subcontractor to provide Employer's Liability Insurance in an amount not less than five hundred thousand (\$500,000). Failure to comply with the conditions of this Subparagraph 11.1.5.1 will subject this Contract to termination.
5. Public Liability Insurance shall not be less than the liability amounts set forth in the New Mexico Tort Claims Act, §41-4-1 et seq. NMSA 1978, as it now exists or may be amended.
 6. Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars (\$1,000,000) per occurrence combined single limit for both personal injury and property damage.

Insurance – Property:

Unless otherwise stated, Builder's Risk coverage may be furnished by the Owner. The Contractor shall provide insurance which will protect the interests of the Contractor and Subcontractors in the Work. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Payment has been made.

Licenses: The Contractor will maintain and inform CES of current status of all federal, state, and local licenses, registrations, certifications, bonds, and permits required for the performance and delivery of any and all construction and non-construction products and services. Any Contractor using subcontractors must hold a current and appropriate Contractor's license, as defined in Construction Industries Licensing Act, 60-13-1 NMSA 1978 to enter into such contracts. It is the responsibility of the Contractor to ensure that any subcontractors performing under this RFP hold and maintain the appropriate Contractor's licenses as defined in Construction Industries Licensing Act, 60-13-1 NMSA 1978. The Contractor is responsible to ensure that all Sub-Contractors maintain current all federal, state, and local licenses, registrations, certifications, bonds, and permits required for the performance and delivery of any and all construction and non-construction products and services.

Liquidated Damages: The CES Member or Participating Entity has the right to assess liquidated damages to the Contractor (and its Surety); and the Contractor shall be liable for the amount of liquidated damages as determined in the contract documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to Owner without limiting Owner's right to terminate this agreement for default as provided elsewhere herein. The liquidated damages are assessed per calendar day of delay until the work is determined by CES and its Member or Participating Entity to be substantially complete. Liquidated damages will comply with the requirements of 55-2-718 NMSA 1978.

Liquidated damages and early completion incentives will be between the CES Member or Participating Entity and the Contractor and must be agreed upon in writing. If the CES Member or Participating Entity declines a liquidated damages or early incentive agreement, the Contractor will ensure such agreement is reflected and included in the project's contract documents.

Lumber Species: Per the laws of New Mexico, In the construction, erection or repair of all buildings and structures under this contract, the Contractor is hereby required to use, whenever the species of lumber necessary for such construction or repair work is available in this state, such species of lumber produced from timber grown in the State of New Mexico.

Maintenance of Building Systems: The Offeror of the various facility components or systems electrical/ mechanical/ structural must have or have access to and offer comprehensive maintenance support services to CES Members and Participating Entities. If a third party is used to provide maintenance or warranty work, Offerors must include with the proposal details of any such arrangement. Factory certified and trained technicians will be available to cover all parts of the state. Maintenance service in metropolitan areas of New Mexico should be available within 12 business hours of receiving a call and service in rural areas within 24 business hours of receiving a call. Any maintenance facility must have sufficient parts inventory to provide quality service on units sold to CES Members or Participating Entities. On small pieces of equipment, out-of-state manufacturers may offer mail-in service, if normal turn-around time is 48 hours.

New Mexico Building Codes and Regulations

The Contractor shall perform in compliance with all applicable national and state building codes.

- NMAC 6.27.30 - Statewide Adequacy Standards
- NMAC 14.5.1 - General Provisions: "This rule applies to all the administration, interpretation, and enforcement of contracting work performed in New Mexico subject to the jurisdiction of Construction Industries Licensing Act (CILA) and LP GAS Act."
- NMAC 14.5.2 – Permits: "This rule applies to all permitted work performed in New Mexico on or after November 15, 2017, that is subject to the jurisdiction of CID."
- NMAC 14.5.3 – Inspections: "This rule applies to all contracting work performed in New Mexico on or after November 15, 2016, that is subject to the jurisdiction of CID..."
- NMAC 14.5.8 - Investigations and Enforcement

- NMAC 14.5.9 - Code Bond Determinations
- NMAC 14.6.3 - Contractor's License Requirements
- NMAC 14.6.4 - Journeyman Certification
- NMAC 14.6.6 - Classifications and Scopes: This rule applies to any person who engages in contracting, as that term is defined in Construction Industries Licensing Act (CILA) Section 60-13-3 NMSA 1978.
- NMAC 14.6.6.9 - General Construction Classifications
- NMAC 14.6.6.10 - Electrical Classifications
- NMAC 14.6.6.11 - Mechanical And Plumbing Classifications
- NMAC 14.6.7 - Modular Building Structures
- NMAC 14.7.2 - 2021 New Mexico Commercial Building Code
- NMAC 14.7.7 - 2021 New Mexico Existing Building Code
- NMAC 14.7.8 - 2021 New Mexico Historic Earthen Buildings
- NMAC 14.7.9 - 2021 New Mexico Commercial Energy Conservation Code
- NMAC 14.8.2 - 2021 New Mexico Plumbing Code
- NMAC 14.8.3 - 2012 New Mexico Swimming Pool, Spa and Hot Tub Code
- NMAC 14.9.2 - 2021 New Mexico Mechanical Code
- NMAC 14.9.3 - 1997 Uniform Mechanical Code
- NMAC 14.9.4 - Boilers
- NMAC 14.9.4 - Medical Gas Installation And Certification
- NMAC 14.9.6 - 2012 New Mexico Solar Energy Code
- NMAC 14.10.4 - 2020 New Mexico Electrical Code
- NMAC 14.10.5 - 2012 New Mexico Electrical Safety Code
- NMAC 14.11.3 - 1997 Uniform Plumbing Code
- NMAC 14.12.2 - Manufactured Housing
- NMAC 19.15.40 - New Mexico Liquefied Petroleum Gas Standards
- NFPA 54 - 2018 National Fuel Gas Code
- NFPA 58 - 2024 Liquefied Petroleum Gas Code.
- Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.
- LP Gas Act, Sections 70-5-1 through 70-5-23 NMSA 1978.
- Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978
- Public Works Contracts, Sections of 13-4-1 to 13-4-43 NMSA 1978
- Public Works Minimum Wage Act, Sections 13-4-10 through 13-4-17 NMSA 1978
- Subcontractors Fair Practices Act, Sections 13-4-31 to 13-4-42 NMSA 1978
- Prompt Payment Act, Sections 57-28-1 to 57-28-11 NMSA 1978 New Mexico Public School Facility Authority Adequacy and Construction Standards for K-12 Educational Facilities only.

NMCID: New Mexico Construction Industries Division, a state agency who is responsible for overseeing, administering, issuing, and ensuring that construction projects, Contractors and owners follow and comply with New Mexico laws, rules, regulations, policies, and procedures.

NMDWS: New Mexico Department of Workforce Solutions, a state agency responsible for the administering and ensuring that all Contractors, and subcontractors follow and comply with New Mexico and Federal labor laws and applicable policies and procedures governing employment and the general workforce.

NMDWS Contractor Public Works Registration Requirement: As defined in Public Works Minimum Wage Act 13-4-13.1 NMSA 1978. In order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than Sixty Thousand Dollars (\$60,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 to 13-4-17, NMSA 1978], the Contractor, serving as a prime Contractor or not, shall be registered with the New Mexico Department of Workforce Solutions. The State, or any political subdivision of the State, shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime Contractor that does not provide proof of required registration for itself. Contractors and subcontractors may register with the New Mexico Department of Workforce Solutions on a form provided by the division and in accordance with the Department of Workforce Solutions department rules.

Because this solicitation is for an indefinite quantity and the amount of work to be performed on individual projects is not known, CES is requiring that all Offerors be registered on or before the date of the proposal opening and keep their registration current during the term of the contract and all contract extensions.

New Mexico State Wage Rate Documentation:

1. The New Mexico Department of Workforce Solutions (NMDWS) requires that certain forms be completed for every project in excess of \$60,000. CES will submit for the wage decision and, upon receipt of the decision, will provide it to the prime

Contractor. The Contractor is responsible for completing and submitting the required forms to the NMDWS and must provide CES with a copy of the following required forms: Notification of Award, Statement of Intent to Pay Prevailing Wages, and Affidavit of Wages Paid.

2. The prime Contractor must submit the Statement of Intent to Pay Prevailing Wages and the Notification of Award to NMDWS with a copy being mailed, faxed, or e-mailed to CES, prior to the start of the project. The Affidavit of Wages Paid must be submitted to NMDWS with a copy being mailed, faxed, or e-mailed to CES at the conclusion of your work on the project. The prime Contractor is responsible for insuring that its subcontractor(s) also submit the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid to NMDWS, with a copy being mailed, faxed or e- mailed to CES.
3. CES will not make any payments until copies of the Notification of Award, Statement of Intent to Pay Prevailing Wages and for projects \$25,000 or greater until the Payment and Performance Bonds are received by CES. Final payment will not be released until CES receives a copy of the Affidavit of Wages Paid.

Payment Retention, Progress Payments:

1. In order to comply with 57-28-1 to 57-28-11 NMSA 1978, CES will not retain any funds on progress payments during any construction projects. The prime Contractor agrees to only request payment for stored materials and work completed and accepted by the CES Eligible Agency.
2. Final payment of a contract, will not be made until the project is totally completed and accepted by Owner, including punch list items and close out documents delivered, and the final application for payment is signed by the CES Eligible Agency, received, and audited by CES.

Permits, Fees and Notices:

Building Permits are required subject to New Mexico State Statutes, Section 60-13-45 NMSA 1978, and the provisions of the CID rules, no building or structure shall be erected, constructed, enlarged, enlarged, altered, repaired, moved, improved, removed, converted or demolished, and no electrical wiring, plumbing or mechanical work as defined and described in the applicable New Mexico construction codes for those trades, may be installed, repaired or maintained in or on such building or structure, unless the applicable permit has first been obtained from the division. It is the Offeror's responsibility to secure all required building permits for the construction services offered under this Category and Lots.

Progress Payments for Construction:

All progress payments must be invoiced through CES. It is the responsibility of the CES Agency and/or its designee to review and approve any estimates of work completed. Per 57-28-5 NMSA 1978 A "If an owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete..." In such cases, the contractor agrees to hold CES harmless for any deficiency of payment.

Project Records: The Contractor shall be required to provide accurate record documents for each portion of the work as part of its bid for that portion of the work, without additional cost to CES or its Eligible Agencies.

1. For audit purposes, a copy of any contract(s) and agreement(s) between the CES Eligible Agency and the prime Contractor must be kept on file in the CES office. It is the responsibility of the prime Contractor to supply a signed copy of any contract(s) and agreement(s) to CES.
2. Upon substantial completion of the project and as part of the project close-out phase, the prime Contractor will deliver to the CES Eligible Agency all associated paperwork (as built drawings, executed warranties/ guarantees applicable to the goods and services provided and any owners/operating manuals).
3. The prime Contractor must agree that the CES Eligible Agency reserves the right to release information about the project, and that any advertising of the project by the prime Contractor must be approved by an authorized official of the Agency.

Project Schedule: The CES Eligible Agency retains the right to extend the schedule of work or to suspend the work and to direct the prime Contractor to resume work, when appropriate. The agreement must describe an equitable adjustment for added costs caused by any suspension. Any increases will be invoiced through CES as allowed in the agreement.

New Mexico Public School Facilities Authority (NMPSFA) - Special Conditions

When a New Mexico public school district builds a project utilizing a CES Contract with funds that have been appropriated by the Public School Capital Outlay Council (PSCOC), the NMPSFA and the school district become co-owners of the project until the work is completed and accepted. Therefore, NMPSFA must be involved in project discussions and their representative must approve and submit the documents before payment can be issued.

Upon obtainment of substantial competition, the Contractor, Eligible Agency's, and NMPSFA's representative will develop a punch list of items that need to be completed or resolved. The Contractor will complete the punch list and provide required close-out documents and applicable certificates of code compliance from the various state and local governing authorities prior to requesting final payment.

Quality Control:

1. During the course of the contract, the CES Member or Participating Entity contact person may secure samples according to Construction Industries Division guidelines or industry standards of materials being used from containers at the job site and submit them to an independent laboratory for comparison to specified material.
2. Should test results prove that a material is not functionally equal to or better than specified; the prime Contractor will pay for all testing and any cost incurred to have materials installed to replace those found not to comply with the specifications and remove and dispose of the materials not complying.
3. Should test results prove that materials tested were functionally equal to specified material; the prime Contractor will be notified of the results.
4. During the execution of the project and/or during the project close-out process, the CES Member or Participating Entity and the Contractor encounters a situation and/or condition that they cannot agree on or resolve, CES has consultants under contract that either of the parties can engage to review, investigate, evaluate, and issue a written report on their findings and propose recommendations/solutions for addressing the concerns and issues.

Safety: All work shall comply with OSHA safety requirements and any additional applicable federal, state, or local fire and safety requirements. When specifications or scope of work will result in a violation of a code or result in an unsafe condition, the Contractor must inform the CES Eligible Agency of the situation.

1. The Contractor will not construct any sub-assembly, structure, or device or produce any condition that intentionally violates a fire, health, safety or UBC code or safety standard.
2. Contractor must advise Agency's contact person whenever work is expected to be hazardous to students, Agency's employees, or operators. Failure of the work to comply with currently adopted codes and requirements when a project is inspected, and a certificate of occupancy is required will be corrected by the Contractor at no additional cost of the owner.
3. Material Safety Data Sheets for any material supplied will be provided to the owner as part of the Project Close Documents or as request of CES Member or Participating Entity.
4. When working, loading, unloading, repairing, or operating equipment near an owner-used area, the prime Contractor will maintain a crewman in the area as a guard to keep students and adults from wandering in, if the area is not protected.
5. Fire extinguishers will be maintained within easy reach whenever power tools and torches are being used. The Contractor will advise the CES Member or Participating Entity contact person when volatile materials are to be used near air ventilation intakes, so that they can be shut down or blocked as directed.
6. All of the work and items supplied on this contract will comply with all current and applicable US Federal and State of NM Safety Standards, Statutes, Rules, and Regulations.

Safety – Material Safety Data Sheets

The Contractor will furnish the CES Eligible Agency's representative(s) copies of MSDS' for all products used prior to use at any of the agency's facility. The Contractor must update copies of the MSDS on an annual basis and when any new products are introduced into any agency's facility or added to the contract prior to the product being used. The Material Safety Data Sheets shall comply with OSHA Regulation 1910.1200, Paragraph G.

Site Access: Access to the construction space will be limited to the way agreed upon by the parties. The Contractor shall hold CES and its Eligible Agencies harmless from damage from trespassing on property of others.

Site Cleanup: Contractor will clean up and remove all debris resulting from its work as required by the CES Member and Participating Entity. The Contractor shall comply with all laws and regulations governing disposal of construction and hazardous materials. There shall be no dumping of construction debris or other material on the CES Member and Participating Entity property. Any material that requires special handling as dictated by federal or state law shall be removed in compliance with the requirements of those laws. All such materials shall be removed from the site and properly disposed of by the Contractor.

Site Examination: Contractor shall familiarize itself with the site, in order to anticipate unseen problems that may develop as the work progresses. Failure to have visited the site before submitting a job order proposal shall in no way relieve the Contractor from furnishing any materials or performing any work required to complete the project in accordance with the contract documents, without additional cost to the CES Eligible Agency. If there is no written agreement signed by all parties, by the Contractor taking possession of the project site and commencing work, the Contractor acknowledges that the site's condition meets their expectations and requirements for completing the project.

If construction space is directly under, above, in or near the CES Eligible Agency's used space, the prime Contractor must agree to receive written approval from the CES Eligible Agency contact person prior to interrupting any activities or programs.

Site Preparation: Prior to a purchase order being issued by a CES Eligible Agency, the size, location, and site conditions that

exist at the time the Contractor takes possession and/or control must be clearly identified and stated in writing. The Contractor will not begin a project for which the site is not prepared or in the condition agreed upon in writing by the CES Member or Participating Entity, unless Contractor decides to accept the site as is and is willing to perform the preparation work necessary at no cost, or until the CES Member or Participating Entity has included the cost of site preparation in a purchase order to CES. Site preparation may include, but is not limited to, moving furniture, clearing the site, securing the site, installing wiring for networks or power and similar pre- installation requirements.

Site Supervision: During all phases of a project, the Contractor will have a qualified and experienced foreman in the area of construction being performed; the individual must be qualified and knowledgeable of all specifications and requirements of the project and provide continuous supervision and coordination of activities to assure that project outcomes are met.

1. When working or operating equipment near an owner-used area, the prime Contractor will maintain a crewman in any unprotected area to keep students and adults from wandering into the area.
2. All equipment, tools and machines used in the performance of this work by either the prime Contractor or subcontractors will be maintained in satisfactory working conditions and meet or exceed industry standards at all times.
3. When fixtures, such as air conditioning and other equipment are moved to perform work, they will be placed in a protected area so as not to damage any part or component. Appropriate measures will be taken to prevent rust, vapors, gases, or odors from entering the owner-occupied areas used during the construction or repair services. Appropriately licensed tradesmen will perform all required disconnections and reconnections. Any damage caused by the disconnection, storage, or reconnection of equipment will be repaired at no additional cost to the CES Eligible Agency.

State Wage Rates: It is the contractor's responsibility to be acquainted with the New Mexico Department of Workforce Solutions rules, regulations, procedures, and requirements relating to state wage rates, and to comply with state and federal regulations regarding payment of wages on public projects. The construction contractor will pay New Mexico prevailing wage rates for every job performed under this contract with a total project cost of Sixty Thousand Dollars (\$60,000) or more on an individual basis. The contractor under the Public Works Minimum Wage Act as cited under 13-4-10 through 13-4-17 NMSA 1978, will pay all mechanics and laborers employed on the site of the project by the contractor, unconditionally and not less often than once a week, and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications.

Subcontractors: If it is necessary for the Offeror to contract with third party firms to provide various goods and services, the following will apply:

1. In accordance with the "Subcontractor Fair Practices Act", 13-4-31 to 13-4-42, NMSA 1978, the following information is required to be submitted with any job order project:
 - A. The name of each subcontractor who will be performing work or rendering service on the public works project and whose total contract will be the greater of:
 - 1) Five Thousand Dollars (\$5,000); or
 - 2) One half of one percent (.005%) of the total project (to be estimated by the architect and/or engineer of record).
 - B. Address of the place of business
 - C. Subcontractor license number
 - D. Type of work or services to be performed by the subcontractor.
 - E. Pursuant to Section 13-4-38 NMSA 1978, if an Offeror fails to list a subcontractor in excess of the listing threshold on any job order contract, and they do not state that the provider is a sole source or that they will put all work that exceeds the threshold to individual bid each time, they are stipulating that they are fully qualified to perform the proposed products and services themselves and that they will perform all work themselves. After the specific job order contract award, any change in subcontractors must be approved by CES and the CES Eligible Agency, otherwise, the Offeror will be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided therein.
2. Subcontractor must be registered with New Mexico Department of Workforce Solutions, Public Works section.
3. CES and its Eligible Agencies reserves the right to approve, reject and replace any subcontractor proposed by the Offeror pursuant to 13-4-36 NMSA 1978.
4. Subcontractors shall provide performance and payment bonds to prime Contractor if the sub-contract is greater than \$125,000 pursuant to 13-1-148.1.
5. Any agreements with subcontractors shall incorporate, by reference, the terms and conditions of this solicitation and each individual project contract.
6. No subcontract requiring licensure will be entered into with any unlicensed party. Contractor must use subcontractors openly, include such arrangements in the proposal and certify upon request that such use complies with the rules of the NMCID, New Mexico Public Works Act and New Mexico Procurement Code.
7. Subcontractor Payment: Contractor agrees to pay subcontractors in a timely manner and in accordance with the New Mexico Prompt Payment Act pursuant to 57-28-5 NMSA 1978. If Contractor receives a progress payment from CES, the Contractor will pay subcontractor(s), "...within seven days after receipt of payment from the owner, contractor or subcontractor..." pursuant to 57-28-5 C. NMSA 1978. CES will contract to provide release of liens from subcontractors

within fifteen (15) days of date of payment. Failure to pay subcontractors, pursuant to 57-28-5 C. NMSA 1978, for work faithfully performed and properly invoiced can result in the suspension or cancellation of this contract.

8. Subcontractor's labor used must be of a standing or affiliation that will permit the work to be carried on harmoniously, without delay and will not cause any disturbance, interference, or delay to the progress of the project. Subcontractor and lower-tier subcontractors will not employ anyone whose employment might be objected to by prime Contractor or Member.
9. It is the responsibility of the Contractor to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract and that the CES Eligible Agency must make payments to CES before CES can issue progress payments to the Contractor. The Contractor must provide CES with all subcontractors and suppliers information utilized for any individual project performed.
10. Contractor and Subcontractor are responsible for complying with the provisions of §22-10.3.3.B NMSA 1978, regarding employees' having unsupervised access to students. The Contractor and Subcontractor may be required to obtain background checks for any employee working on a CES project per the CES Member's or Participating Entity's background check policy prior to accessing the project site.

Subcontractor Insurance: In addition to the Insurance requirements specified in the CES General Terms and Conditions the Contractor shall ensure that prior to commencing any work, any subcontractor shall procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form (Acord 25) and from insurers acceptable to the prime contractor. All subcontractors will provide worker's compensation insurance, which waives all subrogation rights against the prime contractor, CES, its Members and Participating Entities.

Substantial Completion and Project Acceptance:

When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall promptly prepare and submit a punch List that includes incomplete and non-compliant Work to be completed or corrected prior to final payment. Failure to include any item on a punch list does not alter the responsibility of the Contractor complete the work in accordance with the agreement between the Owner and the Contractor. Owner and Contractor shall agree on a close-out schedule to include equipment maintenance manuals, instructions, heating or cooling, utilities, insurance, etc. and establish the date of completion for Certificate of Substantial Completion.

Tests and Inspections:

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Contractor shall schedule tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, provided by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals unless otherwise provided in the Contract Documents. The Contractor shall give the Owner and if applicable, the Design Professional, timely notice of when and where tests and inspections and approvals are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

Temporary Utilities: Cost for temporary utility services that are part utilized during the construction process will be identified and agreed upon in writing by the CES Eligible Agency. Utility services utilized by the Contractor to maintain a project office trailer, maintenance shop, storage facilities, security lighting, etc., will be the responsibility of the Contractor and can only be transferred to the Agency on written agreement specifically stating what Contractor's utilities it will be responsible for.

Warranty after Substantial Completion:

The Contractor shall, within 11 months after the date of Substantial Completion, correct all the Work that is found to be non-compliant. If after one year from the date of Substantial Completion any of the work is found to be deficient the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless, the Owner has previously given the Contractor a written acceptance of such condition. During the eleven- month period for correction of the Work, if the Owner fails to notify the Contractor and gives the Contractor an opportunity to make the correction, the Owner waives the rights to require the correction by Contractor and to make a claim for breach of warranty.

WARRANTY – Construction:

Construction warranty refers to a **warranty** for **construction** that is given by the contractor for the project. Such **warranty** states that the substantially completed project is free of structural, electrical, plumbing, and other defects, and is fit for the intended purpose.

The prime Contractor will deliver materials to the worksite in new, dry, unopened, and well- marked containers showing product and prime Contractor's name. Damaged or un-labeled materials will not be accepted. The prime Contractor will deliver

materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the CES Member or Participating Entity contact person.

Contractor warrants that all construction and related services provided shall be performed in a good workmanlike manner, by workers who are appropriately trained and experienced in the work being performed, in accordance with all requirements of the contract documents, industry standards for projects of similar type and quality, and all applicable laws, codes, regulations, and other requirements including safety requirements.

Contractor further warrants that all equipment, software, construction products and services delivered under this contract will conform to the specifications of this contract. Offeror must agree to assist the purchaser in reaching a solution regarding a dispute with the manufacturer over a warranty's terms and comply with the following:

1. Contractor warrants that any construction products and services, equipment or material supplied to CES, or its Members or Participating Entities will conform to all requirements of the contract and all representations of Contractor and will be fit for all purposes and uses as required and defined for each individual project. All work performed, equipment and materials must carry a minimum 12- month warranty that includes parts, labor, and reimbursable expenses.
2. Contractor warrants that for one (1) year after acceptance of the individual project, the work performed, equipment and/or materials provided to the CES Member or Participating Entity will be:
 - a. Of a quality to pass without objection in the industry or trade normally associated with them;
 - b. Fit for the intended purpose(s) for which they are being purchased and/or being used;
 - c. Of even kind, quantity, and quality within each unit and among all units, in the variations permitted by the contract;
 - d. Adequately contained, packaged, and marked as the contract may require; and
 - e. Conform to the written promises or affirmations of fact made by Contractor. Any extended manufacturer's warranty that is obtained to meet the 12-month requirement will be passed to the CES Member or Participating Entity without exception. CES reserves the right to cancel the contract if Contractor charges the agency for any product and/or service received at no cost under a warranty.
3. The Contractor will be responsible for ensuring that all warranty work is completed either by performing the work itself or by working with the Agency to have it completed by a third party or subcontractor. The Contractor will remain available to the Agency should added services be required after warranty obligations are met. Even if final payment is made, if the Agency discovers an unfinished or missing job component or improperly installed material or equipment during the first year after acceptance which should have been completed as part of the original project scope of work, the Contractor will complete the work in a timely fashion at no additional cost.
4. The Contractor may offer extended warranties and maintenance agreements for additional cost to the CES Eligible Agencies as a separate line item. Upon request, no-cost training must be offered by the prime Contractor for the maintenance staff of the Agency and will be arranged after the installation and as part of the purchase contract.

20. North Dakota, North Dakota Educators Service Cooperative (NDESC)

General Terms and Conditions (All Categories)

- a. **Governing Law:** The laws of the State of North Dakota govern all contracts resulting from this solicitation. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
- b. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Cass County, North Dakota. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Cass County, North Dakota.
- c. **Hazardous Substances:** All hazardous products purchased by participating agencies shall include a Safety Data Sheet (SDS) with the delivery.
- d. **Lease and Rental Agreements:** The Vendor may allow participating agencies to enter into a rental, lease, or lease-purchase agreements, providing such agreements comply with North Dakota Statutes and guidelines. NDESC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Vendor and the participating agency. The Vendor agrees that leases will comply with the Uniform Commercial Code. The applicable administrative fee must be included in the lease cost based on the total value of the goods and applicable services purchased. This fee is referred to under the Technical Specifications. The Vendor should attempt to work with NDESC's current leasing vendor. Should the Vendor be required to utilize their own financial leasing company, this should be noted/requested as an exception. In the event of a lease, the total administrative fee for the value of goods shall be paid to NDESC by the vendor at the front end of the lease. NDESC reserves the right to review all purchase orders, lease documents and invoices to ensure contract compliance.
- e. **Non-Discrimination:** Any resulting contract for on or behalf of participating agencies, said Vendor agrees to:
 - i. That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, because of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
 - ii. That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
 - iii. That a violation of this section is a misdemeanor; and
 - iv. That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, shall be forfeited for a second or any subsequent violation of the terms or conditions of this contract.
- f. **Participating Agency:** A participating agency shall be defined under Chapter 54-40.3 of the North Dakota Century Code, as amended. An eligible agency includes any school, higher education, city, county, other governmental agency, nonprofit organization, or other entity contracted to conduct business on behalf of a participating agency provided that they are required to follow state and local procurement regulations.
- g. **Substance Use and Conduct:** All Vendor partners and subcontractors must adhere to local substance (alcohol, drug, smoking, etc.) and conduct (dress code, language, parking, etc.) policies while on a participating agencies' premises.
- h. **Vendor Orientation:** The Vendor and their participating resellers/sub-contractors will be required to participate in an online training session that is designed to educate the Vendor and resellers/sub-contractors on the purpose and nature of NDESC. The Vendor will not be marketed to participating agencies until they have completed the vendor orientation session.

8. Additional Participating Agency Terms and Conditions for Non-Construction Products and Services

If requested by NDESC, the contracted vendor will work with NDESC to develop an order form, or order forms, containing the most commonly purchased items, that NDESC can utilize to market the contracted vendor to its participating agencies.

9. Additional Participating Agency Terms and Conditions for Construction Related Products and Services

Upon acceptance and approval of the Vendor's offer by AEPA, NDESC will independently consider the offer and consult with the Vendor determine if the Vendor can meet the requirements for construction-related products and services, according to [Chapter 48-01.2 of the North Dakota Century Code](#), and to enter and execute a contract in the state of North Dakota. Once NDESC and the Vendor can confirm that business can be conducted in North Dakota, NDESC will make a final decision to complete the contract execution process.

For all quotes provided to participating agencies, for construction-related projects, products and services, the contracted vendor must also send a duplicate quote to NDESC. The quote provided to NDESC must include the contact information of the participating agency.

Performance Bond (*for construction and/or installation related projects*): As defined by state statute, performance bonds will be required on all projects valued great than:

1. Fifty thousand dollars (\$50,000) or more for educational agencies and two hundred thousand (\$200,000) or more for municipalities in North Dakota; or
2. Otherwise requested by the participating agency.

All performance bonds will be issued by a corporate surety authorized to do business in the state in which the work will be conducted and by a surety listed in the US Treasury Circular 570. Performance bonds will be posted by the Vendor and submitted to the specific participating agency for the assigned project. Should the contract be the result of a piggyback agreement, performance bonds will reflect each state's bonding requirements.

The Vendor will execute a performance bond in an amount equal to one hundred percent (100%) of the value specified in the contract between the participating agency and the Vendor unless the participating agency does not require a performance bond or requires less to be posted. This bond will protect all persons supplying labor and material to the Vendor for the performance of the work provided in the contract. Subcontractors who may work on the contract may have to provide the Vendor with a performance bond. If the contract price increases after the bond is provided, the participating agency may consider obtaining additional bonds from the Vendor.

If required, the Vendor will deliver the performance bond to the eligible participating agency at the time the contract is executed between the agency and the Vendor. Work will not commence between the Vendor and the eligible participating agency until the performance bond is received by the participating agency and a copy has been sent to CPC via email (info@purchasingconnection.org). The Vendor will be responsible for providing CPC with a copy of all contracts and bonds in accordance with CPC purchasing procedures. Should the Vendor fail to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to pay the dollar amount of the bond to the participating agency.

It is the Vendor's responsibility to ensure that they can obtain the required bonding for all construction products based on an awarded contract arising from this solicitation. Payment will not be issued for any project for which the required bonds have not been received.

With said construction-based project, the participating agency may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this solicitation and resulting Master Contract Agreement (i.e. project timeline, completion dates, progress payments, delivery requirements, invoice requirements, etc.). Any supplemental agreement developed because of the Master Agreement is exclusively between the Vendor and the participating agency. CPC, its agents, members, and employees shall not be a party to any claim for breach of such agreement.

10. Insurance

The Vendor shall purchase, maintain and provide certification from the insurer for minimal coverage during the life of an awarded contract, to include, but not limited to, comprehensive public and/or commercial liability, errors and omissions, workman's compensation, unemployment, and other insurance coverage required by and applicable to each of NDESCs individual state's statutes and federal laws which proposed products and services will be offered and provided. The Vendor shall provide a Certificate of Insurance (COI) from the issuing company or their authorized agent, identifying the coverage required below and identifying NDESC as a "Certificate Holder". Any required insurance that is canceled before the expiration date of the contract agreement, the issuing company will send immediate notice to NDESC. COIs must be updated and sent to NDESC upon insurance coverage renewal. Respondents shall provide a statement of insurance from the issuing company or their authorized agent with their proposal. The Vendor shall meet the following requirements:

- a. Commercial General Liability: \$1,000,000 each occurrence, \$500,000 annual aggregate
- b. Automobile Liability: \$1,000,000 each occurrence
- c. Workers Compensation: \$100,000

NDESC reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. The Vendor must provide the COI upon receipt of a signed contract.

11. Procedure for Contract Award, Notification and Processing Orders

Once the award is recommended by the AEPA Review Committee, NDESC considers the recommendation based on the value of the potential contract for its participating agencies. In the event of an award by the NDESC Board of Directors, NDESC will

inform its participating agencies of the award.

- a. The contract will be listed and promoted on the NDESC website (www.ndesc.org).
- b. Announcement of the contract award.
- c. Upon award and completion of the vendor orientation, NDESC will promote the contract opportunity to its membership in one or more of the following ways: websites; agency newsletters; hard copy marketing flier; Email announcements; contract catalog; and trade shows.
- d. NDESC will require a marketing flyer, brochure, or other similar marketing pieces, in an editable, electronic format, from each vendor promoting the available contract with the vendor, and/or a web page or link. NDESC may assist in the development of the marketing flier and material (if requested by the vendor), but in all cases shall have the authority to review and approve any marketing materials. If a web site is used, the link will be made available from the NDESC web page. Any web page or link, or other marketing tools shall be dedicated to NDESC and/or AEPA information only.
- e. When a participating agency identifies a desired product or service, the agency and the Vendor may negotiate with each other to establish a description of items and/or services. The Vendor shall quote a price to the member, using AEPA established discounts, including the two percent (2%) administrative fee in the quoted price not as a separate line item. The administrative fee shall be based upon the total cost of goods and/or services including installation costs.
- f. Ordering Methods
 - i. Participating agencies may use two (2) different methods of placing orders from the resulting contract: Purchase Orders (PO's) and procurement cards. The method of payment is at the discretion of the participating agency. Additional surcharges for the use of a procurement card must be clearly outlined.
 - ii. A PO may be issued to the Vendor on behalf of the participating agency ordering the services covered under the resulting contract. An issued PO will become part of the resulting contract. The PO indicated that sufficient funds have been obligated toward the purchase.
 - iii. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
 - iv. Performance under this contract is not to begin until receipt of a PO, procurement card order, or other notification to proceed by the participating agencies to proceed.
- g. NDESC requires that all participating vendors offer the contract opportunity to all NDESC participating agencies.

12. Administrative Fees and Reporting

The administrative fee is to be paid by the Vendor to NDESC, quarterly, within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to NDESC a sales report, in Excel format, listing the following information:

- a. Name of purchasing agency
- b. Address of purchasing agency (city, state, zip code)
- c. Date of purchase
- d. Invoice number
- e. Amount of purchase
- f. Administrative fee generated by sale
- g. Savings generated by sale

This report shall include all sales made and payments received by the Vendor in said quarter. The sales report shall be emailed to Jane Eastes at jeastes@lcsc.org and copied to Lori Mittelstadt at lmittelstadt@lcsc.org. Payments must be received either via check or authorized ACH. An ACH enrollment/authorization form must be provided to NDESC for completion. ACH remittance notification must be sent to the individual indicated on the ACH enrollment/authorization form prior to ACH payment. If mailing a check, the payment shall be delivered to Jane Eastes, NDESC, 1001 East Mt. Faith, Fergus Falls, MN 56537. The check shall be made out to Lakes Country Service Cooperative.

13. Express Online Marketplace

NDESC provides participating agencies with an online purchasing platform called Express, powered by EqualLevel. Through Express, agencies can search for and purchase items. Essentially, Express is a one-stop-shop for many of NDESC's commodity-based contracts. A Vendor does not have to have an e-commerce site to be included in Express. NDESC expects growth in the number of agencies utilizing the marketplace and the volume of sales to grow significantly. NDESC will work with the Vendor to determine if the contract agreement is suitable for the online platform. If deemed suitable, NDESC will require integration into Express promptly.

20. OHIO COUNCIL OF EDUCATIONAL PURCHASING CONSORTIA (OCEPC)

A. **General Terms and Conditions that apply for all Categories:**

1. Compliance with Laws/Forum Designation

Contractor shall comply with Federal, State, and Local Laws, Codes and Regulations while fulfilling the contract. It is the Contractor's responsibility to be aware of and comply with all state and local laws governing this procurement. Applicable laws, codes, and regulations (etc.) must be followed even if not specifically identified herein. Contractor shall verify to the Ohio Council of Educational Purchasing Consortia (OCEPC), its Member Agencies and other qualifying purchasers that the Contractor is complying with all Federal, State and Local Laws, Codes and Regulations while fulfilling the contract. Moreover, this contract shall be governed by and construed in accordance with the laws of the State of Ohio without giving effect to its principles of conflict of law. Legal proceedings arising under this contract shall be brought in an Ohio Court of Common Pleas of the County where the Member Agency's main office is located.

2. Delinquent Tax Affidavit

Contractor shall provide an affidavit relating to delinquent taxes as may be required by Ohio Revised Code Section 5719.042.

3. Secretary of State Registration

Contractor shall meet and maintain all registration requirements as necessary to conduct business in the State of Ohio, including but not limited to registration with the Ohio Secretary of State.

4. Findings for Recovery

Contractor warrants and represents that it is not subject to a finding for recovery under Ohio Revised Code Section 9.24, or that Contractor has taken the appropriate remedial steps required under Ohio Revised Code Section 9.24, or otherwise qualifies under Ohio Revised Code Section 9.24.

5. Ohio Workers Compensation Insurance

Contractor, and any subcontractors hired by Contractor shall, at their own expense, maintain in force for the duration of the project workers' compensation and employer's liability insurance as required by the laws of the State of Ohio.

6. Project Personnel, Student Safety and Background Checks

Member Agency shall have the right to reject the participation of any personnel of Contractor in the performance of the services if, in relation to the work assigned to them, the Member Agency deems such personnel to lack the skill, experience and expertise required to perform the services or if Member Agency considers their performance to be substandard or otherwise detrimental to the proper completion of the services. Contractor will advise Member Agency promptly of any change in the project manager or other key personnel assigned to the performance of the services.

Contractor acknowledges that the safety of the Member Agency's students, employees, officials and guests is of the utmost importance. Contractor will endeavor to ensure that its officers, employees, agents, representatives, and consultants will take no action that would jeopardize the safety of the Member Agency's students, employees, officials, or guests. The Member Agency reserves the right to require Contractor's officers, employees, agents, representatives and consultants to wear identification and stay in designated work areas at all times while on the Member Agency's property. The Member Agency shall have the right to effect the immediate removal of any person associated in any way with Contractor from Member Agency property for failure to wear identification, for being outside a designated work area, for fraternizing with or engaging in any improper behavior directed toward or in the vicinity of students, employees, officials, or guests of the Member Agency or for any other good cause.

Contractor shall perform or cause to be performed an Ohio Bureau of Criminal Investigation and Identification and Federal Bureau of Investigation criminal background check of any personnel that will be performing the services within the proximity of minors. Contractor shall notify the Member Agency of any proposed employee who has been convicted, pled guilty or pled "no contest" to a criminal offense, and the Member Agency reserves the right to reject the proposed employee with a criminal background. No person shall be employed by Contractor who has been found guilty of any of the criminal offenses enumerated in Ohio Revised Code Section 3319.39 without prior approval of the Member Agency.

7. Independent Contractor

Contractor shall be an independent contractor and neither Contractor nor any of its subcontractors, nor the employees of any thereof, shall be deemed to be the servants, employees, or agents of Member Agency. Contractor shall be responsible for paying all costs related to its employees and managers performing the services. Contractor shall remain liable and responsible to Member Agency for all of its obligations under this contract, regardless of whether the services are performed by the Contractor or a subcontractor of any tier.

8. Ownership of Instruments of Service

Drawings, data and other documents prepared by, or with the cooperation of, the Contractor pursuant to this contract shall become, upon payment of all undisputed compensation due the Contractor from the Member Agency, the property of the Member Agency. Such drawings, data or other documents may be used by the Member Agency or others employed by the Member Agency without compensation to the Contractor.

9. Audit

Member Agency may audit and inspect Contractor's records and accounts at any time during the Contractor's performance of the services and for a period of two (2) years following the completion or termination of the services for the purpose of verifying any invoice and underlying documentation presented by Contractor, it being understood that Contractor agrees to preserve all such documents through such two- (2) year period.

10. Notices

Unless otherwise expressly provided in this contract, all notices and other communications given under the contract shall be in writing and shall be deemed effective upon receipt by the addressee at its address as set forth in the contract or at such other address as such party shall have notified the other in writing.

11. Non-Appropriation

If the Member Agency fails to appropriate sufficient monies in any fiscal year for payments due under the contract and other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then Member Agency will give Contractor prompt notice of such Non-Appropriation. This contract shall thereupon terminate without penalty or expense to the Member Agency.

12. No Personal Liability

It is understood and agreed that under no circumstances will the Member Agency's board members, officers, employees, or agents be personally liable for any obligations or claims arising out of or related to the contract.

13. Miscellaneous

Headings and titles of articles, paragraphs and other subparts of this contract are for convenience of reference only and shall not be considered in interpreting the text of this contract.

14. Successor and Assigns

OCEPC and the Vendor each binds himself and his partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither OCEPC nor the Vendor shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officers of OCEPC, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this Agreement.

This contract and any appendices constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto.

No contract amendments can be made without the approval of the AEPA membership.

15. General Liability & Auto Liability Insurance

Consistent with and supplementing the "insurance" clause in AEPA's "General Terms and Conditions for All Agencies," a Vendor Partner must procure before commencement of the work/contact, maintain until completion of the work/contract, and provide certificates of insurance for general liability insurance and auto liability insurance with limits of at least \$1 million per occurrence. The Participating Entity must be named as an additional insured under the Vendor Partner's general liability insurance and auto liability insurance. Any Subcontractor of the Vendor Partner must meet these same requirements.

B. Non-Construction Products and Services:

1. Bus Purchases

For the purchase of school buses, the successful Contractor shall provide bonds required by Ohio Revised Code Sections 153.54 and 153.571.

C. Construction Products and Services:

For construction improvements, the following shall apply:

1. The successful Contractor shall provide such bonds required by Ohio Revised Code Sections 153.54 and 153.571.
2. Progress payments and retainage shall be in accordance with the provisions of the Ohio Revised Code including Ohio Revised Code Sections 153.12 and 153.14.
3. In the event that the agreement is subject to the prevailing wage requirements of either Ohio Revised Code Chapter 4115 or the Davis-Bacon Act, then the contract between the Member Agency and the Contractor shall contain the applicable rates and such terms and provisions as may be required by law.
4. Contractor shall comply with all applicable licensing requirements, including those of the Ohio Construction Industry Licensing Board.

D. Procedures for Processing Orders:

The OCEPC will keep informed its Member Agencies and other qualified purchasers of contract information via web site and through other marketing strategies. A list of OCEPC Member Agencies along with addresses, phones, contacts, etc. will be made available to successful Contractors. After contracts are awarded, Contractors may contact the OCEPC Member Agencies and other qualifying purchasers concerning their products and services.

Participating Member Agencies and other qualified purchasers will submit all purchase orders directly to the Contractor.

The Contractor price shall include a two percent (2%) administrative fee that the Contractor will collect from the Member Agency or other qualified purchaser. Administrative fees are to be remitted to the OCEPC on or before April 15, July 15, October 15 and January 15 of every calendar year with checks payable to the Southwestern Ohio Educational Purchasing Council, 303 Corporate Center Dr. Suite 208, Vandalia, OH 45377.

The Contractor will compile a quarterly report showing all purchases made by the OCEPC Member Agencies and other qualified purchasers under this contract at the conclusion of each calendar quarter. These reports shall be emailed to the named point of contact for the OCEPC Member Agencies.

E. Agencies Allowed to Purchase under Member Agency:

All member cooperatives of the OCEPC and their individual Member Agencies are eligible to participate and purchase from the awarded AEPA contracts. All Ohio K-12 school districts, including Boards of Developmental Disabilities, Educational Service Centers, and Instructional Technology Centers, are eligible to participate and purchase from the awarded AEPA contracts. In addition, all colleges and universities, state, cities, counties, townships and other governmental agencies are eligible to participate if the AEPA contracts satisfy their individual procurement requirements.

Revised: December 2, 2009

Approved: December 14, 2009

Reviewed: May 12, 2010

Revised: May 27, 2011

Reviewed and Approved: September 14, 2011

Reviewed and Approved: May 14, 2014

Revised and Approval: May 20, 2015

Reviewed and Approved: May 18, 2016

Revised and Approved May 17, 2017

Reviewed and Approved May 15, 2019

Review and Approved January 6, 2021

Revised and Approved January 11, 2023

Revised and Approved January 10, 2024

21. Oregon, Intermountain Educational Service District (IMESD)

A. Additional Agency Terms and Conditions – all categories

Intermountain Education Service District (“IMESD”) is an educational service district organized under the laws of the STATE OF OREGON. Pursuant to Oregon Law ORS 279A and IMESD is authorized to cooperate with other entities and in such regard is authorized to cooperate with them in the purchasing of goods and services pursuant to these contract documents. As other entities cooperate with IMESD to take advantage of the goods and services made available pursuant to these contract documents, the terms and conditions of any such sales shall be in accordance with the contract documents.

Additionally Senate Bill 3184 enables Oregon's Education Service Districts to offer the services they provide to component school districts to other organizations. For the past 10 years, the InterMountain ESD (formerly Umatilla-Morrow ESD) has been a leader in expanding revenue available for schools and IMESD programs by providing these services outside of 19 local school districts. (Reference: [ORS 334.185](#))

Under Oregon public contracting rules, each individual public agency will have its own local rules it must adhere to, in addition to statewide public contracting laws. InterMountain Education Service District does not presume that its cooperative purchasing program will necessarily comply with every agency's internal public contracting rules. We always advise potential customers to review the bid solicitation carefully and recommend review by their legal department and/or procurement personnel to assure that contracting laws are complied with.

ADVERTISING AND MARKETING: Bidders must demonstrate they possess the necessary resources and have a proven track record to market, offer, obtain, deliver, install and provide the sales and technical support services to IMESD and its participating agencies within the state of Oregon in a timely and cost effective manner.

APPLICABLE LAW AND VENUE: Any dispute arising out of any of the contract documents, or out of their performance, shall be decided by litigation in the Circuit Court of the State of Oregon in the county of Owner's residence, the parties consenting to jurisdiction in said court and permanently waiving jurisdiction in any other court, state or federal. In the event of litigation the prevailing party shall be entitled to an award of reasonable attorney's fees and costs at trial and upon any appeal thereof.

In the event that the successful bidder breaches a term of condition of a contract awarded, the IMESD may terminate the contract. In addition to the right to terminate due to the successful bidder's breach, and all other rights and remedies contained in other provisions, the IMESD reserves all its rights and remedies at law and in equity available due to the breach.

HAZARDOUS CHEMICALS: The Successful bidder shall supply current MSDS for all products as required below even if these sheets have been supplied in previous years.

The agencies participating on IMESD agreement will need MSDS and labels for certain products defined as hazardous chemicals by the State of Oregon in accordance with ORS 654.025(2) and 656.726(3). The successful bidder has the responsibility to determine such products and to provide MSDS and labels for such products. The MSDS shall be received by the IMESD by or at the time of the initial shipment of such products.

These requirements have been determined by the State of Oregon Workers Compensation Department, and published as Oregon Administrative Rules 437, Division 2 Hazard Communication. This document is available from Hazard Communication Coordinator, Accident Prevention Division, State of Oregon, Labor and Industries Building, 350 Winter St. NE, Salem, OR 97310, phone: (503) 378-3272 or (800) 922-2689 any local Accident Prevention Division Office.

HOLD HARMLESS: Bidders shall indemnify, hold harmless, and defend the IMESD from any and all liabilities, settlements, losses, penalties, costs, expenses, attorney fees (including attorney fees on appeal) in collection with any action, suit or claim based upon or allegedly based upon, resulting from or allegedly resulting from the successful bidder's negligence, omission, activities or services provided pursuant to a contract awarded to such bidder.

LAW OF THE STATE OF OREGON: Any contract between the IMESD and a bidder shall be entered into within the State of Oregon, and the laws of said state, whether substantive or procedural, shall apply to the contract.

In addition to any requirements listed, vendor shall comply with all, current, applicable state, federal and local laws, regulations and ordinances. If through mistake or otherwise any such provision is omitted then submission by either IMESD or the vendor-partner the contract shall be amended to make such inclusion or correction. IMESD Also reserves the right to amend the contract resulting from state law changes. Vendor-partners will be sent written notification of such changes.

SEVERABILITY: The parties agree that if any term or provision of a resultant contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

TAXES: Taxes, whether State or Federal, shall not be included in bid prices. Our Employer Identification No: 93-6000924 indicated our tax exemption status as a political subdivision. Contractor must certify compliance with the Oregon tax laws in accordance with ORS 305.385 when applicable.

B. Additional Agency Terms and Conditions – Non-construction Products and Services

None

C. Additional Agency Terms and Conditions – Construction Products and Services

1. Prevailing wage rates/Davis-Bacon.

As set forth in the conditions below, if this is a public works project (as defined below) Oregon State prevailing wage rates will apply unless exempted. If federal funds are being used, Bidders must take into account the need to comply with the Davis-Bacon Act. If both the federal and state prevailing wages are required the Contractor is required by law to pay the greater of the applicable prevailing wage. Pursuant to ORS 279C.365 no bid will be considered unless the bid contains a statement by the Bidder as a part of its bid that the provision of ORS 279C.840 will be complied with.

(a) If contract is \$50,000.00 or under and there are no federal funds involved the contract is exempted from prevailing wages pursuant to ORS 279C.810(2) (a).

(b) If contract exceeds \$50,000.00 and there are no federal funds involved, existing prevailing wage rate of the State of Oregon will apply. No worker may be paid by any Contractor or Subcontractor a wage less than the wage required by ORS 279C.840. Every subcontract shall include the requirements of this section. Prevailing wages, state and federal, can be seen at the websites referred to in Section 6(a), Additional Requirements of Oregon Law for Public Contracts, Public Works, and Improvements and Miscellaneous Provisions.

(c) If contract exceeds \$50,000.00 and/or federal funds are involved, unless otherwise exempted by law, Contractor shall comply with ORS 279C.800 to 279C.870 relating to the payment of prevailing wages; Contractor shall also comply with the federal Davis-Bacon Act to the extent applicable. No worker may be paid by any Contractor or Subcontractor a wage less than the wage required by ORS 279C.840 and if the state and federal prevailing wage laws both apply, Contractor shall pay as wages the great of the applicable prevailing wage. Every Subcontractor shall include the requirements of this section. Additional Requirements of Oregon Law for Public Contracts,

2. Residence status of Bidder

Each Bidder must identify in its bid whether the Bidder is a resident Bidder, as defined in ORS 279A.120.

3. Licensure

If the contract involves asbestos or asbestos abatement, the contractor or subcontractor must be licensed under ORS 468A.720.

4. Bonding

If this contract is a public improvement contract in excess of \$100,000.00, at the time of the execution of the contract, the successful Bidder shall also deliver to the Owner good and sufficient bonds endorsed on forms supplied by Owner, in sums equal to the contract price, for the faithful performance of the contract, and for the payment of all claims for labor, materials, equipment, and rental equipment that may result from work performed pursuant to the contract documents. The successful Bidder shall not be allowed to execute the contract without the concurrent delivery to the Owner of the bonds required by this paragraph on the required forms. At owner's sole discretion, Contractor shall be subject to disqualification and forfeiture of bid security for breach of this section. If Bidder is disqualified, Owner may award the contract to another Bidder.

5. Subcontractor Disclosure

Unless exempted by ORS 279C.370(1)(c) for public improvement contracts, all Bidders shall within two hours of the date and time of the deadline when bids are due submit information about certain first-tier Subcontractor when the contract value for public improvements is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier Subcontractor furnishing labor or labor and materials would be greater than or equal to:

- (i) 5% of the project bid, or \$15,000, or
- (ii) \$350,000 regardless of the percentage, Bidders must disclose the following information about that Subcontractor:

- (a) the Subcontractor's name, and
- (b) the category of the work that the Subcontractor would be performing, and
- (c) the dollar amount of the subcontract

If Contractor will not be using any Subcontractors that are subject to the above disclosure requirements, Contractor is required to indicate "NONE" on the reply form.

THE OWNER MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE.

FIRST TIER SUBCONTRACTOR DISCLOSURE FORM

Project name:

Bid #:

Bid Opening Date:

Name of Bidding Contractor:

Required Disclosure Deadline:

Bids which are submitted by Bid Closing, but for which a required disclosure submittal has not been made by the specified Disclosure Deadline, are not responsive and shall not be considered for Contract award.

See the certification above the signature line on the second page of this form regarding the Subcontractors that must be disclosed.

The Owner will insert "NA" above if the contract value is not anticipated to exceed \$100,000. Otherwise this form must be submitted either with the bid or within two (2) working hours after the advertised bid closing date and time; but no later than the DISCLOSURE DEADLINE stated above.

This form may not be submitted by facsimile. It is the responsibility of Bidders to submit this disclosure form and any additional sheets, completely filled out and signed, by the specified disclosure deadline.

List below the name of each Subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the Subcontractor will be performing and the dollar value of the subcontract. Enter "None" if there are no Subcontractors that need to be disclosed. (Attach additional sheets if needed.)

NAME OF CATEGORY OF DOLLAR VALUE
SUBCONTRACTOR WORK

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

CERTIFICATION

It is certified that the above listed first-tier Subcontractor(s) are providing labor, or labor and material, with a dollar value equal to or greater than:

(a) 5% of the total Contract Price, but at least \$15,000 [if the dollar value is less than \$15,000 do not list the Subcontractor above], or

(b) \$350,000 regardless of the percentage of the total Contract Price.

Form submitted by (insert Bidder name):

Contact name:

Telephone number:

Additional Requirements of Oregon Law for Public Contracts, Public Works, and Improvements;

Miscellaneous Provisions

"Owner" means the public entity executing the Contract of which these provisions are a part.

"Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public Works" shall mean roads, highways, buildings, structures and improvement of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest by does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(1) In reference to ORS 279B.220 and 279C.505. Contractor shall:

- (a) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in the contract.
- (b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or Subcontractor incurred in the performance of the contract.
- (c) Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.
- (d) If the contract is for a public improvement, demonstrate to Owner that Contractor has an employee drug testing program in place.
- (e) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) In reference to ORS 279C.515 regarding contracts for public improvements:

- (a) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract.
- (b) If the contract is for a public improvement and if the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract within thirty days after receipt of payment from the Owner or a Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty days after the date when payment was received from the Owner or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.
- (c) If the contract is for a public improvement, or is related to a contract for a public improvement, and if the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract, that person may file a complaint with the Construction Contractor's Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(d) The payment of a claim in the manner authorized in this section of this contract shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid claims.

(3) Relating to ORS 279B.020 and ORS 279C.520. Contractor shall comply with ORS 279B.020 and ORS 279C.520 in their entirety (when applicable), and in this regard:

- (a) No person shall be employed for more than ten hours in any one day, or forty hours in any one week except in cases of necessity, emergency, or where the Owner absolutely requires it, and in such cases, the employee shall be paid at least time and half pay:
 - (i) For all overtime in excess of eight hours a day or forty hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - (ii) For all overtime in excess of ten hours a day or forty hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - (iii) For all work performed on Saturday, Sunday, and on any legal holiday specified in ORS 279B.020 and 279C.540.
 - (iv) Contractor shall comply with the notice and posting requirements of ORS 279B.020 and 279C.520(2). Contractor shall pay employees for overtime work performed under this Contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq.).

(4) If the contract is for a public improvement, Contractor shall at its sole expense comply with any and all applicable statutes or ordinances, and all regulations of any agencies, whether federal, state, local or tribal, dealing with the prevention of environmental pollution and the preservation of natural resources including without limitation water that affect the performance of this contract.

The following agencies, as well as others, may have pertinent regulations:

Federal: Army Corps of Engineers, Federal Energy Regulatory Commission, Environmental Protection Agency, Dept. of Human and Health Services, Dept. of Interior including but not limited to the US Fish and Wildlife Service, Department of Labor, and Water Resources Council.

State: Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Human Resources, Soil and Water Conservation Commission, and Oregon Water Resources Department.

Local: City and County wherein the project is to be undertaken.

Tribal: Confederated Tribes of the Umatilla Indian Reservation.

(5) In relation to ORS 279B.230 and 279C.530, Contractor shall comply in their entirety, and in this regard:

(a) Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(b) All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

(6)

(a) If the contract is for public works and is over \$50,000, Contractor, unless otherwise exempted by law, shall comply with ORS 279C.800 to 279C.870 relating to the payment of prevailing wages; Contractor shall also comply with the federal Davis-Bacon Act to the extent applicable. The prevailing rates of wage, state and federal, made available on the internet are hereby incorporated by reference; they may be seen at various sites including at www.boli.state.or.us/BOLI/WHDPWR and www.access.gpo.gov/davisbacon/or.html. If the state and federal prevailing wage laws both apply, Contractor shall pay as wages the greater of the applicable prevailing wage. Contractor shall comply with all wage reporting and certification requirements of the prevailing wage laws and/or the Davis-Bacon Act, as applicable.

(b) Before starting Work the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond

(7) The following apply to contracts for public improvements:

(a) Contractor shall comply with ORS 279C.580, dealing with Contractor's relations with Subcontractors. Without limiting the generality of the foregoing, in this regard Contractor shall include a clause in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purposes of performing the contract:

(i) that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner; and

(ii) that obligates the Contractor, if payment is not made within thirty days after receipt of payment from the Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause required by the preceding paragraph. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and shall be computed at the rate specified in ORS 279C.515(2).

(b) Contractor shall include in each of its subcontracts, for the purpose of performance of work in relation to project, a provision requiring the first-tier Subcontractor to include a before clause and an interest penalty clause conforming to the foregoing standards in each of its contracts and to require each of its Subcontractors to include such clauses in their

subcontracts with each lower-tier Subcontractor or supplier.

(c) Nothing stated herein shall be construed to preclude the negotiations allowed pursuant to ORS 279C.580(5).

(8) If any work supplied pursuant to the contract requires licensing with the Construction Contractors Board or the State Landscape Contractors Board, Contractor must be so licensed in order to submit a bid for the contract, and Contractor and all relevant Subcontractors must remain licensed during the period required for performance. Contractor certifies that all Subcontractors and workers will be properly licensed to perform the work required by this Contract before their commencement of work.

(9) If this contract is for public improvements, then retainage in the amount of 5% of the amount due shall be withheld in accordance with Oregon laws, including ORS 279C.550 et seq.

(10) If this contract is for a public improvement, and unless exempted by resolution of the Owner, Contractor shall comply with ORS 279C.380 and execute and deliver to Owner a good and sufficient performance bond and payment bond to be approved by Owner in a sum equal to the contract price.

By way of supplement to, and equally binding as, all of the foregoing:

(10.1) Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: I) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.

(10.2) Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

(a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110).

(b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

(10.3) Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.

(10.4) Unless contrary to federal law, Contractor shall certify that each landscape Contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape Contractor's license issued pursuant to ORS 671.560.

(10.5) The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

(11) Contractor must certify compliance with the Oregon tax laws in accordance with ORS 305.385 when applicable.

(12) Upon receipt by Contractor of any notice or claim, pursuant to ORS 279C.600 et seq (concerning action against bonds) Contractor shall immediately notify Owner in writing.

(13) Unless agreed to by Owner in writing, Contractor may not assign, transfer, dispose of, or delegate its duties under the contract.

(14) Contractor shall be responsible for compliance with all local, state, tribal, and federal laws, applicable to any aspect of the work to be performed. It shall be Contractor's responsibility to determine the applicability and requirements of any such laws and to abide by them. Contractor shall indemnify, defend, and hold harmless Owner for any default or breach of Contractor in this regard.

(15) The submission of a bid for this contract is certification by Contractor that Contractor has not discriminated and will not discriminate in violation of ORS 279A.110 against any minority, women, or emerging small business enterprises in obtaining any required subcontracts.

(16) If this contract is a public improvement contract for demolition, Contractor shall salvage or recycle constructions and demolition debris if feasible and cost-effective.

(17) If this contract is a public improvement contract for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

(18) Any dispute arising out of any of the contract documents, or out of their performance, shall be decided by litigation in the Circuit Court of the State of Oregon in the county of Owner's residence, the parties consenting to jurisdiction in said court and permanently waiving jurisdiction in any other court, state or federal. In the event of litigation the prevailing party shall be entitled to an award of reasonable attorney's fees and costs at trial and upon any appeal thereof.

D. Procedure for Agencies Processing Orders under IMESD in Oregon

Once the award is made to the vendor, IMESD will market these contracts by: 1) including the contract on the IMESD website, 2) announcing the award in flyers, and 3) attending vendor events throughout school year. A list of schools, contact names, addresses and phone number can be accessed through the Oregon Department of Education website. At this point the vendor contacts schools and schools may contact the vendor. When the school/agency identifies a product or services and agrees on price it issues to Vendor a purchase order for that item or service, referencing the AEPA Bid number. The purchase order must include an additional two percent (2%) administrative fee in the total to be forwarded by the vendor to IMESD after the sale. All participating vendors agree to and are subject to audit proceedings of IMESD member sales.

Upon receipt of the purchase order, the vendor provides the goods or service listed on the purchase order. It is important to remember the vendor makes delivery to the member unless other arrangements are made in cooperation with IMESD. When all items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, vendor then invoices the member for the goods and service. This invoice includes the additional two percent (2%) administrative fee to the total amount invoiced of the goods or service provided by the vendor. This percent is based on the total sales of goods or services. The member then pays the vendor including the two percent (2%) administrative fee. IMESD then invoices the Vendor for the 2% administrative fee based on the sale of goods and services collected by the vendor.

E. Agencies Allowed to Purchase under IMESD in Oregon

The InterMountain Education Service District (IMESD) participates in a national non-profit organization, the Association of Educational Purchasing Agencies (AEPA), which is a procurement vehicle. The mission of IMESD's involvement with AEPA is to cooperatively serve Oregon state agencies members through a continuous effort to explore and solve present and future purchasing needs. AEPA goals include working to secure multi-state volume purchasing contracts with benefits that are measurable, cost-effective and continuously exceed our state member's expectations. InterMountain Education Service District is the member agency representing Oregon in AEPA through an IMESD board approved Memorandum of Understanding between all participating states that are all political subdivisions related to K-12 education. All AEPA bids have been advertised by IMESD in Oregon.

Pursuant to Oregon Law, ORS 279A, InterMountain Education Service District is authorized to offer these contracts to other government entities including school districts, state universities, community colleges, special districts, local and state government.

There is no fee or annual dues to become an IMESD agency member to purchase. InterMountain Education Service District's contract management efforts are funded by a nominal administrative fee paid by the vendor based on sales volume.

22. Pennsylvania, Central Susquehanna Intermediate Unit d/b/a Keystone Purchasing Network

A. Additional Member Agency General Terms and Conditions that apply to all categories

The Keystone Purchasing Network (KPN) is a cooperative purchasing program operated by the Central Susquehanna Intermediate Unit under various state inter-governmental cooperation laws and includes members in several east coast states that currently includes Pennsylvania, Maryland, District of Columbia, New York and Delaware. All applicable Local, State and Federal laws and regulations will apply to any purchases of equipment, services or construction in any of these states and to other states that may be added under the KPN membership throughout the term of these contracts.

Marketing and Advertising under this Agreement: Vendor will actively promote the resulting contract in Pennsylvania, Maryland, District of Columbia, Delaware and New York States. Vendor will comply with the AEPA Marketing program along with the requirement listed below.

1. Vendor will include the approved KPN logo, web address, contract number and toll free number in all print electronic mail and other advertising and promotion intended for release to PA, MD, DC, DE and NY excluding national marketing releases.
2. The KPN logo and associated KPN information shall be of a clearly readable size and in appropriate proportion to other elements in the printed material.
3. Vendor agrees to provide KPN with a copy or proof sheet of the advertisement or promotion material. Vendor will provide KPN with date of release and name of publication, journal, etc.
4. Vendor shall place a supplied KPN vendor sign on booths, tables, etc. of any or all exhibits for which the vendor displays/participates at tradeshow, conventions and the like. Vendor will supply in advance scheduled exhibit dates. Vendor agrees to make available at the exhibit KPN supplied brochures or other promotion materials.
- e. Vendor agrees to insert the approved KPN logo, web address, contract number and toll free number on the vendor's web site promoting or a specific KPN landing page and providing a link to the KPN website.
- f. Vendor will supply product catalog information, product description, pricing, etc., in a spreadsheet format as specified by KPN for inclusion on the KPN website.
- g. Vendor agrees to cooperate in developing appropriate website content to promote its products, services and their advantages to KPN members.
- h. Requested materials will be submitted to KPN within 30 days.

Pricing and Ordering: Vendor will provide all pricing information in an electronic format and/or setup an electronic ordering system that would show the current contract prices along with the KPN administrative fee of 2% or as adjusted by the KPN. In the case of electronic ordering, the KPN would have administrative reporting capabilities with an online ordering system. The KPN administrative fee will apply to all purchases, installation, total lease, total rental prices and all construction and installation and annual maintenance fees and will be included in the net price offered to the purchasing agency.

Compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

When a KPN member seeks to procure goods and services through a KPN contract using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the following procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR"):

a) Contractor Violation or Breach of Contract Terms:

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Provisions regarding Contractor default and legal remedies are included in Sections I.K.18 and I.K.19 above. Any Contract award will be subject to such provisions. The remedies under the Contract are in addition to any other remedies that may be available under law or in equity.

b) Termination for Cause or Convenience:

For any purchase or contract in excess of \$10,000 made using federal funds, the contractor agrees that the following term and condition shall apply:

The KPN member may terminate or cancel any purchase order under this a contract at any time, with or without cause, by providing seven (7) business days' advance written notice to contractor. If an agreement is terminated in accordance with this Paragraph, the KPN member shall only be required to pay contractor for goods or services delivered to the KPN Member prior to the termination and not otherwise returned in accordance with Contractor's return policy. If the KPN member has paid the contractor for goods or services not yet provided as of the date of termination, the contractor shall immediately refund such payment(s).

c) Equal Employment Opportunity:

Except as otherwise provided under 41 CFR Part 60, all KPN member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive

Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. The Contractor agrees that such provision applies to any KPN member purchase or contract that meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 and the Contractor agrees that it shall comply with such provision.

d) Davis-Bacon Act:

When required by Federal program legislation, the Contractor agrees that, for all KPN member prime construction contracts/purchases in excess of \$2,000, the Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, the Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, the Contractor shall pay wages not less than once a week. Current prevailing wage determinations issued by the Department of Labor are available at www.wdol.gov.

The contractor agrees that, for any purchase to which this requirement applies, the award of the purchase to the contractor is conditioned upon the contractor’s acceptance of the wage determination. The contractor further agrees that it shall also comply with the Copeland “Anti-Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

e) Contract Work Hours and Safety Standards Act:

Where applicable, for all KPN member contracts or purchases in excess of \$100,000 that involve the employment of mechanics or laborers, the contractor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, the Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

f) Right to Inventions Made Under a Contract or Agreement:

If the KPN member’s Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. The Contractor agrees to comply with the above requirements when applicable.

g) Clean Air Act and Federal Water Pollution Control Act:

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). When required, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

h) Debarment and Suspension:

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor certifies that The Contractor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor further agrees to immediately notify the KPN member with pending purchases or seeking to purchase from the contractor if the contractor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- i) **Byrd Anti-Lobbying Amendment:**
Byrd Anti-Lobbying Amendment (31 USC 1352) – Bidders who bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. As applicable, Bidders agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).
- j) **Procurement of Recovered Materials:**
For KPN member's purchases utilizing Federal funds, the contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as the District may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- k) **Profit as a Separate Element of Price:**
For purchases using federal funds in excess of the simplified acquisition threshold currently set at \$250,000, the KPN member may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b). When required by the KPN member, the contractor agrees to provide information and negotiate with the KPN member regarding profit as a separate element of the price for a particular purchase. However, the contractor agrees that the total price, including profit, charged by the contractor to the KPN member shall not exceed the awarded pricing.
- l) **Bonding Requirements:**
Pursuant to 2 C.F.R. § 200.326, for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold currently set at \$250,000, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the KPN member, provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
- i. A bid guarantee from each Bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - ii. A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii. A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. The bonding requirements set forth above are in addition to and not in limitation of any bonding requirements under applicable state law.
- m) **Not-To-Exceed Price:**
If requested by the KPN Member, on any contract based on time and materials, the Contractor shall set a ceiling price that Contractor exceeds at its own risk pursuant to 2 C.F.R. § 200.318(j).
- n) **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms:**
Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:
- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - v. Using the services and assistance, as appropriate, of such organizations as the Small Business

Administration and the Minority Business Development Agency of the Department of Commerce; and

- vi. Requiring any subcontractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

o) Equivalent Products:

- i. **Comparable (Alternate) Products:** Where the specification states a named product followed by “or equal,” an alternate or comparable product may be bid; however, the burden is on the bidder to provide evidence that a proposed alternate meets or exceeds the KPN specified named product and its attributes and that it provides an equal or better warranty. If comparable product(s) are proposed in the bid, the bidder must provide a detailed comparison for each to include a list of all the significant qualities of the product named in the Specification and those of the proposed alternate product(s). Significant qualities include attributes such as performance, weight, size, durability, visual effect and specific features and requirements indicated. KPN reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.
- ii. **Substitutions for Cause:** A contractor (awarded bidder) may only propose substitutions pursuant to a purchase order submitted by a purchasing KPN member in the event of unavailability of product, regulatory changes or unavailability of required warranty terms. The contractor must notify both KPN and the purchasing member of all substitutions for cause with full documentation at least thirty (30) working days in advance of the commencement of work. All documentation must demonstrate that the proposed substitution is equal to or better than the specified product on all physical and in-service attributes and warranty provisions and can be implemented by subcontractors as necessary without disruption to the project. The purchasing member must approve all substitutions. The KPN members reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.
- iii. **Substitutions for Convenience:** Bidders may not propose substitutions for convenience.

p) Preference for American Made Materials:

Contractor should, as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, when possible in connection with any services provided to the Eligible Entity.

General Compliance and Cooperation with KPN member:

In addition to the foregoing specific requirements, the contractor agrees, in accepting any purchase order or contract from the KPN member, it shall make a good faith effort to work with the KPN member to provide such information and to satisfy such requirements as may apply to the KPN member’s purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements, and contract cost and price analyses required under the Uniform Guidance.

B. Additional Member Agency General Terms and Conditions for Non-Construction Products and Services

None

C. Additional Member Agency General Terms and Conditions for Construction Products and Services

The following items refer to all projects involving construction or construction related services:

The following items pertain to and only to construction, construction related services and athletic surfaces contemplated by a KPN contract. The awarded contractor agrees that in performance of the services required under a KPN contract to abide by all federal, state and local laws, regulations and ordinances where this contract is utilized, and regulations that may apply to renovations under this bid, including but not limited to those listed below. It is the responsibility of the contractor to determine the applicability and requirements of any such laws and to abide by them. Additionally, the contractor has the sole responsibility for the compliance with other matters in conjunction with the services to be performed hereunder.

- a) **Performance and Labor Material Payment Bonds.** The contractor must provide a performance bond and a labor and material payment bond, each in the amount of 100% of the contract price, before award of the contract (Sections 756 and 757 of the Commonwealth of Pennsylvania Public School Code of 1949, as amended, and the Public Works Contractors Bond Law of 1967).
- b) **Discrimination Prohibited.** According to 62 PA CSA 3701, the contractor agrees that:
 - a. In the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor or any person acting on behalf of the contractor or subcontractor will by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
 - b. No contractor or subcontractor or any person on their behalf may in any matter discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.
 - c. The contract may be canceled or terminated by the government agency and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of that portion of the contracts.
- c) **Human Relations Act.** The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (PL 744)

(43 PS § 951 et. seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. The contractor agrees to comply with the provisions of this Act as amended that are made part of this specification. (CF: 16 PA Code 49 §101).

- d) Competent Workmen Act. Section 7-752 of the Commonwealth of Pennsylvania Public School Code of 1949 requires that when the total estimated cost of a project is \$25,000 or less, no person may be employed to do work under such a contract except competent first class workmen and mechanics. No workmen are regarded as competent first class, within the meaning of this Act, except those who are duly skilled in their respective branches of labor, and who are to be paid not less than such rates of wages and for such hours of work as are established and current rates of wages paid for such hours by employers of organized labor in performance of similar work in the district where work is being done.
- e) Pennsylvania "Prevailing Wage" Rates. For projects for which the total estimated cost is greater than \$25,000, paid for in whole or in part out of funds of a public body, except for maintenance work or work performed under a rehabilitation program or manpower training program, "Prevailing Wages" must be specified. Further information on the implementation of the act, definition of maintenance work and prevailing wage rates is available from the Pennsylvania Department of Labor and Industry, (800) 932-0665 or (717) 787-4763. When applicable, the federal Davis-Bacon Wage Rates schedule for federally assisted projects applies. This regulation and the general Pennsylvania prevailing wage rates (Act 442 of 1961, PL 987, as amended) as determined by the Secretary of Labor and Industry, which must be paid for each craft or classification of all workers needed to perform the contract during the anticipated term therefore in the locality in which the public work is performed, are made part of this specification.
 - a. The general prevailing minimum wage rates, including contributions for employee benefits, as determined by the Secretary of Labor and Industry (hereinafter "Secretary"), are to be paid to the workmen, employed in the performance of the contract.
 - b. The contractor will pay no less than the wage rates as determined by the Secretary and will comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act 442), as amended August 9, 1963 (Act 342), and the regulations issued pursuant thereto, to assure the full and proper payment of said rates.
 - c. These contract provisions apply to all work performed on the contract by the contractor and to all work performed on the contract by all subcontractors.
 - d. The contractor must insert in each of the subcontracts all of the stipulations contained in these required provisions.
 - e. No workmen may be employed on the work except in accordance with the classifications set forth in the decision of the Secretary. In the event that additional or different classifications are necessary, the procedure set forth in the regulations will be followed.
 - f. All workmen employed or working on the work are to be paid unconditionally regardless of whether any contractual relationship exists or the contractual relationship which may be alleged to exist between any contractor, subcontractor and workmen, not less than once a week without deductions or rebate, on any account, either directly or indirectly, except authorized deductions, the full amount due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in this contract, the act or the regulations prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to the workmen of the work.
 - g. The contractor and each subcontractor must post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:
 - i. Name of project.
 - ii. Name of public body of which it is constructed.
 - iii. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
 - iv. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.
 - v. A statement advising workers that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor and/or subcontractor are not complying with the Act or the regulations in any manner whatsoever, they may file a protest with the Secretary within three (3) months of the date of the occurrence, objecting to the payment to the contractor to the extent of the amount or amounts due or to become due to them as wages for work performed on the project. Any workmen paid less than the rate specified in the contract have a civil right of action for the difference between the wage paid and wages stipulated in the contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.
 - h. The contractor and all subcontractors must keep an accurate record showing the name, craft and/or classification, number of hours worked per day, the actual hourly rate of wage paid (including employee

- benefits) to each worker employed in connection with the work and such record must include any deductions from each worker. The record must be preserved for two (2) years from the date of payment and is open at all reasonable hours to the inspection of the owner and the Secretary or the Secretary's authorized representative.
- i. Apprentices are limited to such numbers as in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the rules and regulations issued pursuant thereto will be employed on the work. Any workers using the tools of a craft who do not qualify as apprentices within the provisions of this submission must be paid the rate predetermined for journeymen in that particular craft and/or classification.
 - j. Wages will be paid without deductions except authorized deductions. Employers not party to a contract requiring contributions for employee benefits, which the Secretary has determined to be included in the prevailing minimum wage rate must pay the monetary equivalent thereof to the worker.
 - k. Payment of compensation to workers for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result will be deemed a violation of the Act and the regulations, regardless of the average hourly earnings resulting there from.
 - l. Each contract and each subcontractor must file a statement each week and a final statement at the conclusion of the work on the contract with the owner, under oath, and in form satisfactory to the Secretary, prescribed by the regulations, or if any wages remain unpaid, to the amount of wages due and owing to each worker respectively.
 - m. The provision of the Act and the regulations are incorporated by reference in the contract.
- f) Standard of Quality. The various materials and products identified in the specifications by name or description are stated to establish a standard of quality and of cost for bid or proposal purposes.
- a. Named Products: Items identified by the manufacturer's name. The specification may also include make, model number or other designation shown or listed in the manufacturer's product literature current at the time of the bid. KPN reserves the right to require that a single manufacturer or source be provided and that no comparable products (alternates) or substitutions may be accepted.
 - b. Comparable (Alternate) Products: Where the specification states a named product followed by "or equal," an alternate or comparable product may be bid; however, the burden is on the bidder to provide evidence that a proposed alternate meets or exceeds the KPN specified named product and its attributes and that it provides an equal or better warranty. If comparable product(s) are proposed in the bid, the bidder must provide a detailed comparison for each to include a list of all the significant qualities of the product named in the Specification and those of the proposed alternate product(s). Significant qualities include attributes such as performance, weight, size, durability, visual effect and specific features and requirements indicated. KPN reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.
 - c. Substitutions for Cause: A contractor (awarded bidder) may only propose substitutions pursuant to a purchase order submitted by a purchasing KPN member in the event of unavailability of product, regulatory changes or unavailability of required warranty terms. The contractor must notify both KPN and the purchasing member of all substitutions for cause with full documentation at least thirty (30) working days in advance of the commencement of work. All documentation must demonstrate that the proposed substitution is equal to or better than the specified product on all physical and in-service attributes and warranty provisions and can be implemented by subcontractors as necessary without disruption to the project. The purchasing member must approve all substitutions.
 - d. Substitutions for Convenience: Bidders may not propose substitutions for convenience.
- g) Provisions for the Use of Steel and Steel Products Made in the United States. In accordance with Act 3 of the 1978 General Assembly of the Commonwealth of Pennsylvania, if any steel or steel products are to be used or supplied in the performance of the contract, only those produced in the United States as defined therein will be used or supplied in the performance of the contract or any subcontracts there under in accordance with Act 161 of 1982, and cast iron projects must also be included and produced in the United States. Act 141 of 1984 further defines "steel products" to include machinery and equipment. The act also provides clarifications and penalties.
- h) Prohibition on Cash Allowances. Cash allowances are prohibited.
- i) Time(s) of Completion of the Project. Completion dates for projects must be stated in terms of actual date(s) or the number of calendar working days after notice to proceed with the work not to exceed one hundred eighty (180) calendar days unless otherwise agreed upon by member.
- j) Owner's Compliance in Retaining Payments. Unless a member stipulates otherwise, payment retentions and progress payments are as follows: Ten percent (10%) of all contract payments are retained by the member as insurance of proper performance of the prime contractor. The prime contractor agrees to identify the amount of the invoices sent to the member agencies, then report usage of the contract and sales volume to KPN. When fifty percent (50%) of the work

is completed, as determined by the member agency, one-half (1/2) of the amount retained will be paid to the prime contractor, if the prime contractor requests payment, provided that the prime contractor is making satisfactory progress and there is no specific cause for greater withholding. After fifty percent (50%) of the work is completed, not more than five percent (5%) of the amount of any subsequent progressive payments may be retained, unless the governing board of the member agency determines that satisfactory progress is not being made, at which point ten percent (10%) retention may be reinstated. If the member and the prime contractor agree to a substitute security, the agreement must fully comply with Pennsylvania law. If the substitute security is agreed to, the prime contractor must provide KPN and the member with a signed and acknowledged waiver of any right or power of the obligor to set off any claim against KPN, the member, or the prime contractor, in relationship to the security assigned. The prime contractor, as authorized above, will pay any interest due a subcontractor or material supplier. A subcontractor to the prime contractor may request, in writing, that the subcontractor be notified within five (5) days of payment of each progress payment made to the prime contractor. It is the responsibility of the prime contractor to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract. Once all bonds are in place, the prime contractor and the authored agent of purchasing KPN member will agree in writing upon a schedule of payments based on identifiable milestones. Retention of payments must be done in accord with 62 PA CSA 3921.

A contract containing a provision for retainage as provided in 62 PA CSA 3921 must contain a provision requiring the architect, engineer or purchasing member complete the final inspection within thirty (30) days of the receipt of the request of the contractor for final inspection and application for final payment. If the work is substantially completed, the architect, engineer or purchasing member issues a certificate of completion and a final certificate for payment, and the purchasing member agency must make payment within 45 days, except as provided in §3921, less only one and one half (1½) times the amount required to complete any then-remaining uncompleted minor items, which amount must be certified by the architect, engineer or purchasing member and, upon receipt by the purchasing KPN member of any guarantee bonds which may be required, in accordance with the contract, to insure proper workmanship for a designated period of time. The certificate provided by the architect, engineer or purchasing member must list in detail each uncompleted item and a reasonable cost of completion. Final payment of any amount withheld for the completion of the minor items is due upon completion of the items as listed in the certificate issued by the architect, engineer or purchasing member.

- k) Workers' Compensation Act. The contractor accepts, insofar as the work covered in the contract is concerned, the provisions of the Workers' Compensation Act 44 of 1993, and any supplements or amendments thereof, including any which may be passed in the future, and insures the contractor's full liability there under for all parts of the contract performed by the contractor or any of the contractor's partners, associates, employees or those the contractor may employ herein, or file with the purchasing KPN member a certificate of exemption from insurance issued by the Bureau of Workers' Compensation of the Department of Labor and Industry.

The contract at all times indemnifies and holds harmless the CSIU, KPN and KPN member agencies of and from all claims for Workers' Compensation which may be made by any of the employees of the contractor, and the contractor must appear for and defend the CSIU, KPN and KPN member agencies against any and all such claims. The contractor must be covered by Employers' Liability Insurance with a minimum limit of \$250,000 for each employee, \$2,000,000 policy limit and \$250,000 for each accident.

- l) Background Checks. Pursuant to Section 1-111 of the Commonwealth of Pennsylvania Public School Code and Sections 6354 – 6358 of the Public Welfare Code, known as Acts 33, 34, 114 and 151, and any such sections that will be appended to such in the future, all persons hired to work on the premises of public or private schools or agencies serving children, including independent contractors and their employees, are required to obtain background checks prior to entering the premises to perform the work. The background checks consist of the State Police Criminal History Record Information, the Pennsylvania Child Abuse History Clearance Form and the Federal Criminal History Record (FBI electronic fingerprinting). Contractors are required to perform the following measures:
 - a. Assume the costs for the background checks.
 - b. Identify all employees working on the premises of the project and present the original official documents containing background check information to the superintendent or superintendent's designee prior to the beginning of work. The school must make photocopies of the background checks, notate each with the date on which the original document was inspected and the name of the administrator who viewed the original. Such copies will be retained in the purchasing KPN school member's records, with the originals returned to the contractor.
 - c. If new employees are added to the workforce during the course of the work, the contractor must follow the same procedures set forth above, §§ (1) and (2) prior to the new employee(s) working on the premises.
 - d. The school entity must notify the contractor in writing if the decision to reject the contractor or any of the contractor's employees is based in whole or part on information revealed in the background checks.
 - e. The purchasing KPN school member must follow the regulations promulgated by the State Board of Education concerning the confidentiality of the information contained in the background checks obtained pursuant to

these laws and regulations.

- f. Upon written notice from the purchasing KPN school member, contractors must remove all persons declared unfit from the premises and project. The school district's right to declare such persons unfit is not limited to the required exclusion of persons from school property as set forth in Section 1-111 of the Pennsylvania School Code and/or Act 151 of 1994.
- g. The following applies to all prevailing wage projects:
E-Verify. The successful Bidder and its subcontractors (as such term is defined in the act) are required to comply with the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637). All Bidders shall submit with their Bid a Public Works Employment Verification Form (the "Verification Form") to CSIU - KPN in the form published by the Commonwealth of Pennsylvania, Department of General Services. Per the act, the Verification Form is to be obtained from the Secretary of the Pennsylvania Department of General Services. The Verification Form is presently available on the Department of General Services website. Per the act, the Verification Form shall include a certification that the information in the statement is true and correct and that the individual signing the statement understands that the submission of false or misleading information in connection with the verification shall subject the individual and the public works contractor or subcontractor, as the case may be, to sanctions provided by law; and the verification form shall be signed by a representative of the public works contractor or subcontractor, as applicable, who has sufficient knowledge and authority to make the representations and certifications contained in the statement. Prior to award of a contract or purchase order by a Member Agency to the successful Bidder for a particular project, the successful Bidder shall submit to the Member Agency a Verification Form. Per the act, the successful Bidder's subcontractors shall provide to the Member Agency, and successful Bidder shall cause its subcontractors to provide to the Member Agency, their Verification Forms prior to commencing work on the Member Agency's project.
Bidders are required to submit the E-Verify form along with any other state required forms to members before commencing work on any project.
- m) Prevention of Environmental Pollution. Section 3301 of the Commonwealth of Pennsylvania Procurement Code (Chapter 33 enacted May 15, 1998) requires that all IFBs and RFPs for construction projects issued by any governmental agencies require adherence to all applicable provisions of federal and state statutes, rules and regulations addressing prevention of environmental pollution and preservation of public natural resources that affect the project.
- n) Architectural Services. For those Members who are Pennsylvania Public School Districts, and whose projects require architectural or engineering services, your attention is directed to Section 7-751.1 of the Pennsylvania Public School Code (24 P.S. § 7-751.1), which requires a public school district to engage an architect/engineer that is independent from the Vendor/Contractor's architect/engineer.
- o) Multiple Prime Contractors. For those Members who are Pennsylvania Public School Districts, your attention is directed to Section 7-751 of the Pennsylvania Public School Code (24 P.S. § 7-751), which requires a public school district to use separate prime Contractors for plumbing, heating and ventilating, and electrical work. To the extent a school district's project extends beyond general construction services, the school district will need to separately bid plumbing, heating and ventilating, and electrical work, and should consult with its individual solicitor for compliance with Section 7-751. For other Members who are subject to multiple prime requirements under applicable bidding laws, such Members should consult with their individual solicitors for compliance with said requirements.

D. Procedure for Processing Orders

Once the award is made to the Contractor/vendor, KPN will inform its members of the contract by: (1) including the contract in the agency database that is available on the KPN website, (2) announcing the award in its periodic newsletter, and (3) publishing the contract information in a catalog disseminated to all members. A list of members, institution names, contact names, addresses and phone number will be made available to the vendor in an electronic format. At this point the Contractor/vendor contacts the members and members may contact the Contractor/vendor. When the member identifies a product or service it issues a purchase order for that item to the vendor. The vendor's price to its members will include the following administrative fees: currently 2% (two percent) on all supplies, equipment and construction, rental or lease, annual subscription fee, etc.; and others administrative fees as approved by KPN and will be collected from the member or other qualifying purchaser. KPN reserves the right to adjust the administrative fee at any time during the duration of the contract and any renewal period or to modify the administrative fee based on volume of purchase. If the administrative fee is reduced due to the size of the project the vendor will show the adjustment on the quote. The vendor will also compile a quarterly report showing all purchases made by KPN members under this contract. The vendor will also produce an annual report for all purchases made under this contract for a period beginning with the award of the contract through December 31st and all consecutive 12-month periods if contract is extended. The vendor will make all administrative fee payments to KPN by the 20th of the succeeding month of each 3-month calendar quarter after they have received payment from the member agency and all checks are to be made payable to the Central Susquehanna Intermediate Unit (CSIU) and sent to Keystone Purchasing Network, 90 Lawton Lane, Milton, PA 17847, and Attention: Mark C. Carollo. All reporting of purchases will be made using the provide Excel spreadsheet and will be broken down by entity by state and will show Order Date, Agency Name, Street Address, City,

State, Zip, PO #, and Total Price. Optionally, Item #, Item Description, Manufacturer #, Qty, Extended Advertised Price can be included.

E. Agencies Allowed to Purchase under the Member Agency

The Keystone Purchasing Network (KPN) is a cooperative purchasing program operated by the Central Susquehanna Intermediate Unit under various state inter-governmental cooperation laws. Every public school district in the state is eligible to become a member and must complete a membership application with the KPN. No member is obligated to use these services, but they find the benefits of low price and not needing to go through the bidding process most advantageous. Only those members listed on an approved KPN membership list are eligible to purchase under these contracts. This list may change during the contract period and currently includes members from Pennsylvania, Maryland, New York, Delaware, District of Columbia and other Northeast & Mid-Atlantic states. Vendors may choose to offer KPN in other non-AEPA member states where cooperative purchasing laws allow.

Additional members may include other public educational institutions in the state, college, university, community colleges, vocational schools, charter schools, municipal and county governments and other non-profit organizations from Pennsylvania or any other state where a member is located. Membership from other entities is permitted by various intergovernmental cooperative purchasing laws or regulation from their home state.

As member agencies from other states are added to the membership of the KPN the awarded vendor(s) agrees to abide by all state and local laws and/or regulations that may apply to any purchase of products, services or construction by these agencies. KPN reserves the right to market any AEPA contract under any cooperative program name that it may choose in the future on a national basis in any non-AEPA member state.

23. South Carolina, Carolinas Alliance 4 Innovation

1. General Overview

- a. Carolinas Alliance 4 Innovation (CA4I) became the AEPA representative for the state of South Carolina in 2020 and for the state of North Carolina in 2024.
- b. CA4I is a 501.c.6, non-profit public benefit corporation whose mission is to promote innovative solutions for saving money, time and hassles in education and government for the purpose of community and economic development.
- c. CA4I does business as "Carolina BUY."

2. Eligible Entities

- a. CA4I is able to serve all AEPA eligible members, including City, County, and State Government Agencies and Special Purpose Districts; K-12 Public and Private Schools; Colleges and Universities; Public Libraries; and Non-Profit Organizations.

3. General Terms and Conditions that apply for all categories

- a. **Governing Law:** The laws of the State of South Carolina govern all contracts resulting from this solicitation. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
- b. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Greenville County, South Carolina. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Greenville County, South Carolina.
- c. **Hazardous Substances:** All hazardous products purchased by members shall include a Safety Data Sheet (SDS) with the delivery.
- d. **Award:** Upon acceptance and approval of the Vendor's offer by AEPA, CA4I will independently consider the recommendation based on the value of the potential contract for its participating agencies and the Vendor commitment to emphasize AEPA established discounts and Carolina BUY local advocacy in making sales proposals. In the event of a Vendor award, CA4I will inform its members of the award and contract by posting information on its website, in newsletters, and announcements to affinity partners along with contract instructions and ordering process.
- e. **Processing Orders:** When an eligible educational, governmental or nonprofit member identifies a desired product or service, the member and the vendor may negotiate with each other to establish a description of items and/or services. The vendor shall quote a price to the member, in writing, using AEPA established discounts and including the two percent (2%) administrative fee or payment in the quoted price. The administrative fee shall be based upon the total cost of goods and/or services including installation costs. The administrative fee shall not be listed as a separate line item on the quote. When a member decides to purchase through the CA4I-AEPA contract, the member issues the purchase order directly to the vendor. The purchase order must include the total invoiced cost, based on
 - i. The total cost of goods, service, and installation, including the AEPA established discounts and a 2% administrative fee.
 - ii. Notification will be made to the vendor in the event the purchase order is not in compliance with the contract and adjustments will be made at that time. CA4I and the Vendor will mutually resolve any issues concerning past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by CA4I otherwise. All sales and transactions may continue without delay or in anticipation of the CPC purchase order verification.
 - iii. Once all the items and services on the purchase order have been delivered to the member completely and satisfactorily, the Vendor then files a copy of the final invoice, which is available to CA4I by request in support of the quarterly sales summary.
 - iv. The Vendor makes all deliveries and installations of products and services. CA4I does not warehouse items or provide installation services.
 - v. This administrative fee is to be paid by the vendor to CA4I, quarterly, within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to CA4I a sales report, in Excel format, listing the following information:
 1. Name of purchasing agency
 2. Address of purchasing agency (city, state, zip code)
 3. Date of purchase
 4. Invoice number
 5. Amount of purchase
 6. Administrative fee generated by sale
 7. Savings generated by sale

This report shall include all sales made and payments received by the vendor in the said quarter.

The sales report shall be emailed to Fred Payne, fred.payne@ca4i.org and to Operations@carolinabuy.com.

24. **TexBuy, a Cooperative Purchasing Shared Services Cooperative Sponsored by the Region 16 Education Service Center**

A. Additional Terms and Conditions

- (1) **TexBuy funding:** The total cost of the TexBuy program is funded through a participation fee up to two percent (2%) paid to TexBuy by the Vendors. This fee shall be included in all pricing to TexBuy and its participating agencies. The fee is based on actual Vendor sales. TexBuy does not charge any fees to participating government agencies.
- (2) **Tax exempt status:** All government agencies participating in TexBuy are exempt from payment of taxes under Texas Tax Code §151.309 for the purchase of tangible personal property.
- (3) **Minority and Women Business Enterprise (MWBE) participation:** It is the policy of some TexBuy participants to involve MWBE Vendors in the purchase of goods and services. Vendors shall indicate on the proposal form whether or not they are an MWBE.
- (4) **School District awards** shall not consider whether a Vendor is a member of or has another relationship with any organization and bid specifications (and subsequent contracts) shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization in accordance with Texas Education Code §44.043.
- (5) **Felony Conviction Notice** (TexBuy Vendors will be required to sign a standard form required by the State of Texas): Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.
- (6) **Criminal History and Background Checks**, in accordance with Texas Education Code Chapter 22, Subchapter C, shall be required should any employee or agent of an awarded Vendor a bid have "continuing duties related to the contracted services" with a school district and that employee or agent will have "direct contact with students" (as those terms are defined in 19 Texas Administrative Code §153.1101). Vendor shall provide all necessary information to the school district in order for the school district to perform a criminal history and background check, when applicable. For additional information regarding the process, see <https://tea.texas.gov/texas-educators/investigations/fingerprinting/requirements-for-school-district-contractors>.
- (7) **Debarment and Suspension:** Under Executive Order 12549 in the Federal Register and Rules and Regulations, TexBuy and TexBuy participants shall not do business with a Vendor that has been debarred, suspended, or is otherwise ineligible for participation in federal assistance programs.
- (8) **Conflict of Interest:** In accordance with Texas Local Government Code Chapter 176, vendors/Vendors who have a business relationship as defined by Section 176.001(1-a) with a local government entity and meet the requirements under section 176.006(a) must file a Conflict of Interest Questionnaire (Form CIQ) with the local government entity when:
 - (a.) The Vendor has entered into a contract with the local government entity or the local government entity is considering entering into a contract with the Vendor.
 - (b.) AND the Vendor provides certain income or gifts to a Local Government Officer (LGO) or first-degree family members as defined in the Texas Government Code
 - (c.) OR a family relationship exists between the LGO and the Vendor's employees or agents as defined in the Texas Government Code, chapter 176. A sample Form CIQ is available here <https://www.ethics.state.tx.us/forms/conflict/>.
- (9) **EDGAR Certification Form (Education Department General Administrative Regulations):** In accordance with Federal Regulations under 2 CFR § 200.318(c)(1) – When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (also known as the "Uniform Guidance" or "EDGAR"). All Vendors submitting proposals must complete this EDGAR Certification Form regarding the Vendor's willingness and ability to comply with certain requirements which may be applicable to specific TexBuy member purchases using federal funds. This completed form will be made available to TexBuy members for their use while considering their purchasing options when using federal funds. Members may also require Vendors to enter into ancillary agreements, in addition to the TexBuy's general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

- (10) **Antitrust Certification:** In accordance with Texas Government Code 2155.005, the state or a state agency shall not enter into contract with a Vendor that has violated any provision of the Texas Antitrust laws referenced in Texas Business & Commerce Code Chapter 15 or any federal antitrust laws.
- (11) **Commitment of Current Revenues Only:** any contract resulting from an award shall be a commitment of current revenue only and shall allow the participating governmental agency the continuing right to terminate at the expiration of each budget period during the term of the contract, shall be conditioned on a best efforts attempt by the agency's governing body to obtain and appropriate funds for payment of the contract, or shall contain both the continuing right to terminate and the best efforts conditions. Texas Local Government Code 271.903.
- (12) **Pursuant to Texas Government Code Chapter 2271**, as amended, if any proposed contract is valued at \$100,000 or more and if the Vendor has at least ten (10) full time employees, then Vendor, by its submission of a proposal represents and warrants that Vendor does not boycott Israel and will not boycott Israel during the term of any applicable agreement. This section does not apply to a sole proprietorship.
- (13) **Pursuant to Texas Government Code Chapters 2274 and 809**, if any proposed contract is valued at \$100,000 or more and if Vendor has at least ten (10) full-time employees, then Vendor, by its submission of a proposal represents and warrants that Vendor does not boycott energy companies and will not boycott energy companies during the term of any applicable agreement. This provision does not apply to sole proprietorships.
- (14) **Pursuant to Texas Government Code Chapter 2274**, if any proposed contract is valued at \$100,000 or more and if Vendor has at least ten (10) full-time employees, then Vendor, by its submission of a proposal represents and warrants that Vendor does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of any applicable agreement. This provision does not apply to sole proprietorships.
- (15) Vendor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If vendor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void any resulting agreement.
- (16) The requirements of Subchapter J, Chapter 552, Government Code, may apply to a resulting contract and the Vendor agrees that the contract can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of the contract is One Million Dollars (\$1,000,000.00) or more, the Vendor agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the participating agency for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (a) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the Vendor; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.
- (17) **Certificate of Interested Parties:** Pursuant to [Section 2252.908 of the Government Code](#), a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million, or (3) is for services that would require a person to register as a lobbyist under Chapter 305 of the Government Code. Information regarding the Certificate and online filing process is available at <https://www.ethics.state.tx.us/filinginfo/1295/>.
- (18) **State of Texas Franchise Tax:** By signing the proposal, the Vendor certifies that the Vendor is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.
- (19) **Agricultural products**, including textiles and other similar products, are not to be made available to Texas school districts through the agreement, unless such products produced, processed, or grown in the state of Texas are given a preference in accordance with Texas Education Code §44.042.
- (20) **Recycled Materials:** a participating governmental entity shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than ten percent greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules. 30 Texas Administrative Code 328.203
- (1)

B. Additional Agency Terms and Conditions for Construction Products and Services as required by law in the State of Texas:

- (1) **Certification of Residency (TexBuy Contractors will be required to sign a standard form it required by the State of Texas):** Texas Government Code Chapter 2252, Subchapter A requires TexBuy to determine the residency of its contractors. In part, this law reads as follows:
 - (a.) **Section: 2252.001**
 "Non-resident bidder" refers to a person who is not a resident. "Resident bidder" refers to a person whose

principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.”

(b.) **Section: 2252.002**

”A governmental entity may not award a governmental contract to a non-resident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located.”

(2) **Miscellaneous**

- (a.) **Performance Bonds** when required by Texas , Government Code Chapter 2253, shall be furnished by the successful contractor in an amount equal to one hundred percent (100%) of the total amount of the contract , underwritten by such surety company as the participating agency may approve, conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the participating agency.
- (b.) **Payment Bonds** when required by Texas Government Code Chapter 2253, shall be furnished by the successful contractor, in the amount of the contract, solely for the protection of all claimants supplying labor and material as r defined, in the prosecution of the work provided in said contract, for the use of each claimant.
- (c.) **No less than the Prevailing Wage** rates must be paid to any contractors or subcontractors or their employees or agents in performing any work under the awarded contract. Texas Government Code Chapter 2258. The prevailing wage rates are determined by the participating agency. If federal funds are used, the prevailing wage rate will be as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.
- (d.) **Criminal History Background Checks** in accordance with Texas Education Code §22.0834 and 22.08341 shall be required should any employee or agent of a contractor awarded a bid have “continuing duties related to the contracted services” with a school district and that employee or agent will have “direct contact with students” (as those terms are defined in 19 Texas Administrative Code 153.1101). Contractor shall provide all necessary information to the school district in order for the school district to perform a criminal history and background check, when applicable. For additional information regarding the process, see <https://tea.texas.gov/texas-educators/investigations/fingerprinting/requirements-for-school-district-contractors>.
- (e.) **Architect/Engineers:** No architectural or engineering services shall be procured by TexBuy on behalf of any Texas governmental entities, see Texas Government Code 791.011(h). A Texas school district may not enter into a contract to purchase construction-related goods or services through TexBuy in an amount greater than \$50,000 unless a person designated by the school district certifies in writing that: 1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Texas Occupation Code Chapter 1001 or 1051; or 2. The plans and specifications required under Texas Occupation Code Chapters 1001 and 1051 have been prepared.
- (f.) By submitting a proposal, the Vendor certifies as follows: under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld in this certification is inaccurate.

- (3) **Insurance:** The contractor shall file with the Participating Agency’s designee, Insurance Certificates, as described herein, evidencing the minimum coverage required below or the minimum coverage required by the Participating Agency, and shall be supplied within ten (10) calendar days after receipt of the written “Notice of Award”. In no instance shall the contractor begin work prior to the filing of the insurance requirements. Failure to do so shall be grounds to void the contract. The Participating Agency’s designee shall be given ten (10) days notice prior to the cancellation or change of any of the required insurance coverage. The Participating Agency shall be named as Certificate Holder.

- (a.) **Contractor’s Liability Insurance:** Produce and maintain in force the following kinds of insurance by companies licensed to do business in Texas and acceptable to the Participating Agency. Minimum Limits of Liability are stated.

Contractor’s Liability Insurance:

Employer’s Insurance Workers’ Compensation—Statutory Employer’s Liability
Bodily Injury by Accident Each Occurrence—\$100,000.00
Bodily Injury by Disease Each Employee—\$100,000.00
Policy Limit—\$500,000.00

Commercial General Liability -Combined Limits of Bodily and Personal Injury and Property Damage:
Each Occurrence—\$500,000.00
General Aggregate—\$500,000.00

Automobile Liability - Including non-ownership, hired and owned vehicle coverage:
Bodily Damage Each Person—\$250,000.00
Each Occurrence—\$500,000.00
Property Damage Each Occurrence—\$250,000.00

All Risk Builders Risk against the perils of fire, lightening, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site.

(b.) Umbrella or Excess Liability: excess over the above liability policies in the amount of \$2,000,000.00 each occurrence/aggregate. (Combined Limit)

(c.) Workers' Compensation Insurance Coverage.

.1 Definitions:

1.1 Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096). Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage

showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

9.4 obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the Project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs

9.1 - 9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 Texas Administrative Code §110.110(c)(7)]

C. Procedure for Processing Orders

- (1) Purchase orders are issued by participating agencies to the Contractor.
- (2) "Automated contracts" may be negotiated with TexBuy that provide for purchase orders to be sent directly to the Contractor with reports of usage submitted periodically to TexBuy.
- (3) Contractors deliver goods/services directly to the participating agency and then invoice the participating agency. The Contractor receives payment directly from the participating agency.
- (4) TexBuy shall receive quarterly reports from the Contractor reflecting total sales made through the TexBuy contract with the Contractor. The Contractor shall remit payment of their participation fee up to two percent (2%) to TexBuy at net thirty-day (30) terms.

D. Members Purchasing Under the Agency

TexBuy is operated by Region 16 Education Service Center, located in Amarillo, Texas and is available for use by all public and private schools, colleges, universities, cities, counties and other government agencies in the State of Texas.

25. Virginia, Fairfax County Public Schools

Additional Agency Terms and Conditions that apply to all categories

AUTHORITY-The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned Buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

NOTE: Fairfax County does not discriminate against faith-based organizations, in accordance with the *Code of Virginia*, § 2.2-4343.1, or against a Bidder or Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

GENERAL

1. DEFINITIONS-

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BIDDER/BIDDER: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "Bidder" will be used throughout this document and shall be construed to mean "Bidder" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

COUNTY: County of Fairfax.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

SERVICES: Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

STATE: Commonwealth of Virginia.

- 2. FUNDING-**A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.
- 3. CONTRACT ALTERATIONS-**No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.
- 4. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS-**It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.
- 5. NEW GOODS, FRESH STOCK-**All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.
- 6. INSPECTION-ACCEPTANCE-**For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.
DELIVERY/SERVICE FAILURES-Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
- 7. GUARANTEES & WARRANTIES-**All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
- 8. INSPECTIONS-**Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear

the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

9. **POINT OF DESTINATION**-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
10. **ADDITIONAL CHARGES**-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
11. **TERMINATION OF CONTRACTS**-Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
 - a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
 - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
12. **TERMINATION FOR CONVENIENCE**-A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
13. **TERMINATION OF CONTRACT FOR CAUSE**-
 - a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
14. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
15. **CHANGES**-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
16. **GENERAL GUARANTY**-Contractor agrees to:
 - a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
 - b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other Contractors, for which his or her workers are responsible.
 - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
 - e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
17. **SERVICE CONTRACT GUARANTY**-Contractor agrees to:
 - a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
 - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete

performance, and exercise therein the highest degree of skill and competence.

c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules,

regulations, methods and procedures of all government boards, bureaus, offices and other agents.

- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.

Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

- 18. INDEMNIFICATION**-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the Subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

- 19. NON-DISCRIMINATION**-During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each Subcontractor or vendor.
- e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

- 20. DRUG FREE WORKPLACE**-During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- 21. OFFICIALS NOT TO BENEFIT-**

- a. Each Bidder or Bidder shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such

possible

benefit.

- c. In the event the Bidder or Bidder has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Bidder or Bidder shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

LICENSE REQUIREMENT-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: http://www.fairfaxcounty.gov/dta/business_tax.htm. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

- 22. REGISTERING OF CORPORATIONS**-Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

- 23. COVENANT AGAINST CONTINGENT FEES**-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

24. OFFICE OF SMALL BUSINESS-

- a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
- b. In connection with the performance of this contract, the Contractor agrees to use his or her best effort to carry out this policy and to insure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract.
- c. As used in this contract the term "small business" means a corporation, partnership, or sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees, or less than \$1,000,000 in annual receipts.
- d. As used in this contract, the term "minority business" means a business enterprise that is at least 51 percent owned and controlled by a minority person or persons. Such persons include African Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos and Aleuts; women regardless of race or ethnicity; and persons with a physical impairment that substantially limits one or more of the major life activities of such individuals, a record of such impairment, or who are regarded as having such an impairment.
- e. Contractors may rely on oral or written representations by Subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation.
- f. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

PAYMENTS

- 25. TAX EXEMPTION**-The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a Bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

- 26. PAYMENT**-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

- 27. PARTIAL PAYMENTS**-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
- 28. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING**-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.
- 29.** The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to Fairfax County Public Schools on a quarterly basis.

REMEDIES

30. INELIGIBILITY-

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
 - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
 5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 6. The Contractor has abandoned performance or been terminated for default on any other Fairfax County project;
 7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

31. CONTRACTUAL DISPUTES-

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal

action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.

- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time

of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

32. LEGAL ACTION-No Bidder, Bidder, potential Bidder or Bidder, or Contractor shall institute any legal action until all statutory requirements have been met.

C – Member Purchasing

33. COOPERATIVE PURCHASING-The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government. Bidders are advised that the *resultant* contract(s) may be extended, with the authorization of the Bidder, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s). Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.

26. Washington, King County Directors' Association (KCDA)

A. KCDA Additional General Terms and Conditions

General Intent: KCDA may participate in all or any part of the goods and services listed in this IFB, upon completion of contracts currently in effect, whichever is deemed in the best interest of KCDA members. KCDA cannot be restricted by the successful bidder from choosing which parts of these contracts to use.

Both the Contractor and KCDA member using this Contract agree that it is the member's responsibility to perform due diligence as to the legality of their usage of this contract. In this regard, KCDA suggests that, at a minimum, Contractor and member considering such usage consult with their legal counsel before doing so.

Advertising/Marketing:

KCDA requires all vendors to develop a marketing program to include printed, web-based, e-mail, telemarketing and other methods approved by KCDA.

All promotional marketing materials must have the prior approval of KCDA before distribution and must include the KCDA logo and other contract information.

KCDA staff will work jointly with all vendors and their representatives to market the AEPA contracts to KCDA members and prospective members. Vendors may be requested to make joint presentations to KCDA or its members in either a one to one or a group setting. Some group presentations may be done in conjunction with other vendors.

Displaying exhibits at various statewide conferences are encouraged. Contractor agrees to make available KCDA supplied brochures or other promotional materials at these events. Contractor will provide KCDA with scheduled exhibit dates in advance.

Contractor agrees to insert the approved KCDA logo, web address and contact information on the Contractor's website promoting and providing a link to the KCDA website. Contractor will also provide KCDA with text, links and logos to be posted on the KCDA website.

Assignment:

Contractor shall not subcontract, assign, transfer, convey, sublet or otherwise dispose of contractual duties to any other person, firm or corporation without the previous written consent of KCDA and any member that has an outstanding open purchase order or financing arrangement. In no case shall such assignment of Contract relieve the Contractor from obligations or change the terms of the Contract.

Cancellation/Default/Termination:

KCDA reserves the right to cancel the whole or any part of this contract due to the failure by the Contractor to carry out any obligation, term or condition of the contract. KCDA will issue written notice to the contractor for acting or failing to act in any of the following:

- The Contractor fails to adequately perform the services set forth in the contract
- The Contractor fails to make progress in the performance of the contract and/or gives KCDA reason to believe the Contractor will not or cannot perform to the requirements of the contract
- The Contractor fails to observe any of the terms and conditions of the contract
- The Contractor fails to pay any applicable administrative fees.
- The Contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by KCDA.

If the contract is to be terminated, KCDA shall do the following:

- Step 1 – Issue a warning Letter of Concern outlining the violations and length of time to correct the problem(s). Upon receipt of the letter, the Contractor shall have ten (10) business days to provide a satisfactory response to KCDA. Failure on the part of the Contractor to address adequately all issues of concern may result in contract cancellation.
- Step 2 – Issue a letter of intent to cancel the contract if the problems(s) are not resolved by the date specified.
- Step 3 – Issue a letter to terminate the contract.

Compliance with Laws

In addition to any requirements set forth herein, vendor shall comply with all applicable state, federal and local laws, rules, regulations and ordinances.

Contract Amendments:

KCDA reserves the right to amend the contract resulting from state law changes or internal boilerplate changes due to state law changes. Contractors/Vendors will be sent written notification of the changes.

Employees who have been Convicted of Crimes against Children:

The Contractor, or any subcontractors, shall not utilize any employee at a school site or allow any contact between school children and any employee when an employee has plead guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under 9A.88 RCW, or violation of similar laws of another jurisdiction.

Contractors/Vendors who have regularly scheduled unsupervised access to children, and/or who hire employees who will have regularly scheduled unsupervised access to children, shall perform a record check through the Washington State Patrol criminal identification system under RCW 43.43.830-43.43.834, 10.97.030 and 10.97.050, and through the Federal Bureau of Investigation before hiring the employee. The record check shall include a fingerprint check using a complete Washington State criminal identification fingerprint card. The Contractor shall provide a copy of the record to the person applying for employment to the school location. If the Contractor or applicant has had a record check within the previous two years, the Contractor may waive the requirement. The Contractor shall determine whether the applicant or the Contractor shall pay costs associated with the record check.

In addition, pursuant to RCW 9.96A.020 and 1993 Chapter Law 71, a person is disqualified from employment by school districts, and their Contractor from hiring employees who will have regularly scheduled unsupervised access to children because of a prior guilty plea or conviction of a felony crime specified under RCW 28A.400.322, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

Governing Law and Venue/Legal Litigation:

All applicable local, state and federal laws and regulations will apply to any purchases of equipment, service or public works in any of the states KCDA currently services, as well as any other non-AEPA states where members may be added to KCDA membership throughout the term of these contracts. The laws of the State of Washington govern the Contract. Each and every provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. Venue for any litigation arising out of or related to the Contract shall take place in the State of Washington.

Hazardous Materials:

If any hazardous chemicals/materials are supplied under a contract/purchase order arising out of this solicitation, a Safety Data Sheet (SDS) shall accompany the delivery of any hazardous chemicals/materials supplied by the vendor. All SDA sheets shall be sent to KCDA and the KCDA member. Any products not appropriately labeled will be refused and the vendor will be responsible for additional freight charges.

Indemnification/Hold Harmless:

The Contractor agrees to defend, indemnify and hold harmless KCDA and the member agency, and their respective officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits including attorney fees arising out of or resulting from the acts, errors or omissions in performance of this Agreement, except for injuries and damages caused by the sole negligence of KCDA or the member agency. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor, KCDA or the member agency and their respective officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. Use of this contract certifies that the waiver of immunity specified by this provision was mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of the Agreement.

Independent Contractor:

The Contractor shall not be held or deemed in any way to be the agent or employee of KCDA and /or a KCDA member. It is the intention of the parties that the Contractor shall be and is to be considered an independent Contractor.

Minority and Women Owned Businesses:

KCDA encourages all minority and women owned businesses to participate in the bid process. Washington State law does not allow KCDA to provide any financial advantage for minority and women owned businesses who participate, however, KCDA believes that a diverse range of suppliers benefits all.

Quality of Goods:

Bidder shall bid and provide new (not used or refurbished) items only. Seller warrants all supplies, materials and equipment and services covered by a contract/purchase order with KCDA or with a KCDA member will:

- (a) conform to the specifications, drawings, written instructions, samples, or descriptions; (b) be of good quality and workmanship; (c) be free of defects in design, materials and workmanship; (d) be merchantable; (e) be fit for particular purposes applicable to the design, function or use of the supplies, materials and equipment.

Taxes:

The KCDA Members and Associate Members are to be taxed.

Term of Contract:

The term of the agreement shall commence on the date of the award and continue as stipulated in the General Terms and Conditions, unless terminated, canceled or extended.

Use of Tobacco on School Districts/Public Agency Premises:

RCW 28A.210.310 prohibits the use of tobacco in any form on school district property. Smoking or other use of tobacco will not be permitted at the job site.

B. Order Procedure

After entering into an agreement with KCDA, KCDA will confirm the directions for placement of orders with the Contractor, and will post directions on the KCDA website for both Contractor and members. These directions will also be posted on each awarded Contractors/Vendors website.

- Once the award is made to the Contractor, KCDA will inform members of the contract.
- At this point the Contractor may directly contact members or the member may contact the Contractor.
- A list of members, addresses and phone numbers is available to the Contractor upon request.
- Before a Contractor may enter into business with a KCDA member, they need to verify membership through the KCDA website, which can be viewed under Membership.

Invoicing/Reporting

- KCDA will contact Contractors/Vendors about invoicing procedures.
- KCDA is funded through a service fee paid to KCDA by the participating Contractors/Vendors. The service fee percentage is based upon the total sale of goods and services, including installation, if applicable. This fee shall be reflected in all price quotations under the KCDA agreement. The service fee will be **2%**. Do not print the service fee as a separate line item on the quotation.
- The Contractor will compile an electronic quarterly report listing each purchase made by participating members. Within 30 days after each quarterly period the report will be sent to the e-mail address of the KCDA Procurement Director, Thomas Kim at tkim@kcda.org and CFO, Yohan Lee at ylee@kcda.org
- These reports shall be in Microsoft Excel format and shall have file names that identify the Contractor and the quarterly period being reported. They shall include the following fields and allow for sorting on any of the fields: Date of order, name of member, item purchased, quantity, unit price, extended price, member PO #, Contractor order number.
- KCDA reserves the right to change the contact name of existing KCDA personnel administering the contract. If there are personnel changes, reports and payments will be sent to the new contact(s) specified.

C. Agencies Allowed to Purchase under KCDA

King County Director's Association (KCDA) is a member owned purchasing cooperative representing 294 Washington State school districts. In addition, KCDA provides purchasing and procurement services for more than 1,200 public agencies and political subdivisions in Washington and other states, including but not limited to Alaska, Idaho, and Montana. KCDA also provides purchasing services for accredited private K-12 schools in Washington State.

A listing of all KCDA members is available on the KCDA website, www.kcda.org.

D. KCDA Additional Terms & Conditions for Construction Products and Services

Contractor agrees that, in performance of the services required under this agreement, Contractor shall abide by all federal, state, local and Washington law and regulations that may apply to construction and public works. It is the responsibility of the Contractor to determine applicability and requirements of any such laws and to abide by them.

a) Public Works:

State of Washington statute requires workers be paid **prevailing wages** when employed on **public works** projects and on public building service maintenance contracts. (RCW 39.04.010, RCW 39.12.010 and 020) It is the contractor's responsibility to be acquainted with and comply with State regulations regarding payment of prevailing wages on public works projects. Prevailing Wages are established by the Washington State Department of Labor and Industries and can be obtained on the web at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp> or by contacting Labor and Industries at 360-902-5335. A copy may also be requested from KCDA. KCDA serves all counties in Washington State. The County in which the project is located will be identified once a member initiates a request for the service, and the effective wage rate to be applied to a specific project is to be based on the date of this bid during the original contract term, and if contract extensions are granted, the prevailing wage rate in affect at the time of the latest extension.

Application: The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive administrative or professional in nature. It does not apply to work of a secretary, engineer or administrator, unless they are performing construction work, alteration work, repair work, etc. Prevailing wage application depends on the work that is performed, regardless of the worker's job title. (RCW 39.12.020 and WAC 296-128-510 through 530)

Definition:

Public Works is all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction. (RCW 39.04.010)

Public Building Service Maintenance Contracts: Prevailing wages are also required on all public building service maintenance (janitorial) contracts. (RCW 39.12.020)

Contractors bidding a Public Works project exceeding \$1,000,000.00 must declare who their HVAC, Mechanical and Electrical subcontractors will be within one hour of bid submission and the listing of structural installation and rebar installation subcontractors within 48 hours of bid submission, and submit this information with bid documents in order for the bid to be responsive. (RCW 39.30.060).

Apprentice Utilization Requirements (AURs)

Public works projects should conduct a 15% apprentice utilization requirement if the project belongs to any of below,

- State public works estimated to cost \$1 million dollars or more;
- Department of Transportation projects estimated to cost \$2 million or more;
- All school district public works projects estimated to cost \$1 million or more; and
- All public works by a state four-year institution of higher learning estimated to cost \$1 million or more.

And one of three requirements should happen on a project:

- The project meets the 15% AUR;
- The project does not meet the 15% AUR, however the awarding agency approves a good faith effort; or
- The monetary penalty written in the contract is assessed.

Good faith efforts are for the entirety of a project, not a single occupation unless there happens to be only one apprenticeable occupation on the project. Therefore, the prime contractor cannot only consider their occupation(s) when requesting a good faith effort and leave out the occupations and workforce used by subcontractors.

Within existing resources, awarding agencies are responsible for monitoring apprenticeship utilization hours by

contractor. There must be a specific line item in the contract specifying that apprenticeship utilization goals should be met, monetary incentives for meeting the goals, monetary penalties for not meeting the goals, and an expected cost value to be included in the bid associated with meeting the goals. The awarding agency must report the apprenticeship utilization by contractor and subcontractor to the supervisor of apprenticeship at the department of labor and industries by final project acceptance. The electronic reporting system that is being developed by the department of labor and industries may be used for either or both monitoring and reporting apprenticeship utilization hours.

Refer to RCW 39.04.320, which covers apprentice utilization on public works projects for detailed information.

Reciprocity: In accordance with RCW 39.04.380 any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280 or other procurement exempt from competitive bidding.

b) Prevailing Wage:

Definition: Prevailing Wage is the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers and mechanics. The rate is established by the Department of Labor and Industries for each trade and occupation employed in the performance of public work. If Federal funds are used, bidders must comply with provisions of Davis-Bacon Act.

Basic procedures: A Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid must be filed and approved for the contractor and all subcontractors. No payments can be made until all contractors/subs have submitted an approved intent form. KCDA cannot release retainage until all Contractors have an approved Affidavit of Wages Paid form certified by the Industrial Statistician. (RCW 39.12.030, 040, 042) Once the work is successfully completed, KCDA will release 95% of the project cost and withhold 5% retainage for 45 days as dictated by law. The final 5% will be paid when the following is completed: Receipt of approved Affidavit of Wages Paid Forms, Releases from Washington State Department of Labor & Industries, Employment Security Department and the Department of Revenue, and acceptance of project completion to the satisfaction of the KCDA ordering member. The cost of filing required Intents and Affidavits is the responsibility of the Contractor, and may not be added as a line item charged to the member agency. All Intents and Affidavits must name the agency for whom work is being performed as the contract award agency, not KCDA.

Federally Funded Projects: In addition to the Federal Requirements of Section III, Housing and Urban Development (HUD) Terms and Conditions, **Davis-Bacon** prevailing wage requirements apply to public works construction contracts of \$2,000 or more when a project includes any federal funding of any amount. When there is a difference between applicable state and federal prevailing wages for a particular classification of labor, contractors and subcontractors are required to pay the higher of the two prevailing wages. Applicable federal prevailing wage determinations can be found at <https://sam.gov/content/wage-determinations>. Contractors/Subcontractors must be knowledgeable and adhere to all federal prevailing wage requirements, including but not limited to paying workers weekly and providing certified weekly payrolls for the contractor and subcontractors of any tier as required in the Davis-Bacon Act and applicable U.S. Department of Labor regulations. Falsification of any prevailing wage payroll records may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code. Contractor shall inform all subcontractors of the Davis-Bacon requirements and the prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses. Contractor must coordinate all requirements related to federal funded projects with the KCDA member Agency.

c) Responsible Bidder:

Before award, the bidder must meet the following state responsibility criteria and, if applicable, supplemental responsibility criteria to be considered a responsible bidder. The bidder is required to submit documentation

demonstrating compliance with the criteria.

Low Responsible Bidder

State Responsibility Criteria. The Bidder must meet the following state responsibility criteria:

1. At the time of bid submittal, have a current certification of registration in compliance with chapter 18.27 RCW.
2. Have a current Washington State Unified Business Identifier (UBI) number.
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. If applicable:
 - a. Have Industrial Insurance (workers' compensation) coverage for the Bidder's employees working in Washington State, as required in Title 51 RCW;
 - b. Have a Washington State Employment Security Department number, as required in Title 50 RCW; and
 - c. Have a Washington State Department of Revenue state excise tax registration number, as required in Title 82 RCW.
5. New bidder requirement. Certify that within the three-year period immediately preceding the bid solicitation date:
 - a. The bidder is not a "willfull" violator, as defined in RCW 49.48.082, or any provision of chapter 49-46, 49.48 or 49.52 RCW.
 - b. As determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgement entered by a court of limited or general jurisdiction.
 - c. As of July 1, 2019, WA Labor and Industries has required all businesses to have public works training before bidding and/or performing work on public works projects. This training requirement has been added to the responsible bidder criteria in [RCW 39.04.350](#) and [RCW 39.06.020](#). Awarding agencies are required to verify all contractors submitting bids meet this requirement before awarding the contract.
6. At the time of bid submittal, provide signed sworn statement in accordance with RCW 9A.72.085 verifying under penalty or perjury that the bidder is in compliance with the new responsible bidder criteria requirement.
7. Supplemental Bidder Responsibility Criteria. If supplemental criteria apply to this project, the criteria are included as "Exhibit A." The Bidder may make a written request to modify any or all of the supplemental criteria. Modification of supplemental criteria shall be at KCDA's discretion. Any modifications to the supplemental criteria shall be made by addenda prior to bid opening.

Subcontractor Responsibility

The contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. At the time of bid submittal, have a current certification of registration in compliance with chapter 18.27 RCW.
2. Have a current Washington State Unified Business Identifier (UBI) number.
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. If applicable:
 - a. Have Industrial Insurance (workers' compensation) coverage for the Bidder's employees working in Washington State, as required in Title 51 RCW;
 - b. Have a Washington State Employment Security Department number, as required in Title 50 RCW; and
 - c. Have a Washington State Department of Revenue state excise tax registration number, as required in Title 82 RCW
5. Have an electrical contractor license, if required by Chapter 19.28 RCW;
6. Have an elevator contractor license, if required by Chapter 70.87 RCW;

Payment & Performance Bond:

The prime Contractor shall provide a Performance and Payment Bond at 100% of the contract price to the KCDA member with a copy to KCDA before work begins. The only exception is for contracts of one hundred fifty thousand

(\$150,000) dollars or less. In this instance, at the option of the Contractor, the member may in lieu of the bond retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, Employment Security Department, and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. The bond shall be issued by a surety company authorized to do business in the State of Washington and shall be on standard forms used for public projects (RCW 39.08.010) and as directed by the KCDA member.

Performance and Payment bonds for KCDA members outside Washington must be provided by companies licensed to provide bonds for public entities in the member's state.

Licenses

The prime contractor shall possess and maintain in current status all federal, state, and local licenses, bonds, and permits required for the performance and delivery of any and all products and services offered in its response to the bid solicitation. Before submitting a bid, Bidders must hold a current, valid contractor's license as required in Washington. The contractor's license must be in the name of the legal entity submitting and signing the bid. A Bidder may not substitute a contractor's license held by a subcontractor or joint venture. Bidders submitting bids in Washington State without a valid contractor's license in the name of the Bidder are in violation of RCW 18.27.020.

It is the responsibility of the prime contractor to ensure any subcontractors performing under this contract hold and maintain appropriate licenses.

KCDA reserves the right to request copies of licenses at any time during the contract. Copies of licenses, upon request, must be submitted to the member prior to performing the work. The Contractor agrees to keep and ensure subcontractors keep any required license, permit or bond current and in compliance with Washington rules, regulations and statutes, as well as in states outside Washington in which contractor performs work under this contract. For work performed for any Washington State school district, public agency or municipality, the Contractor must comply with the bidder responsibility requirements of RCW 39.04.350 prior to the KCDA member awarding a contract. The contractor must verify the responsibility of all subcontractors used in accordance with RCW 39.06.020.

d) Permits:

Obtaining permits is the responsibility of the Member. Awarded Contractor may provide guidance and/or assistance in obtaining necessary permits. If Contractor does obtain permits on behalf of member, all fees are viewed as a "pass through" with no upcharge to the member.

e) Certificate of Insurance:

A certificate of insurance demonstrating current coverage of the types and amounts of insurance required by KCDA and the KCDA member must be provided to the KCDA member prior to performance of any work. In addition, the Commercial General Liability policies must be endorsed to name KCDA and the KCDA member as additional insureds. Such policies must be further endorsed to provide that the insurance is primary as respects KCDA and the KCDA member, and that any other insurance maintained by KCDA and the KCDA member shall be excess and not contributing insurance with the Contractor's insurance. These endorsements must be provided along with the certificate of insurance. The KCDA member must approve the certificate of insurance and endorsements.

f) Acceptable Pricing Method:

KCDA is unable to accept Alternative Costing Method quotations except in certain limited instances, (i.e. sole source) in which KCDA and Vendor may mutually determine the Alternative Costing Method is acceptable. This will be the exception rather than the rule. RS Means or line item bid pricing is acceptable.

g) Progress Payments:

The Contractor shall be paid, upon submission of a proper Payment Request, the prices stipulated herein for work performed (less deductions, if any), in accordance with all payment and retainage instructions herein. Submitted Payment Requests must contain the following minimum information:

- a. Contract Number
- b. Bid item ID, bid quantity, unit, unit price and description as appropriate
- c. Sales Tax as applicable

The Payment Request will be reviewed by the Member before payment is made. If the Member is in disagreement with the Payment Request, KCDA will issue a notice requesting a revised Payment Request.

KCDA, at its discretion, reserves the right to withhold payment on a given project, pending receipt of payment from the customer.

In accordance with RCW 51.12.050, KCDA reserves the right to deduct from the payment any outstanding industrial insurance premiums owed by the Contractor or Subcontractors.

h) Payment Retainage:

In accordance with RCW 60.28 contract retainage [*not to exceed five percent of the moneys earned by the contractor toward completion of a public improvement contract*] shall be withheld and reserved in one of two ways:

- a. As a trust fund for the protection and payment of 1) the claims of any person arising under the contract, and 2) the state with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from such contractor. Upon completion of a contract, the member agency shall notify the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries of the completion of contracts over thirty-five thousand dollars. KCDA will issue payment on the retainage amount forty-five days after notice from the KCDA Member Agency that the contract has been accepted as complete or upon receipt of all necessary releases, whichever is later.
- b. Option of providing retainage bond for the full amount of the retainage (5% of the contract amount with a performance bond). This bond is separate from the performance bond under RCW 39.08.10. Providing a retainage bond means no retainage is withheld. If you choose to provide a retainage bond a copy of the bond must be submitted.

i) Force Majeure:

Except for payments of sums due, neither party shall be liable to the other, nor be deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control or responsibility of the party affected and occurs without its fault or negligence, including, but not limited to the following: acts of God; acts of the public enemy; war; riots; strikes; industry-wide labor disputes; civil disorders; fire; flood; snow; earthquakes; tornadoes or violent winds; hail storms; lockouts; injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control or responsibility of the party declaring force majeure, which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring it notifies the other party of the existence of the force majeure, and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with the contract. The party receiving the notice of force majeure may contest the declaration of a force majeure. Force majeure shall not include late deliveries of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, internal labor disputes, or similar occurrences. If either party is delayed at any time by force majeure, the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours.

27. **West Virginia, West Virginia Cooperative Purchasing**

A. General Terms and Conditions that apply for all Categories:

1. Compliance with Laws/Forum Designation

Contractor shall comply with Federal, State, and Local Laws, Codes and Regulations while fulfilling the contract. It is the Contractor's responsibility to be aware of and comply with all state and local laws governing this procurement. Applicable laws, codes, and regulations (etc.) must be followed even if not specifically identified herein. The terms of the Agreement Addendum which is attached hereto and incorporated herein shall govern and supersede any contract terms to the contrary with respect to each procurement. Contractor shall verify to Mountain State ESC, its Member Agencies and other qualifying purchasers that the Contractor is complying with all Federal, State and Local Laws, Codes and Regulations while fulfilling the contract, and shall provide a copy of this contract and any addenda to each Member Agency when providing a price quotation. Moreover, this contract shall be governed by and construed in accordance with the laws of the State of West Virginia without giving effect to its principles of conflict of law. Legal proceedings arising under this contract shall be brought in a West Virginia Court of the County where the Member Agency's main office is located.

2. Delinquent Tax Affidavit

Contractor shall provide an affidavit relating to delinquent taxes as may be required by West Virginia State Code §11-12-10.

3. Secretary of State and State Tax Department Registrations

Contractor shall meet and maintain all registration requirements as necessary to conduct business in the State of West Virginia, including but not limited to registration with the West Virginia Secretary of State (WV SOS) (Legislative Rule CSR §148-1-6.1.7) and a Business Registration Certificate with the WV State Tax Department (WVC §11-12-3) unless specific exemptions apply.

4. West Virginia Workers Compensation Insurance

Contractor, and any subcontractors hired by Contractor shall, at their own expense, maintain in force for the duration of the project workers' compensation and employer's liability insurance as required by the laws of the State of West Virginia.

5. Project Personnel, Student Safety and Background Checks

Member Agency shall have the right to reject the participation of any personnel of Contractor in the performance of the services if, in relation to the work assigned to them, the Member Agency deems such personnel to lack the skill, experience and expertise required to perform the services or if Member Agency considers their performance to be substandard or otherwise detrimental to the proper completion of the services. Contractor will advise Member Agency promptly of any change in the project manager or other key personnel assigned to the performance of the services.

Contractor acknowledges that the safety of the Member Agency's students, employees, officials and guests is of the utmost importance. Contractor will endeavor to ensure that its officers, employees, agents, representatives, and consultants will take no action that would jeopardize the safety of the Member Agency's students, employees, officials, or guests. The Member Agency reserves the right to require Contractor's officers, employees, agents, representatives and consultants to wear identification and stay in designated work areas at all times while on the Member Agency's property. The Member Agency shall have the right to effect the immediate removal of any person associated in any way with Contractor from Member Agency property for failure to wear identification, for being outside a designated work Contractor shall perform or cause to be performed by the West Virginia State Police and Federal Bureau of Investigation criminal background check of any personnel that will be performing the services within the proximity of minors. Contractor shall notify the Member Agency of any proposed employee who has been convicted, pled guilty or pled "no contest" to a criminal offense, and the Member Agency reserves the right to reject the proposed employee with a criminal background. No person shall be employed by Contractor who has been found guilty of any of the criminal offenses enumerated in West Virginia State Code without prior approval of the Member Agency.

6. Independent Contractor

Contractor shall be an independent contractor and neither Contractor nor any of its subcontractors, nor the employees of any thereof, shall be deemed to be the servants, employees, or agents of Member Agency. Contractor shall be responsible for paying all costs related to its employees and managers performing the services. Contractor shall remain liable and responsible to Member Agency for all of its obligations under this contract, regardless of whether the services are performed by the Contractor or a subcontractor of any tier.

7. **Ownership of Instruments of Service**
Drawings, data and other documents prepared by, or with the cooperation of, the Contractor pursuant to this contract shall become, upon payment of all undisputed compensation due the Contractor from the Member Agency, the property of the Member Agency. Such drawings, data or other documents may be used by the Member Agency or others employed by the Member Agency without compensation to the Contractor.
 8. **Audit**
Member Agency may audit and inspect Contractor's records and accounts at any time during the Contractor's performance of the services and for a period of two (2) years following the completion or termination of the services for the purpose of verifying any invoice and underlying documentation presented by Contractor, it being understood that Contractor agrees to preserve all such documents through such two- (2) year period.
 9. **Notices**
Unless otherwise expressly provided in this contract, all notices and other communications given under the contract shall be in writing and shall be deemed effective upon receipt by the addressee at its address as set forth in the contract or at such other address as such party shall have notified the other in writing.
 10. **Non-Appropriation and Other Contract Terms Applicable to Member Agencies as Political Subdivisions of the State**
If the Member Agency fails to appropriate sufficient monies in any fiscal year for payments due under the contract and other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then Member Agency will give Contractor prompt notice of such Non-Appropriation. This contract shall thereupon terminate without penalty or expense to the Member Agency other than for goods and services already provided.
 11. **No Personal Liability**
It is understood and agreed that under no circumstances will the Member Agency's board members, regional council members, officers, employees, or agents be personally liable for any obligations or claims arising out of or related to the contract.
 12. **Price Quotation**
Contractors must quote to a Member Agency the pricing listed in the current contract awarded by the Association of Educational Purchasing Agencies. Vendor will follow the procedures for price reductions to AEPA Member Agencies and Participating Entities set forth in the AEPA general terms area, and conditions. The price quotation must be submitted to a Member Agency and Participating Entity in writing, and any other expenses that the Contractors intend to charge a Member Agency or Participating Entity must be separately itemized on the quotation page in bold font with a good faith estimate of the dollar amount of each item, such as use tax if applicable. The failure to list an item or include a good faith estimate of the dollar amount on the quotation page will preclude a Contractor from charging the same.
 13. **Jobs Act**
As the unemployment rate in the State of West Virginia is significantly higher than most other states, the West Virginia Legislature enacted the West Virginia Jobs Act, which deems it necessary for those employers contracted to perform construction work on state funded public improvement projects, which equal or exceed \$500,000.00 in cost, to hire 75% of their workers from the local labor market. The local labor market is defined as including every county within the State of West Virginia as well as any county outside of West Virginia, if any portion of that county is within 50 miles of the state border.

There are certain exclusions to this requirement, which includes an exemption for projects that contain any amount of federal funding as well as an allowance for out-of-state contractors to bring two (2) of their own employees from outside the local labor market to work on the project and still remain in compliance.
 14. **Miscellaneous**
Headings and titles of articles, paragraphs and other subparts of this contract are for convenience of reference only and shall not be considered in interpreting the text of this contract. This contract and any appendices constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto and all agreements or understandings with a Member Agency. No contract amendments can be made without the approval of the AEPA membership.
- B. Construction Products and Services:**
For construction improvements, the following shall apply:

1. The successful Contractor shall provide such bonds required by West Virginia State Code §38-2-39.
2. Contractor shall comply with all applicable licensing requirements, including those of the West Virginia Contractor Licensing Board pursuant to West Virginia State Code §21-11-3.

C. Procedures for Processing Orders:

The Mountain State ESC will keep informed its Member Agencies and other qualified purchasers of contract information via web site and through other marketing strategies. A list of Mountain State ESC Member Agencies along with addresses, phones, contacts, etc. will be made available to successful Contractors. After contracts are awarded, Contractors may contact the Mountain State ESC Member Agencies and other qualifying purchasers concerning their products and services.

Participating Member Agencies and other qualified purchasers will submit all purchase orders directly to the Contractor.

The Contractor price shall include a two percent (2%) administrative fee that the Contractor will collect from the Member Agency or other qualified purchaser. Administrative fees are to be remitted to the Mountain State ESC on April 15, July 15, October 15 and January 15 of every calendar year with checks payable to the Mountain State ESC, 501 22nd Street, Dunbar, WV 25064

The Contractor will compile a quarterly report showing all purchases made by the Mountain State ESC Member Agencies and other qualified purchasers under this contract at the conclusion of each calendar quarter. These reports shall be attached to the administrative fee remittance.

D. Agencies Allowed to Purchase under Member Agency:

All member cooperatives of the MOUNTAIN STATE ESC and their individual Member Agencies are eligible to participate and purchase from the awarded AEPA contracts. All West Virginia PK-12 school districts, including Career and Technical Education Centers, Regional Education Services Agencies, West Virginia Department of Education (WVDE) and all Institutional Education Programs operated by WVDE are eligible to participate and purchase from the awarded AEPA contracts. In addition, all colleges and universities, state, municipalities, counties, other governmental agencies and non-profit agencies are eligible to participate if the AEPA contracts satisfy their individual procurement requirements.

E. No Debt Affidavit

The No Debt Affidavit is administered in accordance with the *West Virginia Code, §5A-3-10A*

According to the statute, no contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor as defined in this section and the debt owed is an amount greater than \$1,000 in the aggregate.

West Virginia Agreement and Affidavit Required forms:

**PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL
EDUCATIONAL AGENCIES**

AFFIDAVIT

West Virginia Code §5A-3-10a states:

No contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor as defined in this section and the debt owed is an amount greater than five thousand dollars in the aggregate.

Definitions:

"Debt" means any assessment, penalty, fine, tax or other amount of money owed to the state because of a judgment, fine, permit violation, license assessment, penalty or other assessment presently due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions;

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

Exception:

The prohibition does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the West Virginia Code, worker's compensation premium, permit fee or environmental fee or assessment, and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (West Virginia Code §61-5-3), it is hereby certified that the bidder and all related parties do not owe any debts or, if a debt is owed, that the provisions of the exception clause (above) apply.

Vendor's Name: _____

Authorized Signature: _____ Date: _____

**PURCHASING POLICIES AND PROCEDURES MANUAL
FOR LOCAL EDUCATIONAL AGENCIES**

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

DISPUTE RESOLUTION - Any references in the agreement to arbitration or to jurisdiction of any court other than the Circuit Court of the county in which the Agency is located are hereby deleted. The parties may agree to non-binding mediation prior to litigation.

2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.

3. **GOVERNING LAW** - The agreement shall be governed by the law of the State of West Virginia. This provision replaces any reference to any other State's governing law.

4. **LIABILITY** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a political subdivision of the State of West Virginia, the Agency is generally exempt from Federal, State, and local taxes and will not pay taxes for an Vendor including individuals, nor will the Agency make any IH returns or reports on behalf of Vendor or any other party.

PAYMENT - All references to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.

6. **INTEREST** - Provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.

7. **WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.

8. **FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

STATUTE OF LIMITATIONS - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.

10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-liquidation during the term of the agreement are hereby deleted.

11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorneys fees or costs only when assessed by a court of competent jurisdiction. All other provision is invalid and considered null and void.

12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to any State agency or another local governmental agency, board or commission of the State of West Virginia. Upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of the Agency prior to assigning the agreement.

13. **LIABILITY OF AGENCY** - The Agency, as a political subdivision of the State, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

14. **SOFTWARE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, the Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.

15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year of the termination by the Agency prior to the end of any current agreement term.

16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The Agency is insured through the Board of Risk and Insurance Management and will provide a certificate of property insurance upon request.

18. **REPOSSESSION** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.

19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.

20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. Governmental contracts are public records under the West Virginia Freedom of Information Act.

21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Agency.

ACCEPTED BY:

IEUD,;

Local Education Agency: _____

Company Name: _____

Signed _____

Signed: _____

Title _____

Title _____

28. Wisconsin, Cooperative Educational Service Agency - CESA Purchasing

A. Additional Terms and Conditions

(Note: anything that is not already in Part A – General Terms and Conditions for AEPA) Terms and Conditions must be compliant with Wisconsin State Statutes 16.70 to 16.848

- B.** *Additional Participating Agency Terms and Conditions for Non-Construction Products and Services* Some larger districts, like Milwaukee Public Schools, may require an additional one page “piggyback” memorandum of understanding to utilize the contract.

- C.** Additional Participating Agency Terms and Conditions for Construction Related Products and Services
Construction contracts are subject to Wisconsin State Statutes 16.855 or 66.0901.

D. Procedure for Processing Orders

All districts directly process orders with the CESA Purchasing AEPA vendor partner unless otherwise arranged.

The vendor’s price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to CESA Purchasing on a quarterly basis.

E. Members Purchasing Under CESA

CESA Purchasing membership is free. Membership is available to the following agencies based on WI State Statutes Chapter 116 which governs the work of WI Cooperative Educational Service Agencies: school districts, University of Wisconsin System institutions, and technical colleges. All public, private, and tribal schools, and all public and private agencies and organizations, that provide services to pupils. Please note in Wisconsin we do not require additional registration of members and define members as those defined by WI Statute 116 that guides our work.

29. Wyoming, Northeast Wyoming Board of Cooperative Educational Services (NEW BOCES):

Upon execution of this document, the respondent hereby agrees to submit bids and NEW BOCES agrees to accept such bids under the following conditions:

PREFERENCES Wyoming Statutes provide for percentage preferences for items supplied by Wyoming resident bidders and for items produced or grown in the State of Wyoming. Preferences may not be applied when federal funds are involved. Preference will be given in accordance with W.S. 16-6-101, 16-6-102, 16-6-103, 16-6-104, 16-6-105, 16-6-106, 16-6-107, and 16-6-301, as amended. For bids involving federal funds please refer to W.S. 16-6-108. Please contact the Department of Workforce Services, Division of Labor Standards

Resident & Non-Resident VENDOR REGISTRATION REQUIREMENTS:

Secretary of State 2020 Carey Avenue Cheyenne, WY 82002 Phone: (307) 777-7378 website: <http://soswy.state.wy.us/>
Department of Workforce Services Division of Unemployment Insurance 100 W. Midwest P.O. Box 2760 Casper, WY 82602 Phone: (307) 235-3217

Public Works and Contracts: Vendor shall comply with all laws, whether local, state, federal, or otherwise, applicable to any aspect of the service or product to be provided in relation to the contract. It shall be the vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them. Vendor shall indemnify, defend, and hold harmless NEW BOCES for any default or breach of vendor in this regard. To the extent applicable for the product or service bid, vendor shall comply with W.S. 16-6-101 to 16-6-602 and to W.S. 21-3-110(a) (viii)

Every Contracted Vendor Employee shall provide a valid State issued Identification Card upon entry of any educational facility.

Members Customer Client Purchasing: NEW BOCES NEW BOCES is an educational cooperative authorized under the provisions of W.S. 21-20-101 to 21-20-111. All K-12 school districts, Community Colleges, Child Development Centers, Residential Child Care Institutions, Utah Educational Service Agencies, South Dakota School Districts, all Non-Profits and all Municipalities are eligible to participate in NEW BOCES cooperative purchasing programs within the State of Wyoming and Other States as requested.

"Agencies" means Counties, Municipal Corporations, School Districts, Community College Districts, the joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes, the business council of the Eastern Shoshone Indian tribe, the business council of the Northern Arapaho Indian tribe. Providing facilities or functions enumerated in W.S. 16-1-104(c);

No member user is obligated to use these services, but they find the benefits of economy and efficiency made possible by cooperative purchasing to be advantageous.

Procedure for Processing Orders: Upon bid award to the Contractors/Vendors, NEW BOCES will inform its members and other qualifying purchasers of the contract:

- When the customer identifies a desired product or service as available through the AEPA/NEW BOCES contract and agrees on price as presented to the customer by the awarded AEPA/NEW BOCES vendor, the customer then issues to the vendor a purchase order for that item or service.
- The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to NEW BOCES on a quarterly basis.
- Administrative/Marketing fees will be payable to NEW BOCES on the 15th in the months of April, July, October, and January with all checks payable to NEW BOCES, 410 North Miller Avenue, Gillette, Wyoming 82716.
- Vendor makes all deliveries and installation of products and services. NEW BOCES does not warehouse items nor provide services.
- No other Cooperative shall be offered or used by awarded Contracted Vendors within the participating member customer clients of NEW BOCES.

Vendor Contact: Vendor will designate to NEW BOCES an individual(s) who will represent them. This contact person(s) will correspond with each ordering member for technical assistance, problems, or questions that may arise. Include instructions if different contacts for different geographical areas are needed; this information will be distributed to NEW BOCES members upon award of this bid.

Vendor Reporting: Quarterly Reports and promotional materials shall be submitted via email to nwerner@newboces.org.

NEW BOCES Commitment to Awarded Contract Vendors:

- 1) Website postings www.newboces.com under Cooperative Purchasing. Includes but not limited to News & Announcements, Public Calendar Events, Awarded Contracts, and Flyers.
- 2) Announcing the contract in its quarterly newsletter and other events completed with vendors which includes savings reports and rebates to members and users of NEW BOCES Cooperative Contracts.
- 3) Publish the Vendor information in a catalog disseminated to all members and marketing for new members.
- 4) Attend Annual Conferences for Trade Show product purposes of all contracts held by NEW BOCES. Including any other suggestions or support from Vendors. A list of members and other qualifying purchasers, addresses, and phone numbers will be made available to the Contracted Vendor.

1. Exclusive Agreement -- Any purchase order issued because of a NEW BOCES Co-op bid solicitation constitutes the exclusive agreement between the parties and shall include these terms and conditions when awarded. The terms and conditions cannot be changed without prior written consent of both parties. The laws of the State of Wyoming shall apply in all disputes. Unless exceptions are clearly noted in the bid response, the goods shall conform to specifications, drawings, and any other description attached hereto and shall be free from defects in materials and workmanship.
2. Preservation and Packaging -- All items shall be packaged and packed best commercial pack at no additional charge to the NEW BOCES Co-op its' Members and qualified purchasers. Such a procedure shall require the inclusion of a packing list with each shipment that identifies the contents.
3. Delivery Schedule It is understood by the parties hereto that with respect to delivery, time is of the essence. Therefore, failure to deliver procured goods on time may result in termination of the awarded Purchase Order at the option of the NEW BOCES Co-op its' Members and qualified purchasers. Where late goods are accepted by the NEW BOCES Co-op its' Members and qualified purchasers with or without objections, such acceptance shall not constitute waiver of the requirements of timely performance hereunder when performance is divisible.
4. Receipt -- The NEW BOCES Co-op its' Members and qualified purchasers shall be deemed to have received goods procured hereunder when such goods have been deposited at the NEW BOCES Co-op its' Members' and qualified purchasers dock and all bills of lading or other shipping papers which require signature by the NEW BOCES Co-op its' Members and qualified purchasers have been signed.
5. Acceptance -- Despite receipt, the NEW BOCES Co-op its' Members and qualified purchasers shall be deemed to have accepted goods procured hereunder only after actual inspection for conformity or the passage of ten (10) days from receipt, whichever occurs first, unless specific acceptance criteria are attached hereto, which criteria shall take precedence.
6. Rejection/Termination -- All goods procured hereunder are subject to inspection and acceptance by the NEW BOCES Co-op and its' Members. All goods which are rejected for nonconformity are rejected at the Vendor's expense and shall be returned to Vendor at its risk of loss and expense. In the event of breach by the Vendor of any of the terms and conditions of the awarded Purchase Order, the NEW BOCES Co-op its members and qualified purchasers shall have the right to terminate this agreement by giving oral or written notice to the Vendor. Such notice shall be effective upon actual receipt.
7. Assignment -- All monies due and owing hereunder shall not be assigned to a third party without written consent of both parties.
8. Warranties -- The Vendor expressly warrants that all goods supplied hereunder shall be merchantable within the meaning of Article 2-314 (2) of the Uniform Commercial Code in effect on the date of this order in the State of Wyoming. Additionally, the goods shall conform to specifications, drawings, and any other description and shall be free from defects in materials and workmanship.
9. Taxes -- The NEW BOCES Co-op its members and qualified purchasers are exempt from payment of all Federal or State taxes. Exemption certificates will be furnished upon request.
10. Title to Goods -- Vendor warrants that the goods offered hereunder are free from all liens claims, or encumbrances.
11. Vendor/Contractor Rights Assignments--Antitrust Claims -- When awarded, contractor through its duly authorized agent, conveys, sells, assigns, and transfers to, NEW BOCES Co-op its' Members and qualified purchasers and the State of Wyoming all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Wyoming, relating to the goods or services purchased or herein acquired.
12. Public Records -- The laws of the State of Wyoming require procurement records to be made public unless exempted by the Code of Wyoming.
13. Access to Company Records/Audits -- Company shall retain all records and provide unlimited access, at reasonable times, to all accounting records relating to the goods and services furnished during the term of, and for five (5) years after. Should such an audit disclose incorrect billings or improprieties, NEW BOCES reserves the right to charge Company for the cost of the audit and pursue appropriate reimbursement. Evidence of criminal intent will be turned over to the proper authority.

4. **State Specific Forms**

An AEPA Member Agency (State) may have forms relating to this solicitation that require completion before an award is made by that AEPA Member Agency.

For this solicitation, New Jersey is the only AEPA Member Agency with required forms. These forms are found as an optional pdf on Bonfire. To be responsive in New Jersey, a vendor must download the forms, sign them and upload them with your response.