

AEPA FORM B: ACCEPTANCE OF BID AND CONTRACT AWARD

AEPA IFB #011-B SCHOOL AND INSTRUCTIONAL SUPPLIES

NAME OF BIDDER QUILL CORPORATION

INSTRUCTIONS: PART I of this form is to be completed by the Bidder and signed by the Authorized Representative. PART II will be completed by the Member Agency only upon the occasion of the bid award. The completed document must be scanned to a PDF format and saved to Folder A, and a completed and signed paper version must be included in the package. If awarded, the bidder is required to produce a copy of the document for each of the member agencies with which it contracts.

PART I: BIDDER

In compliance with the Invitation For Bid (IFB), the undersigned warrants that I/we have examined the Instructions to Bidders, and, being familiar with all of the conditions surrounding the proposed projects, hereby offer and agree to furnish all labor, materials, and supplies incurred in compliance with all terms, conditions, specifications and amendments in the IFB and any written exceptions to the bid. Signature also certifies understanding and compliance with the certification requirements of the Agency Terms and Conditions and the Special Terms and Conditions. The undersigned understands that his/her competence and responsibility and that of his proposed subcontractors, time of completion, as well as other factors of interest to the Member Agency as stated in the evaluation section, will be a consideration in making the award.

Company Name: Quill Corporation

Date: 10/12/10

Company Address: 100 Schelter Road City: Lincolnshire State: Illinois Zip: 60069

Contact Person: Maria Matthews Title: Bid Supervisor

Authorized Signature (ink only)



Title

President

PART II: AWARDING MEMBER AGENCY

Your bid for contracting services is hereby accepted. As contractor/supplier, you are now bound to sell the materials and services listed by the attached bid based upon the solicitation, including all terms, conditions, specifications, amendments as set forth in the IFB. As contractor, you are hereby cautioned not to commence any billable work or provide any material or service under this contract until an executed purchase order is received from the agency. The parties intend this contract to constitute the final and complete agreement between the agency and contractor, and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall bind any of the parties hereto. No change or modification of this contract shall be valid unless it shall be in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract shall not be affected thereby. The term of the agreement shall commence on award and continue until February 29, 2012 unless terminated, canceled or extended. By mutual written agreement as warranted, the contract may be extended for three (3) additional 12-month periods ending on February 28, 2013, February 28, 2014, and February 28, 2015.

Awarding Agency

Agency Executive

Awarded this

day of

Contract Number

AEPA BID FORM A: BID AFFIDAVIT

AEPA IFB #011-B SCHOOL & INSTRUCTIONAL SUPPLY CATALOG

NAME OF BIDDER: Quill Corporation

Instructions: This form must be signed by the bidder's authorized representative and notarized below. The completed document must be scanned to a PDF format and saved to Folder A and a completed and signed paper version must be included in the package. If awarded, the bidder is required to produce a copy of this document for each of the member agencies with which it contracts.

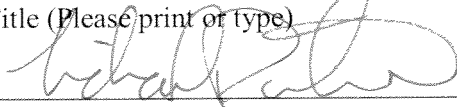
1. The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing bid (such persons, firms and corporations hereinafter being referred to as the bidder), being duly sworn, on his/her oath, states that to the best of his/her belief and knowledge no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing bid, has directly or indirectly entered into any agreement or arrangement with any other bidders, or with any official of the **Member Agency**, or any employee thereof, or any person, firm or corporation under contract with the **Member Agency** whereby the bidder, in order to induce the acceptance of the foregoing bid by the **Member Agency**, has paid or is to pay to any other bidder or to any of the aforementioned persons anything of value whatever, and that the bidder has not, directly nor indirectly entered into any arrangement or agreement with any other bidder or bidders which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing bid.
2. This is to certify that the bidder, or any person on his/her behalf, has not agreed, connived, or colluded to produce a deceptive show of competition in the manner of the bidding or award of the referenced contract.
3. This is to certify that neither I, nor to the best of my knowledge, information and belief, the bidder, nor any officer, director, partner, member or associate of the bidder, nor any of its employees directly involved in obtaining contracts with the State of **Member Agency**, **Member Agency**, or any subdivision of the state has 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.
4. This is to certify that the bidder or any person on his behalf has examined and understands the terms, conditions, scope of work and specifications, and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the bid submittal.
5. This is to certify that if awarded a contract, the bidder will provide the equipment, commodities, and/or services to members and affiliate members of the Agency in accordance with the terms, conditions, scope of work and specifications and other documents of this solicitation in the following pages of this bid.
6. This is to certify that we have completed, reviewed, approved and have included all information that is required in Sections C, D, E, F and G of these bid forms.

Michael Patriarca
Authorized Representative (Please print or type)

100 Schelter Road
Mailing Address

President, Quill Corporation
Title (Please print or type)

Lincolnshire, IL 60069
City, State, Zip

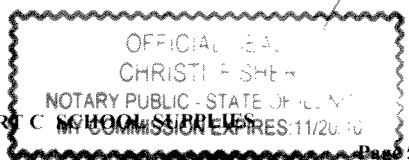

Signature of Authorized Representative

10/12/10 800-634-4809
Date Phone

Subscribed and sworn to before me this 12 day of October 2010

Notary Public in and for County of Lake State of IL

My commission expires: Signature: 





INVITATION FOR BID

AEPA IFB #011-B – **INSTRUCTIONAL AND SCHOOL SUPPLIES CATALOG**

PART B – BID SPECIFICATIONS

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1. IFB Goal: The goal of this IFB is to establish multistate purchasing contracts for affiliate agencies of the participating AEPA member agencies located in twenty-two states. AEPA state organizations serve all levels of public educational institutions, governmental agencies and nonprofit organizations that have been authorized to utilize AEPA contracts accepted and awarded by the state member agencies to provide their affiliates with one or more catalog suppliers of classroom supplies and related products. Due to the limited financial resources available to the members, they seek cooperative purchasing contracts with highly qualified and experienced suppliers who have a proven track record in providing office supplies and related equipment.

2. IFB Intent

2.1. The intent of the specifications and expectations enumerated in this IFB is to allow AEPA member agencies and their affiliates to have the option of the highest quality, most complete and comprehensive product line of school and instructional materials, tools and equipment.

2.2. It is further the intent of the AEPA to award a contract or multiple contracts to the best responsible supplier(s) meeting the specifications and qualifications as demonstrated through the response to this IFB. The AEPA has the right to waive any informality or irregularity in any response to the IFB received, and to accept the proposal that, in the group’s judgment, is in its own best interest.

AEPA reserves the right to advertise for a new IFB where the acceptance, rejection, waiving or re-award, which will be based on, but not necessarily limited to the following:

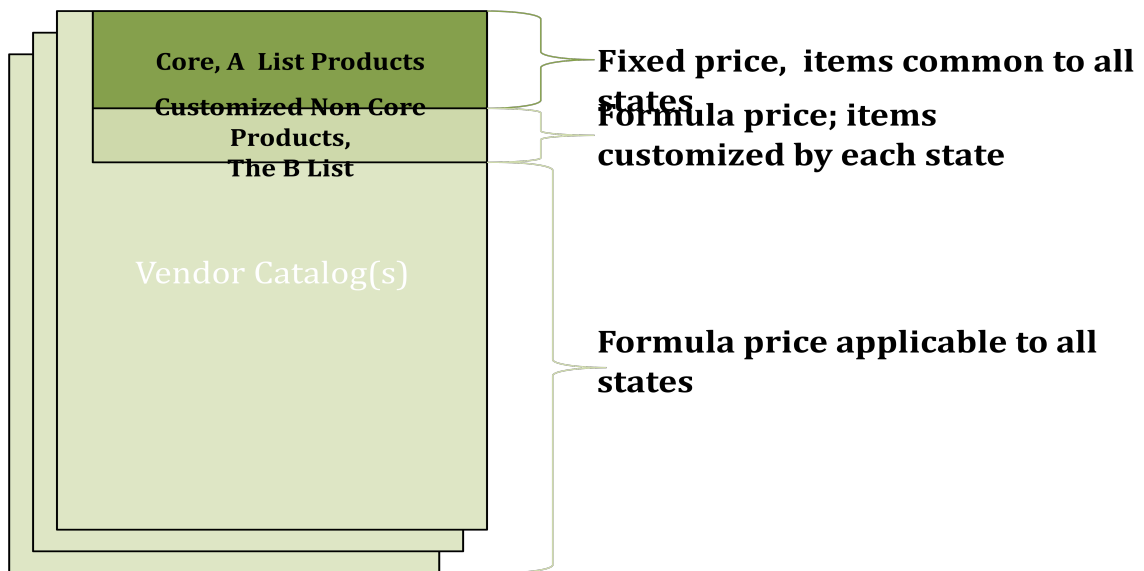
- 2.2.1. Bidder's adherence to all requirements of the specifications set forth in Parts A, B and C of this IFB. An incomplete bid proposal is subject to rejection and will constitute no grounds for protest.
 - 2.2.2. Bidder's past performance in providing products and services in the AEPA states.
 - 2.2.3. Bidder's ability to service and meet or exceed the current and future needs of the member agencies and their affiliates in the twenty-two AEPA states.
 - 2.2.4. Ability of bidded product and services to meet, comply and fulfill the needs of the member agencies and their affiliates in the twenty-two AEPA states.
 - 2.2.5. The completeness of information provided by the bidder in response to this IFB.
 - 2.2.6. Bidder's financial standing, capacity and bond rating.
 - 2.2.7. Nature and extent of company information furnished through the bid proposal.
 - 2.2.8. Quality and proven track record of offered products and services.
 - 2.2.9. National perspective of the bidder's delivery network's general reputation and experience.
 - 2.2.10. Bidder's ability and willingness to participate in cooperative marketing with the AEPA member agencies in their states, at a level of assistance and support that will allow member agencies to serve their affiliates with a comprehensive cooperative procurement option.
 - 2.2.11. Bidder's ability to demonstrate its distribution network, and understanding of the needs, expectations and future requirements of AEPA member agencies and their affiliates.
- 2.3. Addenda to the IFB:** AEPA reserves the right to issue addenda during the time of bidding, which shall be incorporated into the bid automatically. Addenda are posted on the AEPA website with the bid documents, www.aepacoop.org. Bidders are responsible for staying informed of such addenda and incorporating appropriate responses in the bid proposal.
- 2.4.** A response to this IFB is an offer and commitment to contract with AEPA member agencies based upon the terms, conditions, scope of service and specifications contained and referenced in this bid. The awarded bidder will be required to deliver products, supplies, equipment and services proposed in its response and accepted by AEPA to all member agencies and their affiliates as applicable to the award and in accordance with the pricing established for each state and the specific terms, conditions and other applicable laws for each member state. In the event that the awarded bidder/supplier and AEPA are not able to agree on an executable contract, AEPA reserves the right to recommend rejecting the awarded bidder/supplier and making the award to the second or more responsive bidder(s).
- 3. Scope of Bid**
- 3.1.** AEPA agencies seek a contract for one or more full house qualified catalog suppliers of a comprehensive line of classroom supplies and related services (hereinafter, "products"). Bidders must have the ability to provide national coverage and to provide next-day shipments to member agencies and their affiliates. All products offered must be of superior quality, new, unused, of the latest design and technology, and the most current product lines available. The desired product offering must be broad to meet a variety of office needs. The successful bidder will provide discount pricing on all products provided. Bidders are requested to offer their entire catalog of available products at a discount from the current published schedule

for public agencies. The bidder/supplier must provide member agencies and their affiliates with catalogs and an e-commerce website.

In response to this IFB, Part C, Form G et seq., the bidder is required to use the Excel spreadsheets incorporated as bid documents with this IFB, to provide the following information:

- 3.1.1. A list of “core products” referenced as the “A List.”
- 3.1.2. Formula pricing for a list of state-specific “customized core products,” referenced as the “B List.”
- 3.1.3. Formula pricing for “non-core products” available in the bidder’s commercially available catalog(s).

Figure 1



- 3.2. Any contract resulting from this solicitation will be used on an as-needed, if-needed basis by AEPA member agencies and their affiliate members. This is a non-exclusive contract. It is understood that some bidders may not be able to provide the full range of curricular supplies and products.
- 3.3. This is an indefinite quantity bid for which there shall be no limit to the number of orders placed, in any quantity, by AEPA member and affiliate agencies, for the term of the contracts.

4. Type of Bid

| YES | NO | TYPE OF BID |
|-----|----|---|
| ✓ | | CATALOG: A catalog bid shall have established percentage discounts from catalog list or published prices or price list. The discounts may be for the entire catalog or for specific product or manufacturer categories. Prices may change based on manufacturer’s price changes and new products may be added at the established percentage discounts at any time. Discontinued products may be dropped at any time during the year. AEPA should be aware of any changes as they are made. Substantial changes to the catalog that reduce the supplier’s ability to perform as bid can result in revocation of the contract. |
| | ✓ | LINE ITEM: A line item bid shall be identified as specific line items that prices are |

| | | |
|--|--|---|
| | | requested for in the bid documents. The supplier may only request adjustments to the prices once a year at the time of renewal and must submit a written request to the AEPA Bid Oversight Committee for any changes in pricing. The request must document why the prices changes are warranted, such as changes in raw material costs, etc. The supplier may also submit new products or technologies to be added to the current bid pending review and approval of AEPA and its membership. |
|--|--|---|

5. Anticipated AEPA Member Agency Participation

| State | Participate Yes/No | Estimated First Year Purchase Volume | State | Participate Yes/No | Estimated First Year Purchase Volume |
|-------------|--------------------|--------------------------------------|--------------|---|--------------------------------------|
| California | Yes | \$ 250,000 | Montana | Yes | \$ 250,000 |
| Colorado | Yes | Unknown | Nebraska | Yes | \$2,000,000 |
| Connecticut | Yes | \$ 150,000 | New Mexico | Yes | \$ 800,000 |
| Florida | Yes | Unknown | North Dakota | Yes | \$ 500,000 |
| Indiana | Yes | \$ 900,000 | Ohio | Yes | \$6,000,000 |
| Iowa | Yes | \$ 1,500,000 | Oregon | Yes | \$ 50,000 |
| Kansas | Yes | \$ 750,000 | Pennsylvania | Yes | \$1,500,000 |
| Kentucky | Yes | \$ 100,000 | Texas | Yes | \$ 200,000 |
| Michigan | Yes | \$ 100,000 | Virginia | Yes | \$ 600,000 |
| Minnesota | Yes | \$ 750,000 | Washington | No | ----- |
| Missouri | Yes | Unknown | Wyoming | Yes | Unknown |
| | | | | TOTAL Estimated 1st Year Participation Volume | \$16,400,000 |

5.1. The above stated anticipated interest in the contract to be awarded under this solicitation does not guarantee or mean in any way that the individual AEPA member agency will enter into a contract with any AEPA approved supplier. Each AEPA member agency makes that determination after reviewing the supplier's responses and the AEPA recommendation for acceptance and bid award. The AEPA member agency's contracting decision is final.

The above stated projected volume for the first year of the solicitation is based on surveys submitted by member agencies. AEPA member agencies anticipate that purchase volumes will increase in contract years two through four (2 - 4). This information is provided as an aid to bidders for the purpose of preparing bids only. It is not to be a guarantee of volume under this IFM. The successful bidder's discount and pricing schedule applies regardless of business under this contract.

6. Glossary of Terms

| TERM | DESCRIPTION |
|---|--|
| A-List Core Products and Pricing | A-List products specified on the Excel pricing schedules the bidder uses in responding to this IFB are items common in availability, anticipated purchases and pricing to all states, and will be used in the Market Basket Study. |
| AEPA Member Agencies | Public procurement agencies, offices or programs, each representing a different AEPA state. |
| Affiliate Member | The agencies affiliated with an AEPA member agency, that are |

| TERM | DESCRIPTION |
|----------------------------------|---|
| Agencies | authorized to piggyback the member agency's contract with the supplier. |
| Agencies | Public educational institutions, governmental agencies and nonprofit organizations authorized to participate in cooperative procurement programs. |
| ASTM | American Society for Testing Materials, an organization setting industry standards recognized by most federal and state laws. |
| B-List Products | B-List projects under this IFB are items that may require custom pricing by state. |
| Bidder | The company responding to this solicitation, used interchangeably with "offeror." |
| Contract | The resulting contract entered into between the awarded bidder (supplier) and AEPA member agencies. |
| Contracting Member Agency | Any AEPA member agency that enters into a contract with the bidder/supplier as a result of this contract. |
| General Office Supplies | The complete catalog of office supplies, products, accessories and services available from the supplier. |
| MSDS | Material Safety Data Sheets, required by the Occupational Safety and Health Administration (OSHA) |
| Purchasing Member | Any member agency or its affiliate member using the contract. |
| SKU | Stock Keeping Unit, the manufacturer or distributor's number uniquely assigned to each product, part or service available in the catalog. |
| Supplier | Used interchangeably with "vendor," "contractor," and "offeror," the supplier is the awarded bidder. |
| User | Purchasing member. |

7. Special Terms and Conditions

7.1. The following Special Terms and Conditions are in addition to the General Terms and Conditions set forth in Part A of this IFB. Approve or note exceptions on the Exceptions Form E included in Part C (Bid Forms) of this IFB.

- 7.1.1. The supplier must provide paper and/or electronic catalogs with all products awarded under this solicitation to all contracting member agencies and, as requested, to their affiliate members. There shall be no cost to members for catalogs.
- 7.1.2. A contracting member agency may limit or exclude product types or categories as it deems appropriate.
- 7.1.3. Contract pricing is in the form of discount(s) off the standard catalog price. Discounts may vary by category type, and they may graduate according to volume.

- 7.1.4. Vendors must maintain a reasonable stock in inventory for prompt delivery to the buying member. Failure to maintain such inventory resulting in complaints filed by purchasing members using the contract, may result in contract cancellation. Purchasing members file complaints with their state's AEPA member agency.
- 7.1.5. All products shall be properly labeled in accordance with local, AEPA member state and federal applicable rules, regulations, laws and statutes. Material Safety Data Sheets (MSDS) and/or secondary labels must be provided as required. Bidders must be aware of states' restrictions for the labeling and purchase of art, craft, classroom or office supply materials. Items that violate such restrictions will not be awarded under this solicitation.

8. Specifications

The following specifications apply to the category of classroom supplies only. Bidders are directed in Part C, "Bid Forms and Instructions," to indicate whether they comply or deviate from each specification below. Deviations, or exceptions or alternates, are allowed as long as they are indicated on Forms F and F.1 (Part C), and do not contradict applicable laws and statutes and the fundamental requirements of this IFB. It is understood that some bidders may propose items to a specific area of classroom instruction, such as art, while others may provide the spectrum. Bidders are reminded that bid proposals will be evaluated using a Market Basket Study, attached as Form G.2. in Part C, which specifies representative items by brand and size.

8.1. Requirements

| Item | Requirement | Description |
|---------|------------------------|--|
| 8.1.1. | Inventory | Supplier offers a broad-based line of office products with a minimum inventory of 10,000 available items. |
| 8.1.2. | Products | All offered products are new and high quality. Refilled or remanufactured items are labeled as such. |
| 8.1.3. | Products | The catalog includes a variety of manufacturers of specified products and services, and 80% or more of the catalog is dedicated to classroom supplies. |
| 8.1.4. | Products | The catalog offers a selection of "green" products. |
| 8.1.5. | Products | Supplier provides MSDS sheets on all products requiring them by state or federal laws. Additionally, art and craft materials are labeled according to ASTM standards. The supplier is required to provide an acceptable substitute for any product in violation of an AEPA state's laws and regulations. |
| 8.1.6. | Product Guarantee | Products sold under this contract must be guaranteed by the supplier for a minimum of one (1) year. |
| 8.1.7. | Private Brands | A bidder may offer private brands unless the A List of Core Products explicitly states "no private brands." In those cases the specified brand or a third-arty branded substitute must be offered. A substitute is offered at the bidder's risk. |
| 8.1.8. | Private Label Products | If private label manufacturers change during the term of the contract, this must result in offerings equal or superior to the originally approved manufacturer and product, and offered at an equal or lower price. |
| 8.1.9. | E-Commerce | Supplier maintains an e-commerce site with an online catalog, with shopping cart capabilities for purchasing members. The online catalog displays the contract price for AEPA users, the ability to set purchasing authorization limits, and the ability to download order and invoice history reports. |
| 8.1.10. | Customer Support | Supplier offers a toll-free telephone line that will connect to personnel who are dedicated to assisting with orders and concerns related to purchases of items |

| Item | Requirement | Description |
|-------------|--|---|
| | | offered under the AEPA contract. |
| 8.1.11. | Shipping Time | Orders of stocked products will be shipped within 48 hours of receipt of order. The supplier notifies purchasing members within 48 hours of order if the product cannot be shipped in this time frame, which gives the member the right to cancel and place the order elsewhere. |
| 8.1.12. | Minimum Monthly Fill Rate | Supplier maintains a minimum monthly fill rate of 95%. Reordered, backordered or partially filled line items may not be factored into the fill rate. |
| 8.1.13. | Restocking Fees | Restocking fees may not be collected on items cancelled for failure to be delivered within the specified time. |
| 8.1.14. | Product Guarantee | Products sold under this contract must be guaranteed by the supplier for a minimum of one (1) year. |
| 8.1.15. | Exchanges and Refunds | With the exception of clearly identified special order items, all merchandise bid under this contract is subject to exchange or refund. |
| 8.1.16. | Minimum Order Amount | The supplier may not require a minimum order greater than \$50 for an order to a single location unless a different amount is required by a member agency. |
| 8.1.17. | Unfilled and Partial Orders | Unfilled and/or partial orders must be indicated on packing slips. The supplier must provide anticipated delivery dates for unfilled or partial orders. |
| 8.1.18. | Shipping Identification Information | All orders must be accompanied by delivery tickets or packing slips. Tickets/packing slips must include the purchase order number, supplier name, and article name. Cartons must be labeled with the purchase order number and supplier name as well. |
| 8.1.19. | Classroom Supplies: Art, Painting | The supplier provides art classroom supplies for painting that include but are not limited to: paints (watercolor, gouache, tempera, acrylic, oil), brushes, painting knives, palettes, color wheels, canvases, mixing cups and buckets, brushes (sponge, foam, synthetic, and animal hair or bristle) in a variety of shapes and sizes, brush accessories, solvents, cleaners, paint papers and boards. |
| 8.1.20. | Classroom Supplies, Art Papers | The supplier provides art classroom papers in a wide selection of colors and sizes for a variety of activities that include but are not limited to high quality printmaking papers, drawing papers (various surfaces, weights and sizes), sketchbooks (various surfaces, weights and sizes), newsprint, tracing paper, origami papers, decorative papers, construction paper, bookmaking papers, novelty papers, etc. |
| 8.1.21. | Classroom Supplies, Art Papers | The supplier provides rolls of art papers, to fit vertical, horizontal, wall and/or table racks, as well as poster board, tagboard, scratch boards, illustration board, bristol board, mat board, and other rigid or flexible paper, canvas or cardboard surfaces. |
| 8.1.22. | Classroom Supplies, Construction Paper | Construction paper is divided into the following categories: Economy (with groundwood pulp) and Quality (with 100 percent sulphite). Separate products and SKUs should be offered for construction paper in both categories. |
| 8.1.23. | Classroom Supplies, Art, Drawing Tools and Supplies | The supplier provides drawing tools and full color selection supplies that include but are not limited to: all types of pastels, chalk, crayons, drawing pencils, charcoal, ink, pens, crayons, markers, erasers, paint markers, fixatives, storage units, utility art boxes, portfolios, mannequins (wood, plastic or plaster) mannequins and anatomical models, etc. |
| 8.1.24. | Classroom Supplies, Art, Sculpture and Ceramics Supplies and | The supplier provides sculpture and ceramics tools and supplies that include but is not limited to: a wide variety of clays, plaster, plastiques, paper mache, wood, stone, wire, metals, slabs, wheels, wedging boards, glazes, brushes, carving tools, stands, torches, googles, etc. |

| Item | Requirement | Description |
|---------|--|--|
| | Tools | |
| 8.1.25. | Classroom Supplies, Art, Printmaking | The supplier provides a wide selection of tools and supplies for various printmaking techniques, including etching, linoleum and wood block printing. This includes inks, chemicals, papers, fabrics, etching surfaces, carving tools, wedge boards, presses, rollers, etc. |
| 8.1.26. | Classroom Supplies, Crafts | The supplier provides a wide selection of tools, supplies and kits for a variety of art class activities, including but not limited to jewelry making, collage, papermaking, architectural design, silk screening, fiber arts, leather crafts, etc. |
| 8.1.27. | Classroom Supplies, Misc. | The supplier provides a wide selection of miscellaneous tools and supplies to support art class projects, including paper cutters, knives, shop tools, vacuums, scissors, templates, string, fabrics, yarns, clamps, adhesives, tape, drafting tools, punches, stamps, airbrush equipment, stands, lamps, art texts and videos, art history materials and visuals, protective gear, etc. |
| 8.1.28. | Classroom Supplies, Art Room Furnishings | The supplier provides a wide selection of easels, stools, lamps, displays, cutting boards, adjustable work surfaces, light tables, drafting tables, racks, files, and other support furnishings for art activities. |
| 8.1.29. | Classroom Supplies, Photography | The supplier provides a selection of tools, supplies and equipment for digital photography classes. |
| 8.1.30. | Classroom Supplies, Science Lab | The supplier provides a wide selection of laboratory supplies, tools and equipment for a range of grade levels to support scientific laboratory activities, including, but not limited to biology, physics, chemistry, geology and earth sciences, environmental sciences, health science, horticulture, astronomy, meteorology, agricultural sciences, zoology and other fields of scientific inquiry. Such items include but are not limited to live and preserved organic specimens, inorganic specimens, models, dissecting kits, calibrated glass and metal ware, chemicals, timers, scales and other measurement tools, clamps and pulleys, centrifuges, stands and clamps, microscopes and other optical aids, burners and torches, chemical supplies, preservation supplies, sterilization supplies, cleansers, protective gear, lab coats, timers, first aid supplies, etc. |
| 8.1.31. | Classroom Supplies, Science Instruction | The supplier provides a wide selection of texts, media and visual aids, demonstration kits, models, tools, transparencies, work books, lab journals and other materials suitable for elementary through advanced high school level scientific inquiry. |
| 8.1.32. | Classroom Supplies, Lab Furnishings | The supplier provides a selection of laboratory support furnishings, such as lamps and lighting sources, tables, benches, work stations, sinks, hoods, stools, large power tools, storage units, maple wood furnishings, wall clocks, etc. |
| 8.1.33. | Classroom Supplies, Vocational Ed. | The supplier provides a wide assortment of vocational education classroom equipment, materials and supplies, specific to engineering, automotives, industrial arts, mechanical arts, computer assisted design (CAD), graphics, health and beauty laboratories, etc. |
| 8.1.34. | Classroom Supplies, Life Skills | The supplier provides a wide assortment of life skills classroom equipment, furnishings, materials and supplies to support instruction in sewing, cooking, sex education, driver education and other life skills activities. |
| 8.1.35. | Classroom Supplies, Basic Writing Supplies | The supplier provides a wide assortment of pens, pencils, markers, pencil sharpeners, erasers, correction fluids, and other writing instruments suitable for grades K – 12. |

| Item | Requirement | Description |
|---------|--|---|
| 8.1.36. | Classroom Supplies, Notebooks and Papers | The supplier provides a wide assortment of bound notebooks, loose leaf 3-ring notebook paper, composition books, graph paper, binders, index cards, protective book covers, etc. |
| 8.1.37. | Classroom Supplies, Math Instruction | The supplier provides an assortment of tools, instructional aids and media, and other supplies to support classes of elementary level math, general math, geometry, algebra, functions, calculus, advanced placement math courses, applied math, etc. |
| 8.1.38. | Classroom Supplies, Computer Lab | The supplier provides an assortment of supplies and basic equipment for computer labs, including, but not limited to, cleaning supplies, batteries, stands, holders, ergonomic mouse pads, document holders, etc. |
| 8.1.39. | Classroom Supplies, Basic Supplies | The supplier provides an assortment of basic classroom supplies, such as adhesives, paste, scissors, paper cutters, tape, storage units, batteries, pointers, clips, tacks, calculators, grade books, carts, carrying cases, clocks, waste and recycle receptacles, files and file holders, special lighting, displays, cash boxes, ticket rolls, Universal Precaution kits, etc. |
| 8.1.40. | Classroom Supplies, General Instructional Aids | The supplier provides an assortment of teaching aids suitable for k – 12 core academic instruction, including posters and print media, maps, displays, kits, models, workbooks, etc. |
| 8.1.41. | Classroom Supplies, Early Childhood | The supplier provides an assortment of supplies, materials, instructional aids and equipment for early childhood programs. |
| 8.1.42. | Classroom Supplies, Special Needs | The supplier provides an assortment of supplies, materials, aids and equipment for special needs classrooms. |
| 8.1.43. | Classroom Supplies, Services | The supplier includes custom order services for products such as rubber stamps, placards, and name plates; imprinting items with school mascots or themes; furniture assembly and binding. |

9. Pricing

9.1. Contract pricing will be in the form of discount(s) off catalog prices. Discounts may be offered using one of the following methods:

- 9.1.1. A standard discount off the entire catalog,
- 9.1.2. Discounts that vary by category or geographical region
- 9.1.3. Discounts that vary by individual line item for a list of highly used items, with remaining catalog items priced by single discount or discounts by category.

9.2. Basic guidelines for pricing include:

- 9.2.1. **Net Pricing:** All pricing bid should be net, including trade discounts. No taxes, disposal fees, environmental fees or transaction fees are to be included in the bid price.
- 9.2.2. For all items in all categories, the bidder must state prices. Missing price quotes can result in rejection of the bid proposal.
- 9.2.3. **Units of Measure:** Bidders must specify the total number of common units in every package so that evaluators can create a verifiable price comparison. This notation

must be in number decimal form on the spreadsheet, so that it can be calculated by formula by the evaluators. On the spreadsheet, the applicable column is called “Quantity of Lowest Common Unit in a Package,” and an examples would be to list a dozen as “12” or a ream of paper as “500.” Bidders are held responsible to bidding core items in the units of measure they intend to supply during the course of the contracts.

- 9.2.4. **Change in SKU Numbers:** A bidder may update or correct model or manufacturer SKU numbers appearing on the spreadsheet by inserting “new number” or “corrected number” in the “Notes” space on the Excel sheet. The bidder does so with the understanding that the offer is for the exact product as described and that there are no other changes to the specifications.
- 9.2.4. **Substitutions:** It is preferred that the specified item be bid. However, if the bidder does not have the exact item specified, a substitute that is equivalent to the item specified may be proposed. The substitute may differ in manufacturer or brand. Upon request, samples must be provided for a substitution to be considered. AEPA and its member agencies will have the final authority and discretion as to whether the substitution meets equivalent specifications. In the event the specifications call for a brand-specific item on one line (such as 3M Post-It Notes) and a lesser quality version of the same product on an adjacent line (such as Highland “sticky notes”), the latter may not also serve as a substitute for the former. Guidelines for entering substitutions on the Excel Spreadsheet:

Figure II

| Propose a substitute if the specified item is not available | | | | | | |
|---|----------------------------------|--|-----------------|---|----------------|--|
| | Substitute Item | | | | | Notes |
| Quantity of Lowest Common Unit in Package (e.g. a ream would equal 500) | Manufacturer's SKU of Substitute | Description of Substitute, Including Manufacturer's Name | Unit of Measure | Quantity of Lowest Common Unit in Package (e.g. a ream would equal 500) | Your Bid Price | Notes |
| | 123456 | Roundhouse Temptra, quart, light purple | Bottle/QT | 32 | \$ 1.99 | We only have quart sizes; no pints available |
| | | | | | | |

- 9.2.5. **No Bid:** A “No Bid” noted for any line item listed on the Core A-List may render the entire bid to be nonresponsive and subject to rejection. If the bidder cannot meet the specification as listed, propose a substitute brand or alternate product that is as similar as possible.
- 9.2.6. **Discontinued Items:** If AEPA has specified items that the bidder understands to be discontinued by the manufacturer, the bidder must propose a substitute or alternate product with similar functional value. Do not leave the item blank or unpriced. In the “Notes” space on the Excel sheet, indicate that the item is discontinued. AEPA has the right to remove the bidder’s responses for discontinued items from comparative evaluation, since an equivalency among bidders may not be established for those items.

9.2.7. **New Items:** New items introduced by manufacturers or invented during the course of the contract may be added to the contract at the bid discount appropriate to its category.

9.3. **Customized Core List:** AEPA provides an Excel worksheet organized in Core Product Categories: A-List, B-List and Non-Core. The guidelines are as follows:

9.3.1. **A-List:** Specific line items sought, with their descriptions and model numbers are indicated on the Excel spreadsheet under the A-List category. This list represents the core items to be specifically priced for the contract. These are the most frequently ordered items by members using the AEPA contracts. Accordingly, AEPA and member agencies expect the most aggressive pricing on these items. All Core Items must be available to members the duration of the contract. In the event any item is discontinued by the manufacturer during the course of the contract, AEPA and member agencies may require the Contractor to add a functionally equivalent substitute item at the same price or discount structure.

Completing the Excel A-List spreadsheet: Each and every item on the Core List must be bid with a specific price. Leave no blanks. DO NOT enter any “no-bid” notations. If a Bidder does not have or carry a specified item, a substitute MUST be offered. Pricing must be in US dollars and cents. Spreadsheets filled out with pricing beyond two decimal points will be rounded to the nearest whole cent. Figure III shows an example of how bids should be offered in the spreadsheet for core list.

Figure III

| Specifications of Items Sought | | | | | |
|--------------------------------|----------|---|--------|----------------|--|
| Number | Category | Product Description or Specification (May Bid Equivalent in the Substitute Column) | SKU | Your Bid Price | Quantity of Lowest Common Unit in Package (e.g. a ream would equal 500) |
| 157 | Other | TISSUE FACIAL, KLEENEX BRAND, 125 CT., WHITE, 2-PLY, BOX | K21606 | \$ 0.89 | 125 |
| 158 | Paint | PAINT, TEMPERA READY-TO-USE, 16 OZ., VIOLET, DIXON/PRANG, 21606, EACH | 21606 | \$ 0.99 | 16 |
| 159 | Paint | PAINT, TEMPERA READY-TO-USE, 16 OZ., BLACK, DIXON/PRANG, 21608, EACH | 21608 | | |

9.3.2. **B-List:** The B-List pricing schedule addresses items that are inconsistently requested or available across the geographic breadth of the twenty-two member agencies. This IFB solicits an additional price discount formula for this customized list of up to 100 SKUs, unique to each of the participating member agency states. If the bidder is awarded a contract pursuant to this IFB, each participating member agency will execute a contract prior to March 31 for each year the contract is in force with the bidder with the right to create a customized core list (The B-List) for items proposed in this section.

9.3.2.1. Items on the B-List shall be made up of up to 100 items within the bidder's commercially available catalog, providing they are not already proposed on the A-List.

9.3.2.2. The B-List requested by a member agency may not include special order or customized service products unless the bidder/supplier agrees. Each contract year, prior to March 31, the bidder/supplier may object to up to 10 of the suggested items proposed by the member agency for inclusion on the B-List and offer substitutes, until an agreement of the total B-List is reached.

9.3.2.3. B-List items shall be sold with an additional bid discount price, as quoted and offered by the awarded bidder. Under no circumstances shall a supplier be required to sell items on the B-List below cost.

9.3.3. **Non-Core Commercially Available Catalog or Website Items:** A bidder must also offer a commercially available catalog, set of catalogs or a commercially available website from which purchasing agencies may order additional items beyond those enumerated on the A- and B-Lists. Pricing for res-of-catalog items in this category must be on a "discount percentage" from the catalog price or website price for general retail or educational sales. The bidder may establish multiple categories of variable discounts for items within its catalog or website. These discounts, whether a single percentage or variable percentage by category, must be listed on the "Quote Sheet" spreadsheet, part of the Excel document.

9.3.4. Guidelines for completing the B-List and Non-Core spreadsheet:

Figure IV.

Pricing Form B -- Discount Formula for Non-Core Items and the B List

Bidding Company Name MAIN STREET SCHOOL
Name of Catalog(s) for Pricing Basis SUPPLIES
The Mainstream Catalog of Green School Supplies, Published June 2010 and www.mainstreamxl.net
This must be the catalog in effect as of the bid-due date

| # | Category of Discount | Main Discount Offered | Additional Discount Offered for Any B-List Items |
|---|----------------------|-----------------------|--|
| 1 | Name of Category | Y% | G% |
| 2 | Name of Category | Z% | H% |
| 3 | Name of Category | A% | G% |
| 4 | Name of Category | B% | I% |
| 5 | Name of Category | B% | K% |
| 6 | Name of Category | B% | G% |
| 7 | Name of Category | Y% | G& |

| | | | |
|----|------------------|----|----|
| 8 | Name of Category | B% | G% |
| 9 | Name of Category | A% | H% |
| 10 | Rest of Catalog | X% | A% |

10. Evaluation

10.1. **Award of Bid/Contract:** AEPA and member agencies reserve the right to reject any or all bids, to waive any irregularities or informalities in any bids or the bidding, and to make its selection of awards based upon its best judgment as to which items substantially comply with the specifications, or which are most economical, and/or best suited for the purpose for which they are intended.

10.2. **Multiple Awards:** AEPA may recommend multiple awards, and individual member agencies reserve the right to adopt multiple awards as allowed by respective state law, particularly where catalogs offered are substantially different, where there are geographic or service level factors at play or where demand requires the service of multiple suppliers.

10.3. Evaluation of Pricing:

10.3.1. The evaluation process will primarily emphasize (1) the total dollar value of acceptable core line items multiplied by the estimated usage or quantity and (2) total dollar value of a market basket of non-Core items multiplied by estimated usage.

10.3.2. When the difference between or among any bids is less than 5%, the evaluation may also include: (1) the value of B-List discounts, (2) percent difference between line items and benchmark pricing, which consists of the current prices being paid under AEPA contracts, (3) number of line-item winds, that is, the total number of SKUs which have the lowest price among competitors, and (4) total dollar value of items offered multiplied by a quantity of one, where demand is unknown.

10.3.3. At the discretion of AEPA and its member agencies, the evaluation may exclude line-item anomalies, such as individual line-item prices based on abnormal packaging, discontinuations, prices significantly higher than competitor or than benchmark pricing where those items offered do not appear to be equal to or meet specifications.

10.3.4. **Samples:** AEPA and its member agencies reserve the right to request samples to ensure the equivalency of an item bid as a substitute. In such a case, bidders are bound to respond within five business days with the requested samples to a specified (USA) address. Failure to supply samples within the time specified can result in the rejection of the bid proposal as nonresponsive.

10.3.5. **Identical Bids:** If identical bids are submitted by responsible bidders, AEPA and its member agencies will determine the award by lot.

11. Post Award Requirements

11.1. **Purchasing Activity Report:** As per the conditions set forth in Part A of this IFB, the awarded bidder becomes responsible for submitting quarterly reports to participating member agencies that denote total quantities purchased by affiliate

members of each item awarded under the contract, within fifteen (15) days of the close of the quarter, in a format agreed upon with the member agencies. If the 15th day falls on a weekend or holiday, the due date shall fall on the next following business day. Failure to report on a timely basis can result in default of contract.

- 11.2. **Changes in Packaging for Core Items:** If during the term of the contract, a manufacturer 1) changes the packaging configuration that affects the unit of measure of the item, or 2) changes an item's SKU number, the supplier must promptly notify both AEPA and member agencies of the changes.

The contracted price for any item with new packaging must equal the bid price of the original item corresponding to the lowest, most common unit of measure. For example, if the original bid price was for two pens at 10 cents, and the new packaging was for a box of one dozen pens, the new acceptable contract price would be 60 cents.

Under no circumstances shall a supplier simply change its inventory policies to stock a new unit of measure in order to force an LEA to order more merchandise than the purchasing member originally expected by reading published bid prices. For example, a brand of pen was bid in a cello pack with three (3) pens inside. The cello pack is still available from the manufacturer. It is unacceptable for a supplier to discontinue the 3-pack in favor of a box containing a dozen pens, when the originally bid unit of measure, the 3-pack, is available from the manufacturer.

- 11.3. **Price Increase Rules:** Part A of this IFB allows price increases when manufacturer wholesale costs to the supplier increase. For the Instructional and School Supply Bid, the following rules shall apply to Part A's allowance for price increases:

11.3.1. During the course of the contract, eligible A-List core item prices may increase twice per year, based only on document wholesale increases, once on April 1 and once on October 1.

11.3.2. Forty-five (45) days prior to those dates, the supplier shall submit to the AEPA Oversight Committee a complete numbered list of the bid's A-List core items with pricing, noting any proposed price increases and also noting any discontinued items and suggested substitutions.

11.3.3. The Oversight Committee has the authority to audit the requested price increases, asking for documentation relating either to 1) a sampling of the proposed increases or 2) to any specific line item, or 3) to all proposed price increases.

11.3.4. The supplier's failure to comply in providing the timely documentation would by default disallow any price increases reviews for the core items until the next 45-day period preceding April 1 or October 1.

11.3.5. The Oversight Committee's approval or denial of the revised core item pricing will be distributed to member agencies for adoption in their respective states.

11.3.6. Discount formulas for the rest of the catalog and for the B-List shall remain constant for the term of the contract. When wholesale invoiced prices to the supplier increase, the supplier shall be allowed to increase the price basis for its bid formula in subsequent editions of its commercially available catalog(s). At that time, member agencies and their affiliate agencies would

be subject to the new catalog pricing in accordance with the supplier's bid formula.

- 11.3.7. The structure and logic of the base price formula of the supplier's catalog must remain constant for the term of the contract. If at any time a supplier, who has more than one price listed in a catalog, revises its commercially available catalog pricing by removing the price basis, the underlying structure and logic for the original price basis shall apply.

For example, a supplier may publish a "list price" alongside an "educator's price" (or "discount" or "our price"). If the supplier later removes the "educator's" price from the commercially available catalog, thereby removing the price basis of the bid formula, the supplier must make known to AEPA and its member agencies the logic and structure for the original "educator's price" and continue that pricing basis for the remainder of the contract. The final effective prices to be charged, before and after any allowable price increase, shall be compared to ensure that the disclosed price basis for the catalogs is true.

12. Substantiating Documentation

Part C of this IFB contains the instructions and forms for required substantiating documentation. Failure to provide complete information, as requested, may result in a determination of the bid being nonresponsive. The required responses and forms are:

- 12.1. Affidavit (of non-collusion), Form A, to be signed, scanned to an electronic folder and also produced as an original paper document.
- 12.2. Acceptance of Bid Award and Contract, Form B, to be signed, scanned to an electronic folder and also produced as an original paper document. In the event of an award, this document becomes the contract executed between the supplier and each of the participating member agencies.
- 12.3. Service Questionnaire, Form C, to be completed, with attachments as necessary, signed and scanned to an electronic folder. This form requests information about the bidder's proposed service through discounts, e-commerce, and customer support.
- 12.4. Company Information, Form D, to be completed, with attachments as necessary, signed and scanned to an electronic folder. This form seeks information about the bidding company's history and ability to meet its contractual obligations.
- 12.5. Exceptions, Form E., to be completed, with attachments as necessary, signed and scanned to an electronic folder. The bidder uses this form to express exceptions or alternates to the Terms and Conditions set forth in Parts A and B of this IFB. The bidder is reminded that AEPA cannot waive federal laws or laws and regulations in effect in the participating member agency states and affiliate members' local regions and municipalities.
- 12.6. Compliance, Form F, to be completed, signed and scanned to an electronic folder. This check-off form requires the bidder to indicate its ability to comply or deviate from the bid specifications enumerated in Part B of this IFB. The bidder is reminded that all items must be checked either comply or deviate.

- 12.7. Deviations, Form F.2., to be completed, with attachments as necessary, signed and scanned to an electronic folder. The bidder uses this form to explain any deviations indicated on Form F.
- 12.8. Pricing, Form G et seq., including the Core Pricing schedule. The bidder completes the Word document (Form G) attaching other forms and documents as required.

End Part B



**INVITATION FOR BID NUMBER AEPA IFB #011
PART A – TERMS AND CONDITIONS**

(SAME FOR ALL IFB #011 BID COMMODITIES)

Notice to Bidders

Sealed Bids will be received on behalf of [Educational Agency] until:

1:30 p.m. EDT, Friday, October 15, 2010

For: A. Office Supply Catalog, B. School & Instructional Supply Catalog, C. Custodial Supply Catalog, D. Portables/Modular Buildings, E. Utility Vehicles

Each bid package consists of three or more parts:

- Part A – Notice to Bidders and Terms and Conditions (Same for all bid commodities)**
- Part B – Commodity Specifications**
- Part C – Bid Forms**
- Part D - G – Additional Bid Forms if required**

All bids shall be submitted to Wilson Education Center, 2101 Grace Avenue, Charlestown, IN 47111, in a sealed envelope marked “SEALED BID AEPA #011” on the front of the envelope. Note that bidders must be able to provide products and services in up to 22 states including California, Colorado, Connecticut, Florida, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington, and Wyoming.

Bid documents can be downloaded after registering from the web at www.aepacoop.org. [Educational Agency] reserves the right to reject any or all bids in whole or in part; to waive any formalities or irregularities in any bids, and to accept the bids, which in its discretion, within state law, are for the best interest of [Educational Agency]. Bids will be opened and publicly read immediately following the deadline.

The text enclosed in the box above is the public Notice to Bidders to be used by each of the AEPA participating agencies. Each participating agency will insert the name of their agency and appropriate phone numbers, e-mail address and web address for use in posting public notice in their state.

Bid and Contract Timeline:

| | |
|------------------------------------|--|
| September 5, 2010 | A. Publication of Bids & IFB available on the AEPA website www.aepacoop.org |
| September 5, 2010 | B. Mailing of bid notices from member agencies |
| October 5, 2010 | C. Voluntary Pre-Bid Conference call for vendors – vendors must pre-register by September 27, 2010, 3 PM EDT |
| October 8, 2010 | D. Deadline for questions from bidders |
| October 15, 2010, 1:30 pm EDT | E. Deadline for Bid Submittals and Public Opening of Bids |
| December 1, 2010 | F. Approval of bids |
| December 15, 2010 | G. Bidders are advised of the results of the bid |
| March 1, 2011 to February 29, 2012 | H. First contract year |
| March 1, 2012 -2014 | I. Annual contract renewal dates subject to approval by AEPA |

Questions regarding this IFB should be directed to:

Tammy Standley Fax: (541) 276-4252 or email tammy.standley@umesd.k12.or.us

AEPA Member Agency information

| State | Agency Name | Contact | Email | Students |
|--------------|---|-------------------|--|-----------|
| California | Monterey County Office of Education d/b/a CalSAVE | Ted Witt | twitt@epylon.com | 6,500,000 |
| Colorado | Colorado BOCES Association | John Tillman | jtillman@my.amigo.net | 700,000 |
| Connecticut | Capitol Region Education Council (CREC) | Cara Hart | chart@crec.org | 580,000 |
| Florida | Panhandle Area Education Consortium | Rick Everitt | everitr@paec.org | 2,500,000 |
| Indiana | Wilson Education Center | Phil Partenheimer | philp@wesc.k12.in.us | 600,000 |
| Iowa | Iowa Educators Consortium | Dan Dreyer | ddreyer@iec-ia.org | 500,000 |
| Kansas | Southeast Kansas Education Service Center | Brad Stefanoni | brad.stefanoni@greenbush.org | 465,000 |
| Kentucky | Green River Regional Educational Cooperative | Ann Burden | ann.burden@grrec.ky.gov | 500,000 |
| Michigan | Oakland Schools | Mike Rangos | michael.rangos@oakland.k12.mi.us | 1,600,000 |
| Minnesota | Minnesota Service Cooperative | Jeremy Kovash | jkovash@lcsc.org | 825,600 |
| Missouri | Cooperating School Districts | Tom Post | tpost@csd.org | 500,000 |
| Montana | Montana Cooperative Service | Frank Loehding | floehd@mtcoop.org | 150,000 |
| Nebraska | Nebraska ESU Cooperative Purchasing | Kip Schneider | kschneider@esu17.org | 350,000 |
| New Mexico | Cooperative Educational Services | Llew Perry | llperry@nmedu.org | 350,000 |
| North Dakota | North Dakota Educators Service Cooperative | John Jankowski | jjankows@sendit.nodak.edu | 80,500 |
| Ohio | Ohio Council of Educational Purchasing Consortium | Elmo Kallner | kallner@mail.mecdc.org | 1,500,000 |
| Oregon | Umatilla-Morrow ESD | Tammy Standley | tammy_standley@umesd.k12.or.us | 600,000 |
| Pennsylvania | Central Susquehanna Intermediate Unit d/b/a Keystone Purchasing Network | Jeff Kimball | jkimball@csiu.org | 3,500,000 |
| Texas | Region 16 Education Service Center d/b/a TexBuy | Andrew Pickens | andrew.pickens@esc16.net | |
| Virginia | Fairfax County Public Schools | Tony Crosby | tony.crosby@feps.edu | 1,200,000 |
| Washington | King County Directors Association | Jim Borrow | jborrow@kcda.org | 975,500 |
| Wyoming | Northeast Wyoming Board of Cooperative Educational Services | Laurie Walsh | lwalsh@newboces.com | 89,500 |

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I. ABOUT AEPA

The Association of Educational Purchasing Agencies (AEPA) is a school procurement consortium established in 2000 through a Memorandum of Understanding, and incorporated in 2007 under the state laws of Nevada. Currently, 22 states have joined to issue simultaneous Invitations for Bids (IFB).

AEPA requests that bidders only respond if they are able to offer prices lower than what they ordinarily offer on separate, single school district contracts, and with prices lower than they would offer on a single state contracts or multi-state contracts that have a lesser volume.

AEPA's mission is to cooperatively serve our members through a continuous effort to explore and solve present and future purchasing needs. Our goals include working to secure multi-state volume purchasing contracts with benefits that are measurable, cost-effective and continuously exceed our members' expectations. AEPA is committed to accomplish this mission lawfully and ethically, using leading edge technology and futuristic business practices.

AEPA designates one Member Agency per state that is operating legally under the rules and regulations of that state. Any additional agencies that wish to participate will negotiate with the authorized Member Agency and participate through them in a manner in which they mutually agree is not in conflict with AEPA procedures. The Member Agency will be the only agency allowed to represent that state at AEPA and will be the only communication link between AEPA and that state.

II. BID PROCEDURES

A. *Issuing Agency*

The great benefit to the bidder is that one response may be prepared for award by multiple agencies and their members located throughout many states. These 22 member states have members in various other states that are listed in their individual state's T& Cs. Bidders responding to this IFB will prepare two computer/electronic CD or USB Flash Drive of all files requested along with complete catalogs. Bidders selected in response to this single IFB have the potential to provide products and services to local education agencies serving over 30,000,000 students.

Each Member Agency will individually publish notice of the IFB. Bidders will send responses to a single receiving point for all Member Agencies. Responses will be evaluated by all Member Agencies collectively who have indicated they will participate in the category of products and services being solicited, and after AEPA approval, individual AEPA Member Agencies may award contracts to the selected respondents or reject their offers.

The procurement activities of AEPA are limited to document preparation, distribution of the IFB, initial evaluation, and recommendation for possible approval to Member Agencies. AEPA consists of agency officials who have agreed to assist one another in meeting the public purchasing needs of local school districts and other political subdivisions.

Contracts awarded through cooperative purchasing must meet the procurement laws of the states of Member Agencies. When these laws are satisfied, an individual entity using these contracts is deemed in compliance with bidding regulations. As allowed by specific state statutes, they can issue purchase orders for any amount without the necessity to prepare their own IFB, RFP, or gather necessary quotations. This saves the entity time and allows for economical and efficient purchasing.

State laws that permit or encourage cooperative purchasing contracts do so in the belief that lower prices will be the result. *A contract issued by a cooperative can be used by hundreds of separate political units; but if it has the same or higher prices than what a single agency can get through its own bid, a cooperatively bid contract makes no sense.* **AEPA requests that bidders only respond if they are able to offer prices lower than what they ordinarily offer on separate, single school district contracts, single state contract or multistate contracts that have lesser volume.**

AEPA policy for membership permits new Agencies to become Member Agencies upon approval of existing members. If additional Agencies are added, they and their members may procure from existing contracts upon approval of the awarded bidders and in accordance with their state laws.

B. *Voluntary Pre-Bid Conference Call – Pre-Registration Required by September 27, 2010,*

3 PM EDT.

AEPA will host a voluntary pre-bid conference call on Monday, October 5, 2010, for any interested bidders or potential bidders. The conference call times are set in the following schedule for each of

the four contiguous United States time zones. Bidders must register no later than Monday, September 27, 2010, 3 PM EDT, by emailing request to [Jill Gemberling](mailto:jgemberling@csiu.org) at jgemberling@csiu.org or by calling 570-523-1155 x2140. Bidders must indicate which bid category or categories that they would like to participate in their registration. An email confirmation with details of the phone conference will be sent to the bidder within 24 hours of receipt of their request. Each Bidder will be allowed only one phone line to participate in conference call. It will be the bidder's responsibility to have one primary person responsible for asking questions during the conference call.

Voluntary Pre-Bid Conference Call Schedule – Monday, October 5, 2009

| | Eastern | Central | Mountain | Pacific |
|------------------------------------|----------------|----------------|-----------------|----------------|
| A. Office Supply Catalog | 11:30 AM | 10:30 AM | 9:30 AM | 8:30 AM |
| B. School Supply Catalog | 12:00 PM | 11:00 AM | 10:00 AM | 9:00 AM |
| C. Custodial Supply Catalog | 12:30 PM | 11:30 AM | 10:30 AM | 9:30 AM |
| D. Portable/Modular | 1:00 PM | 12:00 PM | 11:00 AM | 10:00 AM |
| E. Utility Vehicles | 2:00 PM | 1:00 PM | 12:00 PM | 11:00 AM |

C. Questions

All questions regarding this IFB shall be submitted, in writing, referencing AEPA Bid #011, to Tammy Standley, 2001 SW Nye, Pendleton, OR 97801, by fax to Tammy Standley at (541) 276-4252, or by email to Tammy Standley at tammy.standley@umesd.k12.or.us. All questions and responses will be available on the AEPA website (www.aepacoop.org) as addenda, and will become part of the bid documents. It is the bidders responsibility to check the website for the addenda prior to the bid deadline. Questions received less than seven (7) days prior to bid due date cannot be answered.

D. Bidder Qualifications

An essential part of the bid evaluation process is an evaluation to qualify the company being considered. All bids must contain answers, responses and/or documentation to the information requested in the Bid Documents. Any bidder failing to provide the required information/ documentation may be considered non-responsive. Bidders must demonstrate their ability, capacity and available resources to provide the products and services to all of the AEPA members indicating an interest in participating in the categories being solicited. The Bidders are required to communicate and demonstrate within their response they have extensive knowledge, background and at least five (5) years experience with manufacturing, obtaining, delivering, installing, maintaining and/or supporting the product lines of products, equipment, services or software offered. AEPA and/or its Member Agencies reserve the right to accept or reject newly formed companies or companies failing to demonstrate their abilities or capacity solely based on information provided in the bid response and/or its own investigation of the company.

E. Bid Security

Not all AEPA Member agencies' states require that a bid security be submitted at the time bids are due, however since there are some Member states that do require a bid bond or other type of bid security be submitted with the bid response. Those member states that require bid security have so indicated within their individual state terms and conditions (Part A, Section IV; Part B, Section 8 and Part C). As part of the evaluation process any respondent/vendor who fails to submit the proper form of bid security may be considered non-responsive.

F. Bid Submission

1. Preparation of the Bid Response

- a. The IFB is published in three parts. Part A contains the terms and conditions that apply to all IFB's in the current series of bids. Part B is the specifications for the bid commodity. Part C contains the Bid Forms to be filled out and returned by the bidder. Some bids may contain additional Parts or Forms.
- b. Parts A and B are available in Adobe PDF format.
- c. The Part C Bid Forms and any additional forms are designed to be submitted electronically. Only AEPA Bid Form A & Bid Form B shall be submitted in both hard copy & electronic with original signatures. Bidders must complete and sign all forms and submit these completed forms on the CD or Flashdrive. CD or Flashdrive must be properly labeled with the Bidders name.
- d. All bids shall be on the forms provided, or on forms that duplicate the information in the exact order presented.
- e. The Bid Forms A & B shall be submitted with original ink signatures, by the person authorized to sign the bid. The person signing the bid shall initial erasures, interlineations or other modifications in the bid document. Failure to properly sign the bid documents or to make other notations as indicated may result in the response being deemed non-responsive.
- f. Mistakes may be corrected prior to bid opening, but shall be initialed by the person signing the bid documents. Corrections and/or modifications received after the opening time will not be accepted, except as authorized by applicable rule, regulation or statute and AEPA.
- g. In case of an error in extension of prices in the bid, unit prices shall govern.
- h. Periods of time, stated as a number of days, shall be in calendar days, not business days.
- i. It is the responsibility of all bidders to examine the entire IFB package, to seek clarification of any item or requirement that may not be clear, and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after due time and date.
- j. The bidders' ability to follow the bid preparation instructions set forth in this solicitation will also be considered to be an indicator of the bidders' ability to follow instructions should they receive an award as a result of this solicitation. Any contract between the Member Agency and a bidder requires the delivery of information and data. The quality of organization and writing reflected in the bid will be considered to be an indication of the quality of organization and writing which would be prevalent if a contract was awarded. As a result, the bid will be evaluated as a sample of data submission.

2. Format of Bid Submittal

- a. Two (2) complete originals of the bid response shall be submitted on the forms, and in the format contained in the IFB on CD or Flash Drive. The bid CD or Flash Drive shall contain all completed forms, descriptive literature, specifications, samples, catalogs, etc. AEPA Bid Forms A & B must also be submitted in hard copy with original signatures.
- b. Format for the CD or Flash Drive – Files must be placed in the proper folders on the CD or Flash Drive as listed below:

FOLDER A CONTENTS:

- a. **Document Development:** Bid Forms for this IFB are published on www.aepacoop.org in both Microsoft Word and PDF formats. Bidders may download the Microsoft Word forms and complete them electronically or they may download PDF forms, type or complete by hand. All documents requiring an original signature or which were not completed electronically must be scanned and saved as PDF documents on the electronic media. All documents must be titled with the name of the Company and Form. For example: *Bidder Name Form A*.
- b. **Table of Contents:** Using the form provided, create a Table of Contents for the bid proposal. Provide as a Word Document or a document that has been scanned to a PDF, and title as per the instructions in **Document Development** above.
- c. **Bid Affidavit (FORM A):** Complete the form provided. A signature of the bidder's authorized representative is required and a Notary Public must complete this form. Scan to a

- PDF format and title as per the instructions in **Document Development** above. Additionally, a paper (hard) copy of the completed form with original signatures must be included in the sealed bid package with the electronic media. *If the bid is awarded, the bidder will be required to produce the original signed and notarized document on a CD or flashdrive, with hard copies bearing original signatures, for each participating member agency.*
- d. **Acceptance of Bid and Contract Award (FORM B):** Complete the form provided. A signature of the bidder's authorized representative is required. Scan to a PDF format and title as per the instructions in **Document Development** above. Additionally, a paper (hard) copy of the completed form with original signatures must be included in the sealed bid package with the electronic media. *If the bid is awarded, the bidder will be required to produce the original signed and notarized document on a CD or flashdrive, with hard copies bearing original signatures, for each participating member agency.*
 - e. **Service Questionnaire for Bidder (FORM C):** The Questionnaire seeks information about the bidder's pricing structure and commerce processes. Complete the form provided. The authorized representative must sign the completed document. Scan to a PDF format and title as per the instructions in **Document Development** above.
 - f. **Company Information (FORM D):** The Company Information Form provides background information on the Company. The authorized representative must sign the completed document. An attached letter of credit from the bidder's chief financial institution is required. Scan the Form, any attachments and the letter from the bidder's chief financial institution to a single PDF format and title as per the instructions in **Document Development** above.
 - g. **Exceptions (FORM E):** Exceptions to Terms and Conditions set forth in Parts A and B of this IFB must be noted on this Form. If there are no exceptions, the form must be returned with the "no exceptions" box checked and signed by the authorized representative. Scan to a PDF format and title as per the instructions in **Document Development** above.
 - h. **Compliance (FORM F):** The Compliance Form seeks the bidder's ability to fulfill the bid commodity specifications set forth in Part B. The specifications represent the needs and interests of the member agencies and their affiliate members. Alternatives or deviations may be proposed unless otherwise specified. While deviations may be acceptable, the bidder who is able to comply with the greater number of specifications may be considered more responsive. After checking boxes, the authorized representative must initial the form. Scan to a PDF format and title as per the instructions in **Document Development** above.
 - i. **Deviations (FORM F.2):** Explanations of deviations noted in response to **Compliance (FORM F)** are required on Form F.1. If there are no deviations, the form must be returned with the "no deviations" box checked and initialed by the authorized representative. Scan to a PDF format and title as per the instructions in **Document Development** above.

FOLDER B CONTENTS:

- a. **Pricing (FORM G):** Form G is intended as the cover document for the bidder's discount pricing schedule. This form must be signed as by the authorized representative. Scan to a PDF format and title as per the instructions in **Document Development** above.
- b. **Excel Pricing Schedule:** The bidder is instructed in Part G.1. on Form G to prepare a Price Schedule in Microsoft Excel 2008 that lists products and services available under this bid, the list price, the AEPA discounted price for members, and shipping and other charges. Alternatively, a formatted Excel document may be provided as a bid document to be used for this purpose. Title the Excel document as per the instructions in **Document Development** above.
- c. **Warranties, Additional Services or Incidental Price Schedule:** In response to Form G., the bidder may be asked to provide a price schedule for warranties, etc. This document should be presented in Microsoft Excel and titled as per the instructions in **Document Development** above.

- d. **Catalogs and/or Pricelists:** For catalog bids, PDFs of the bidder's most recent published catalog(s) or pricelists may be included for catalog bids. Each PDF document must be titled as per the instructions in **Document Development** above.
- e. **Market Basket Grid (Form G.2):** If requested, bidders must complete a form provided as a bid document, which requests bid pricing for a range of products specified by brand. This will be used in the competitive pricing evaluation.

FOLDER C CONTENTS: Folder C is reserved for any additional documents or files other than those listed above that may be related to a bid.

If the bid is approved by AEPA for recommendation to its members, the bidder will provide a complete exact duplicate response on CD or Flash Drive with hard copies of AEPA Forms A & B with original signatures to each participating Member Agency as indicated for that bid category.

3. Bid Transmittal – Due by October 15, 2010, at 1:30 EDT

It is the responsibility of the bidder to be certain that the bid submittal is in the actual possession of AEPA at the Wilson Education Center, 2101 Grace Avenue, Charlestown, IN 47111, on or prior to the exact due date and time of October 15, 2010 at 1:30 PM EDT. Bids must be submitted in a sealed envelope or box properly addressed to Association of Educational Purchasing Agencies, with the Bid Number, Bid Category being offered, Bid Due Date and Time, and Bidder's Name and Address clearly indicated on the envelope or box. AEPA cannot be responsible for late receipt of bids. Bids received by the correct time and date will be opened and the name of each bidder and other appropriate information will be publicly read.

G. Bid Evaluation

To qualify as a responsive bidder, a bid must have been submitted on time, and materially satisfy all mandatory requirements identified throughout the IFB. A responsive bid must substantially conform to all of the specified requirements in the IFB in the judgment of AEPA and its Member Agency representatives. Any deviation from requirements indicated herein must be stated, in writing, and included with the bid submittal. Otherwise, it will be considered that bids are in strict compliance with all requirements, and any successful bidder will be held responsible therefore.

2. Deviations or exceptions stipulated in bidder's response may result in the bid being classified as non-responsive. Language to the effect that the bidder does not consider this bid to be part of a contractual obligation will result in that bidder's bid being disqualified. Terms of the IFB that any bidder considers particularly unwarranted, and to which that bidder would have to take significant exception in his bid, should be stated clearly and concisely as exceptions and/or deviations.
3. In preparing a proposal, the Bidder's inability to follow the proposal preparation instructions set forth in this solicitation and its inability to provide written responses, narratives, requested and support documentation relating to the Bidder's qualifications; abilities; capacity; products; specifications; delivery, installation, setup, maintenance; support services and pricing utilized by AEPA evaluators may result in the Bidder's response be rendered non-responsive.
4. Additional evaluation criteria and factors which will be used to determine acceptability and responsiveness of a Bidder's bid response may include but is not limited to:
 - a. Quality and suitability of products and services offered to meet and perform to the specifications, expectations and requirements identified in this solicitation.
 - b. Demonstrating they possess adequate financial resources, production or service facilities, personnel, background, experience to manufacture, obtain, deliver, install and/or support the products and/or services requested within this solicitation.
 - c. A demonstrated and documented track record of satisfactory performance, integrity and a reputation of responding to and meeting educational institutions' needs.
 - d. And other criteria and factors identified in Part B or C of this solicitation.

H. Contract Award and Implementation

An AEPA oversight committee will perform initial bid response review and evaluation and will prepare and make a recommendation of selected bid respondent(s) to the AEPA Member Agencies for consideration and approval. Successful bidders will be notified that their contract has been approved by AEPA.

It is the responsibility of the approved bidder to contact each of the participating Member Agencies (up to 22) and provide a complete bid package as submitted to AEPA. Each Member Agency will review the recommended bids to determine which, if any, can be awarded contracts.

The approved bidder and the AEPA Member Agency will then work out details of contract implementation including:

- Signing the contract for the Member Agency

Note: Once the contract is signed, the approved bidder becomes a contractor for the Member Agency.

- Marketing plan for the Member Agency and the Contractor
- Order processing procedures
- Contract roll-out activities
- Contact management for the Contractor and the Member Agency
- Advertising, flyers, website access, etc.

It is not guaranteed that each Member Agency will enter into a contract with AEPA approved bidders. The final decision as to the appropriateness of a contract for a Member Agency rests solely with that Member Agency.

III. GENERAL TERMS AND CONDITIONS FOR ALL AGENCIES

Advertising: Contractor shall not advertise or publish information concerning this contract prior to the award being announced by the Agency. Once the award is made, the contractor may advertise to the Agency Members that products/services are available. Contractor shall submit ad copy to the Member Agency for review and approval prior to issuing the advertisement.

Agency Member: Agency shall be the entity identified in the table on page two of this document that has chosen to participate in this bid. Not every listed entity may elect to participate in this bid once the responses are reviewed.

Amendment of Bid: A bid may be amended up to the time of opening by submitting a sealed letter to the place where the bids are received as indicated on the front of this solicitation.

AEPA Member Agency: "Direct or Indirect Participation" may include their involvement through the formulation of any part of a procurement activity; the influencing of the content of any term, condition and/or specification; the evaluation, investigation, auditing and/or the rendering of advice, recommendation, decision, approval, disapproval and the award and implementation of a procurement contract.

Applicable Law: The laws of the state of the respective Member Agency shall govern this contract. Suits pertaining to this contract may be brought only in courts in the County and State as prescribed by the Member Agency. Both parties agree that the Uniform Commercial Code, as adopted by the State of the Member Agency, shall fully apply. Contractor shall comply with any and all laws, whether local, state, federal or otherwise, applicable to any aspect of the work to be performed in relation to the contract. It shall be Contractor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

Approval and Awarding of Contract: AEPA and its Member Agencies reserves the right to approve and award a contract to one bidder, to make multiple approvals and awards, to reject any or all bids in whole or in part, to waive any minor formalities or irregularities in any bids, and to accept bids, which in its discretion and according to law may be in the best interest of its members. A response to this solicitation is an offer to contract with the Member Agencies based upon the terms, conditions, and scope of work and specifications contained in this invitation. A solicitation does not become a contract unless and until it is accepted, approved and recommended by AEPA and awarded by the individual Member Agency. A contract is formed when a Member Agency administrator and, if required, Member Agency Board approves and signs the **Bid Affidavit Signature and Acceptance Form** (see Form A) document, eliminating the need for a formal signing of a separate contract.

Assignment: No right or interest in this contract shall be assigned or transferred by the contractor without prior written permission by the Member Agency, and no delegation of any duty of the contractor shall be made without prior written permission by the Member Agency. The Member Agency shall not unreasonably withhold approval and shall notify the contractor within fifteen (15) days of receipt of written notice by the contractor.

Audit Rights: In accordance with applicable law of the State of the Member Agency, the contractor's books and pertinent related records related to this contract may be audited at a reasonable time and place.

Authority: This solicitation, as well as any resultant agreement, is issued under the general authority of the State laws of the Member Agency (see also Procurement Code). In addition, any relevant educational institution's, local public bodies' and/or state agencies' procurement policies, rules and regulations published by the governing authorities and jurisdictions (jurisdictions) within each state are considered part of this contract. Cooperative Purchasing Agreements between the Member Agency and Agency Members, (and if applicable Affiliate Members), have been established under state law of the state in which the Member Agency exists.

Authority: This solicitation, as well as any resultant agreement, is issued under the general authority of the State laws of the Member Agency (see also Procurement Code). In addition, any relevant School District Procurement Rules published by the State Board of Education, are considered part of this contract. Cooperative Purchasing Agreements between the Member Agency and Agency Members, (and if applicable Affiliate Members), have been established under state law of the state in which the Member Agency exists.

Awarding of Contract: Member Agency reserves the right to award a contract to one bidder, to make multiple awards, to reject any or all bids in whole or in part, to waive any minor formalities or

irregularities in any bids, and to accept bids which, in its discretion and according to law, may be in the best interest of its members. A response to this solicitation is an offer to contract with the Member Agency based upon the terms, conditions, and scope of work and specifications contained in this invitation. A solicitation does not become a contract unless and until it is accepted by the Member Agency. A contract is formed when a Member Agency administrator and, if required, Member Agency Board approves and signs the **Bid Affidavit Signature and Acceptance Form** (see Form A) document, eliminating the need for a formal signing of a separate contract.

Bid Opening: Bids shall be opened at the time and place, and in the manner designated in this document. The name of each bidder shall be publicly read and recorded in the presence of witnesses.

Bidder/Contractor Definitions:

“Prospective Bidder” has notified AEPA of a desire to bid by registering on the AEPA website.

“Bidder” has presented a bid to AEPA in a timely manner in response to an Invitation for Bid (IFB).

“Recommended Bidder” has been approved by AEPA for its Member Agencies for contracting.

“Contractor” has entered into a contract with Member Agency(s)

Bidder Acceptance Period: In order to allow educational agencies the opportunity to evaluate the bids, the Member Agency requires that a bid in response to this solicitation be valid and irrevocable for ninety-days (90) after opening time and date.

Bonding: The contractor agrees to provide all performance and payment bonds required by a Member Agency and participating Agency Members at the time a contract between the Agency Member and the contractor is executed. If the contractor fails to deliver any required performance or payment bond, the bid security with AEPA shall be enforced, the contract with the Member Agency canceled, and the recommendation made that contracts with all Member Agencies be canceled.

Brand Names: The use of the name of a manufacturer, brand, make or catalog number does not restrict the bidder. Brand names and model numbers are used to indicate the character, quality and/or performance equivalence of the commodity on which bids are submitted. Bidders may submit alternates. However, the Member Agency reserves the right to decide whether alternatives to the identified manufacturer and brand are in fact equal to the equipment described in the invitation. The Member Agencies’ decision shall be final.

(Rename section “Termination” and place alphabetically)

Captions, Headings and Illustrations: The captions, illustrations, headings and subheadings in this solicitation are for convenience, enjoyment and ease of perusal only and in no way define, limit or describe the scope or intent of the request.

Catalog Bid: A catalog bid shall have established percentage discounts from catalog list or published prices or price list. The discounts may be for the entire catalog or for specific product or manufacturer categories. Prices may change based on manufacturer’s price changes and new products may be added at the established percentage discounts at any time. Discontinued products may be dropped at any time during the year. The AEPA Bid Oversight Committee should be aware of any changes as they are made.

Catalogs/price lists: A copy of the latest edition of the price list or catalog that the discount will be applied to shall be included with bid. Bidder shall attach all applicable price lists or catalogs. Submission of outdated price lists or catalogs may result in rejection of bid.

Catalogs/price list copies: Contractor shall furnish Member Agency and Agency Members with copies of approved price list(s).

Certificate of Insurance: Prior to commencing services under this contract, successful bidder shall procure and maintain during the life of this agreement, comprehensive public liability insurance, to include automobile liability, providing limits of not less than \$1,000,000 per occurrence. Evidence of the required insurance shall be provided by means of a certificate of insurance naming Member Agency as the certificate holder. In addition, bidder must be willing to provide, upon request, identical certification of insurance to any Agency Member using this contact.

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 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 and Agency Member.

Successful bidder shall also procure and maintain during the life of this agreement, workers’ compensation insurance for all of contractor’s employees engaged in work under the contract. All

workers' compensation insurance will be in compliance with applicable state statute and evidenced by a certificate of insurance.

Certification: By signature in the bid section of the Contract Award page, the contractor certifies:

1. The submission of the bid did not involve collusion or other anti-competitive practices;
2. The contractor shall not discriminate against any employee, or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246);
3. The 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 bid; and
4. The contractor agrees to promote and offer to Agency Members only those materials and/or services as stated in and allowed under resultant contract(s) as the Member Agency contract items.

Christian Doctrine: Any clause required by rule or regulation to be included in this contract will be read as if in this contract, whether or not physically included.

Clarification: As used in this solicitation, clarification means communication with a bidder for the sole purpose of eliminating minor irregularities, informalities or apparent clerical mistakes in the bid. It is achieved by explanation or substantiation, either in response to an inquiry by the Member Agency or as initiated by the bidder. Clarification does not give the bidder an opportunity to revise or modify its bid.

Combination Pricing: Offers with combination pricing shall clearly identify items covered by discount(s) and those with fixed prices. Prices for such contracts shall be adjusted as identified for the appropriate contract type above.

Competitive Range: AEPA and its Member's reserve the right to establish a competitive range of acceptable proposals as part of the evaluation process as defined herein. Proposals below the competitive range will be determined to be unacceptable and will not receive further consideration.

Contract Type:

1. Fixed discount off retail or off published price list; or
2. Fixed price with economic adjustment (bidder must identify in writing in this IFB any contingencies prior to approval).
3. Fixed multipliers/factors bid to be applied to an established pricing methodology/system to allow for individual local requirements and conditions

This is an indefinite quantity contract. A cost-plus-a-percentage-of-cost contract is prohibited.

Contractor: Bidder who has been awarded a contract for the delivery of construction, material goods or services in response to this IFB.

Contractor Contact: Contractor will designate one individual who will represent them to the Member Agency during the agreement period. This contact person will correspond with each ordering Agency 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 Agency Members upon award of this bid.

Contractor's Price List: The contractor shall furnish the Member Agency with copies of the approved price list to facilitate Agency Members in placing orders.

Construction: Each AEPA member state within their statutes defines what constitutes construction, identifies the policies, rules, regulations and codes that govern construction projects. Therefore, AEPA has defined construction as 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.

Cooperative Purchasing Contracts: The Contractor agrees that all the prices, terms, warranties and benefits granted by the Contractor to Agency Members through this contract are comparable to or better than the equivalent terms being offered by the Contractor to any present customer meeting the same

qualifications or requirement of equal or less volume. If the Contractor shall, during the term of this Contract, enter into arrangements with any Member Agency providing greater benefits or terms that are more favorable directly to the Agency Member, the Contractor agrees to notify the Member Agency of the agreement.

Cost: The cost or price of a bidder's goods or services will not cancel out technical competence as identified in the specifications; cost is an important factor and its importance will increase as the degree of equality of technical competence between bids increases.

Cost of Bid Preparation: Neither AEPA nor any Member Agency shall reimburse the cost of developing, presenting or providing any response to this solicitation.

Credit Hold: The bidder must agree not to place the Member Agency on "credit hold" without 10-days advanced notice in writing, either by letter or facsimile. [The Member Agency believes it is better for the contractor if the Member Agency places the slow-paying Agency Member on "credit hold;" if a contractor places the Member Agency on credit hold, agencies that pay promptly are penalized. If, on the other hand, the Member Agency places the offending Agency Member on "credit hold", payment is more likely to result and only the offender is disciplined.]

Current Products: All bids shall be for equipment, supplies, commodities and software in current production and marketed to the general public and/or educational/governmental agencies.

Default in One Installment to Constitute Total Breach: Contractor shall deliver conforming materials in each installment or lot of this contract and may not substitute nonconforming materials. The Member Agency reserves the right to declare a breach of contract if the contractor delivers nonconforming materials to any Agency Member or Affiliate Member of the Member Agency under this contract.

Delivery: Delivery is to be made within thirty (30) days of receipt of the purchase order, unless otherwise stipulated in writing and accepted by all parties (buyer/agency placing order and contractor). The contractor agrees to notify buyer if an order cannot be processed and/or delivered within the 30-day period and/or the agreed upon timelines. The buyer will then have the option of canceling the purchase order or invoking other options enumerated within the buyer and contractor agreement. Ownership of products and services happens only after receipt and acceptance of delivery by the buyer. The buyer will be the determining judge of whether materials and services delivered under the purchase order/contract satisfy the specifications and requirements as identified in the contract/order. Bidder should list exceptions.

Delivery: It is desired that delivery be made within thirty-days (30) of receipt of the purchase order. The bidder should list exceptions.

Defective Goods: Contractor agrees to pay for return shipment on goods that arrive in a defective or inoperable condition. Contractor must agree to arrange for return shipment of damaged goods.

Descriptive Literature and Brand Names: All bids are to include a complete set of the manufacturer's descriptive literature regarding the materials, equipment and software offered. Brand names, trade names and/or catalog numbers used in the solicitation will be intended to describe and identify equipment and software.

Deviations or Exceptions to Requirements: Deviations or exceptions stipulated in a Bidder's proposal may result in rendering of the response non-responsive. AEPA and its Member Agencies reserve the right to determine whether the deviation or exception does or does not serve the interest of or is not advantageous or acceptable to AEPA or its Agency Members.

Disbarment and Suspension: By signature accepting Terms and Conditions, it is certified on behalf of the company and their key employees that neither the company nor its key employees have been proposed for debarment, debarred, or suspended by any State or Federal Agency within the last five years.

Discontinued products: If a product or model is discontinued by the manufacturer, contractor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.

Discounts: Discount offers must clearly identify percent of discount to apply to retail or published price lists. If multiple discounts apply, bidder shall clearly indicate the discounts and applicable materials or services. Bidder shall agree that there will be no reduction in discount(s) during the term of the contract.

Electronic Ordering (Option)

1. Web-based electronic ordering systems are preferred.

2. Electronic ordering systems shall be secure and password protected. Entering the system with the designated password shall automatically send the user to AEPA contract pricing.
3. When Agency Members requires purchase orders, electronic ordering system shall require entry of a purchase order number prior to accepting an order.
4. Electronic ordering systems shall block excluded items from any order.
5. Electronic ordering systems shall not allow purchases from a blanket purchase order to exceed the funds in that purchase order.
6. Electronic ordering systems shall automatically assign correct contract prices to applicable orders.
7. Electronic ordering systems that list catalog price and AEPA discounted price are preferred.
8. Electronic ordering systems shall track orders and purchases on those orders for reporting and audit purposes.
9. Electronic ordering systems with the ability to include individual Member Agencies administrative fee will be required by many Member Agencies.
10. If AEPA Member Agency authorizes contractor to collect administrative fees through the electronic ordering system, contractor shall remit that fee to Member Agency on a quarterly basis or as required by an AEPA member with a complete report as to what agency members have used the contract and total purchases made by that member.
11. To assist with auditing, electronic ordering systems that allow Member Agencies to print an archived (historical) copy of a Agency Member's order are preferred.

Estimated Quantities: AEPA and Member Agency's anticipate considerable activity resulting from this solicitation; however, there is no guarantee of future order quantities. Usage depends on the actual needs of the Agency Members and marketing by the contractor.

Evaluation: In accordance with accepted standards of competitive sealed bid awards as set forth in the Procurement Code of the state of the Member Agency, competitive sealed bid awards will be made to lowest responsive and responsible bidder after meeting the evaluation criteria listed below and elsewhere in this bid. To qualify for evaluation, a bid must have been submitted on time, and materially satisfy all mandatory requirements identified in this document. To be considered responsive, a bid must reasonably and substantially conform to all the terms and conditions in the solicitation. Deviations or exceptions stipulated in bidder's response, while possibly necessary in the view of the contractor, may result in disqualification. Language to the effect that the bidder does not consider this solicitation to be part of a contractual obligation may result in that bidder's bid being disqualified.

The evaluation criteria for this solicitation include, but are not limited to:

1. conformance to the terms and conditions in the solicitation;
2. completeness of the bid and required forms;
3. qualifications, knowledge, background, experience, available resources and service capabilities;
4. price, including favorable pricing for cooperative purchasing;
5. warranty and availability of maintenance beyond warranty period;
6. references and Past Performance Information (PPI) review; and
7. other specific evaluations including, transportation costs, energy costs, ownership costs, and/or life cycle costs.

During the evaluation process it may become necessary to create a "Market Basket Study" to compare overall pricing between bidders. AEPA evaluators will create a list of items typically purchased by Agency Members that represent a cross-section of the types of those items purchased. The selection and quantity of line items evaluated will be at the sole discretion of the AEPA evaluators.

External Procurement Unit means any procurement organization not located in a state which, if located in the state, would qualify as a federal or state agency or a local public body. Various state procurement codes allow external procurement units to offer their contracts and for agencies within those states to utilize those contracts to acquire goods and services.

Federal Agency [25 USC 3001 (4)] Is defined as any department, agency, or instrumentality 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.

Federal Requirements: Contractor agrees, when working on any federally assisted projects with more than \$2,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all applicable sections of the act and the Department of Labor's supplemental regulations (29 CFR parts 5 and 1926), the Civil Rights Act of 1964 as amended, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in the Department of Labor regulation (29 CFR part 3), and the Equal Opportunity Employment requirements of Executive Order 11246 as amended by Executive Order 11375 (Labor regulations (41 CFR Part 60)). In such projects, the contractor agrees to post wage rates at the work site and submit a copy of their payroll to the Agency Member for their files. In addition, to comply with the Copeland Act, the contractor must submit weekly payroll records to the Agency Member. The contractor must keep records for three (3) years and allow the federal grantor agency access to these records, upon demand. All federally assisted contracts to Agency Members that exceed \$10,000 may be terminated by the federal grantee for noncompliance by the contractor. In projects that are not federally funded, bidder must agree to meet any federal, state or local requirements, as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed on costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee. On all other projects, the prices must agree with this contract. Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 187 [h], and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et. Seq.); and, Executive Order 11738 and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included in the EPA list of violated facilities

Fixed prices: Fixed price offers shall include prices for any and all items. Fixed prices shall be firm until each anniversary date of contract, unless there is an occurrence of one or more economic price adjustment contingencies outlined the bid. If price adjustment contingencies occur, or not less than thirty (30) days prior to each contract anniversary date, Contractor may submit a fully documented request for price adjustment to AEPA and then to Member Agency. The documentation must substantiate that any requested price increase was clearly unpredictable at the time of bid submittal and results from an increased cost to Contractor that was out of Contractor's control.

Fixed price review: Member Agency will review requests for fixed price adjustments to determine if the new prices or another option is in the Agency Members' best interests. New fixed prices shall apply to the contract upon approval from Member Agency. Price changes shall be a factor in contract renewal

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 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; mobilization; 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 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. 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, 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.

Form of contract: The form of contract for this solicitation shall be the Invitation for Bid, the awarded bid(s) and properly issued purchase orders referencing the requirements of the Invitation for Bid. If a firm submitting a bid requires Member Agency and/or Agency Member to sign an additional contract, a copy of the proposed contract must be included with the bid.

Fungible Goods: Title to an undivided share or quantity of an identified mass of fungible goods will not pass to a buyer until a separation of the purchased share has been made, delivered and received.

Gratuities: Member Agency may, by written notice, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the contractor or any agent or representative of the contractor, to any employee of the Member Agency with a view toward securing a

contract or with respect to the performance of this contract. However, 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 the Member Agency for demonstration, evaluation, or loan purposes are not considered gratuities.

Improper Delivery: Unless contrary to other parts of this solicitation, if the goods or the tender of delivery fail in any respect to conform to this contract, the purchasing Agency Member may: 1) reject the whole; or 2) accept the whole; or 3) accept any commercial unit or units and reject the rest.

Indemnification: To the extent permitted by law, Member Agency and its Agency Members shall be indemnified and held harmless by contractor for its vicarious liability as a result of entering into this contract. Each party to the contract is responsible for its own negligence.

Inquiries: Inquiries and questions related to this solicitation, the solicitation process and any resulting contract award may occur and should be addressed to the following:

1. From the time the solicitation is published and the due date and time the responses are received inquiries and questions should be shall be submitted, in writing, referencing AEPA Bid #011, to Tammy Standley, 2001 SW Nye, Pendleton, OR 97801, by fax to Tammy Standley at (541) 276-4252, or by email to Tammy Standley at tammy.standley@umesd.k12.or.us.
2. From the time bids are received and opened until the time AEPA has approved and made its recommendations inquiries and questions should be made in writing to Jeff Kimball, AEPA Bid Coordinator, c/o CSIU, P.O. Box 213, Lewisburg, PA, 17837 or via fax at 570-524-5600 or email at jkimball@csiu.org.
3. From the time AEPA has made its approval and recommendations until individual contracts have been awarded by the individual AEPA member agencies or questions relate to contract implementation, pricing, extension/renewal and/or termination, questions should be addressed to bid oversight committee chair by contacting Pam Clover, AEPA Secretary, at pclover@wesc.k12.in.us for correct contact information for committee chair.
4. Once a contract has been awarded by an individual Member state agency any inquiries and questions relating to contract implementation, execution, transactions and/or concerns/issues occurring within that state should be addressed to the individual Member state agency.
5. All other inquiries and questions should be addressed the AEPA president.

Installation: Equipment and items of construction shall be installed in accordance with the manufacturer's instructions, specifications, in accordance with any federal, state, local rules, regulations, codes and the schedule determined by the Member Agency and/or buying Agency Member.

Late Bids: Late bids shall not be considered, and will be returned within ten (10) days, upon request, unopened. If not returned, late bids will be destroyed after thirty (30) days.

Leases and Rentals: Contractor may allow Agency Members to rent, lease or lease purchase. Member Agency must receive a copy of the executed leasing documents prior to processing a purchase order. Member Agency will not collect monthly lease payments. Contractor agrees that leases will be in compliance with the Uniform Commercial Code. All terms of leasing must be included in the bid, with interest rates described as related to a published government standard. Contractor must indicate in their response to this solicitation if the shipping costs for the return of leased or rented equipment are the responsibility of the Agency Member, and what those costs will be. No sale of a contract to a third party will be made without informing the Agency Member of the transfer. If contractor sells a lease contract to a third party, the cost of return of the product must not be greater than the cost of return to the original contractor.

Legal Remedies: All claims and controversies shall be subject to the Procurement Code of the state in which the Member Agency resides.

Licenses and Registration: Each AEPA member state and local jurisdictions may require various types of licenses and/or registrations (business, construction contractor, etc). Likewise, there are various policies, procedures, rules, regulations, codes and laws that govern such licensing/registration within federal, state and local jurisdictions, therefore, it is the Bidder's/Contractor's responsibility to be aware of, obtain and maintain in current status all federal, state and local licenses, registrations and bonds required for the performance and delivery of any and all products and services offered in its response to this solicitation. It is also the responsibility of the Bidder/Contractor to ensure that any subcontractors performing under this bid hold and maintain the appropriate licenses/registrations. The Bidder will submit copies of licenses, registration and/or other documentation to substantiate they hold the appropriate licenses/registration required by individual jurisdictions covered by this solicitation.

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

Local public body: A political subdivision of the state and the agencies, instrumentalities and institutions thereof. Such agencies may include but are not limited to two-year and four-year post-secondary educational institutions, pre-k-12 institutions, counties, cities and municipalities, except as exempted pursuant to the Procurement Code within each state. Entities within these groups may include but are not limited to political subdivisions, administrative units, councils, commissions, boards and organizations that either by federal, state or local legislative or administrative action or appointment and have been established or given the responsibility and authority to act, conduct and perform various activities on behalf of the federal or state agency or local public body.

Member Agency: Member Agencies are local public bodies and AEPA has limited to one per state and usually represent a large number of participating educational & government agencies in their state. Member Agency shall be the entity identified in the table on page two of this document that has chosen to participate in this bid. Not every listed entity may elect to participate in this bid once the responses are reviewed.

Modification by member: Contractor shall have no obligation with respect to any patent and copyright infringement claim based upon Agency Member's modification of the equipment and/or software, or its operation or use with apparatus, data or programs not furnished by contractor. However, one Member's action will not preclude Contractor's obligation to others not having modified their equipment or software.

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

Most Favored Customer: The Member Agency expects contractors to bid their very best prices to the Agency Members. The contractor may respond to any solicitation from any public procurement unit without regard to this contract. If contractor offers lower prices to any of its other customers, it must lower its prices to its Member Agency at the same time by facsimile or written notice. If upon discovery, the Member Agency verifies that the contractor is offering the Agency Members lower prices outside this contract, the Member Agency reserves the right to cancel this contract.

Multiple Approvals and Awards: Throughout the United States, participating Member Agencies have a large number of Agency Members. In order to assure that any ensuing contracts will allow the Member Agency to fulfill current and future needs and requirements, AEPA and its Member Agencies reserve the right to approve and/or award contracts to multiple contractors. The actual use of any contract will be at the sole discretion of Agency Members. It is AEPA and its Members Agencies discretion to approve and/or award multiple contracts, to approve and/or award only one contract, or to approve and award no contracts.

New catalogs/price lists: New price lists or catalogs may be submitted for review throughout the term of the contract after being reviewed, recommended and approved by AEPA. The AEPA Oversight Committee will review new price lists or catalogs to determine if the new prices or an alternative option is in the Agency Members' best interests. New price lists or catalogs shall apply to the contract recommended by AEPA only upon approval by Member Agencies. New price lists or catalogs found to be non-competitive at any time during the contract would be grounds for terminating the contract.

New products/Services: New products and/or services that meet the scope of work may be added to the contract. Pricing shall be equivalent to the percentage discount for other products. Contractor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products may be added to avoid competitive procurement requirements. Member Agency may require additions to be submitted with documentation from Agency Members demonstrating an interest in, or a potential requirement for, the new product or service. Member Agency may reject any additions without cause.

No Replacement of Defective Tender: Every tender of materials must fully comply with all provisions of this contract. If tender is made which does not fully conform, this shall constitute a breach and contractor shall not have the right to substitute a conforming tender without written consent of all parties involved.

Nonexclusive Contract: Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the Member Agency. Member Agency and its Agency Members reserve the right to obtain like goods and services from another source.

Nonresponsive Bid: Any bid that does not conform to all material requirements of the solicitation including but not limited to: bids received after the deadline; bids that do not contain required items such as proper and/or signed forms, pricing, catalogs, electronic files; bids that do not contain the proper bid bond where required. Nonresponsive bids will not be considered for award.

Notice: Notices under this solicitation/contract will be in writing and will, for all purposes, be deemed to have been fully given when sent by registered or certified mail, return receipt requested, postage prepaid, properly addressed to the respective parties as specified herein or at such other address as may be specified by either party from time to time.

Novation: If the original 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. AEPA reserves the right to recommend acceptance or rejection of the new party. A simple change of name agreement will not change the contractual obligations of the contractor.

Options: Optional equipment or products may be added to the contract at the time they become available under the following conditions:

1. The enhancement is recommended by AEPA and approved by the Member Agency;
2. The option is priced at a discount similar to other options;
3. The option is an enhancement to the unit.

Order of precedence: In the event of a conflict in the provisions of the contract as accepted by the Member Agency, the following order of precedence shall prevail:

1. Member Agency Specific terms and conditions
2. Specifications and scope of work
3. General terms and conditions
4. Attachments and exhibits
5. Documents referenced or included in the solicitation

Overcharges by Antitrust Violations: Member Agency maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the contractor hereby assigns to the Member Agency any and all claims for such overcharges as to the goods or services used to fulfill the contract.

Parole Evidence: This contract represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

Past Performance Information: PPI is relevant information regarding a bidder's actions under previously awarded contracts to schools, local, state, or federal agencies. It includes the bidder's record of conforming to specifications and to standards of good workmanship; the bidder's record of containing and forecasting costs on any previously performed cost reimbursable contract schedules, including the administrative aspects of performance; the bidder's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the bidder's businesslike concern for the interests of the customer.

Patent and copyright indemnification: To the extent permitted by law, Contractor shall indemnify and hold harmless Member Agency and its Agency Members against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of contract performance or use by Member Agency and its Agency Members of materials furnished or work performed under this contract. Member Agency and its Agency Members shall reasonably notify contractor of any claim for which it may be liable under this paragraph.

Price: The contractor agrees that the cost for any item bid on this contract will be uniform for all states, and that any differences are actual freight (shipping) costs, and that if the cost is lowered for any Member Agency for any reason, the cost will be lowered at the same time for all agencies for the same reason. (If one Member Agency proposes to purchase a large volume of one product at one time and the contractor agrees to provide an additional discount, that same discount would be available to any agency in any of the Member Agencies participating in this contract. **Contractor must agree that they will not provide an equal or lower cost to any state or multi-state contract for a volume less than that through AEPA.** Any special discount must be available for a minimum of 30 days or until supply lasts.) Installation rates may vary from Member Agency to Member Agency, but material costs must be the same for all Member Agencies. Member Agency administrative and freight and shipping cost may also vary as necessary. Any and all variations to pricing based on geographical locations must be indicated in the bid response.

Prime Contractor: For the purpose of this bid, a contractor will be considered a prime contractor and not a subcontractor. Any contractor paid directly by the Agency Member is a prime contractor; a contractor pays a subcontractor. Prime contractors using subcontractors are responsible for all actions of its subcontractors.

Procurement Code: The State Procurement Code in the state which the Member Agency resides and the Member Agency Procurement Rules and Regulations are a part of this document as if fully set forth herein.

Product Discontinuance: In the event that a product or model is discontinued by the manufacturer, the contractor may substitute a new product or model if the replacement product meets or exceeds the performance of the discontinued model and if the discount from retail is the same or greater than the discontinued model.

Product Line: If applicable, contracts will be awarded to bidders able to provide their complete product line of equipment, software and services described in the scope of work and/or specifications. Bidders with a published, priced catalog may submit the entire catalog; the AEPA reserves the right to select or reject products within the catalog for recommendation without having to award all the contents.

Progress Payments: Member Agency will permit its Agency Members to make progress payments on a purchased good or service under the following conditions:

1. The Agency Member and the contractor agree to the terms of the progress payments prior to issuing a purchase order;
2. The purchase order describes the amounts to be paid and the date of payment;
3. That the Agency Member has a satisfactory method of verifying progress described in writing in a letter or on the purchase order;
4. That payments will only be made when actual goods and/or services are verified/received; and
5. That any such payments be made in full compliance of Agency Member's local board rules and any and all other applicable state rules and regulations.

Protests: Under this public procurement and AEPA solicitation any bidder who is aggrieved in connection with any of the three (3) procurement function(s) including, but not limited to:

1. The preparation and contents of the solicitation, its terms, conditions and specifications, the notification, distribution of solicitation documents and addendums (date published through the bid due date and time);
2. The receiving, opening, recording, evaluating, making and approving bidders to be considered for an award. (Date received and opened through date of individual contract award). AEPA Board of Directors' actions relating to contract renewal and extension.
3. The awarding, implementing and administering of resulting contracts and the disclosure of confidential data. (Date individual contracts awarded through the term of contract).

Protest contents: Protests shall be in writing, must be filed with the Executive Director of the Member Agency, A protest must include: 1) The name, address and telephone number of the protester; 2) The original signature of the protester or its representative; 3) Identification of the procurement function and/or contract activity with the solicitation or the contract number; 4) A detailed statement of the factual grounds or legal basis for the protest; 4) include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; 5) The form of relief requested.

Protest Submittal: Based on which one of the three above noted procurement functions is being protested the bidder shall submit their written protest for:

1. Item 1 above to: Tammy Standley, 2001 SW Nye, Pendleton, OR 97801, by fax to Tammy Standley at (541) 276-4252, or by email to Tammy Standley at tammy.standley@umesd.k12.or.us. immediately when the protester knows or should have known the basis of the protest or within ten calendar days of the bid's due date in accordance with appropriate state statutes where the Member Agency resides.
2. Item 2 above to: Jeff Kimball, AEPA Bid Coordinator, c/o CSIU, P.O. Box 213, Lewisburg, PA, 17837 or via fax at 570-524-5600 or email at jkimball@csiu.org. immediately when the protester knows or should have known the basis of the protest or within ten calendar days of being notified of the AEPA Board's decision.
3. Item 3 above to the individual AEPA Member Agency's office who is involved and in accordance with the appropriate state statutes where the Member Agency resides.

Protest Resolution: Protest shall be resolved, in accordance with AEPA's Board Policies, Procedures and the appropriate state statutes where the Member Agency resides. It is the intent of the AEPA that all

decisions up to AEPA approval or rejection be a group decision, however appropriate state statutes where the Member Agency resides shall take precedence. Note that some Member Agency requires losing party in protests to pay costs of the protest.

Provisions Required By Law: Each and every provision of law and any clause required by law to be in the contract 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 bids submitted to this invitation shall become the property of the AEPA and will become a matter of public record, available for review, subsequent to the award notification. Bids may be viewed, by appointment only, at the Wilson Education Center, 2101 Grace Avenue, Charlestown, IN 47111, under the supervision of the Executive Director, Phil Partenheimer, ED. D., Executive Director or his designee, from 8:30 a.m. to 3:30 p.m., Monday through Friday.

Responsible Bidder: A responsible bidder is a firm or person with the capability to perform the contract requirements and the integrity and reliability, which will assure good faith performance. Member Agency must determine a bidder to be responsible before awarding a contract to bidder. Prior to a recommendation for award be presented to AEPA, the Contract Oversight committee must determine whether a bidder is responsible. If award is approved by AEPA, Member Agencies reserve the right to determine if said contractor is responsible in their respective state.)

Responsive Bid: A responsive bid reasonably and substantially conforms to all material requirements of the solicitation. Bids must be responsive to receive award consideration.

Restocking Fees: A restocking fee may only be charged on products ordered and that have been delivered to the Agency Member's site. Restocking fees in excess of 15% will not be allowed. Restocking fees may be waived, at the option of the contractor.

Right to Assurance: Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he/she may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

Safety Measures: Contractors shall take all necessary precautions for the safety of employees on the worksite, and shall erect and properly maintain at all times, as required by job conditions and progress of the work, all necessary safeguards for the protection of the workers and public. They shall post danger-warning signs against the hazards created by their operation and work in progress. Proper precautions shall be taken pursuant to state law and standard construction practices in order to protect workers, the general public and existing structures from injury or damage.

Safety Standards: All items supplied on this contract shall comply with the current applicable Occupational Safety and Health Standards, the National Electric Code, and the National Fire Protection Association Standards.

Severability: The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract that may remain in effect without the invalid provision or application.

Serial Numbers: Bids must be for equipment on which the original manufacturer's serial number has not been altered in any way.

Shipment under Reservation: Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

Shipping Costs: Products may be shipped without additional cost. If shipping is charged, the actual cost of delivery may be added to an invoice. No COD orders will be accepted.

Shipping Errors: Contractor agrees that shipping errors will be at the expense of the contractor. For example, if a contractor ships a product to a Agency Member that was not ordered, it is the responsibility of the contractor to pay for return mail or shipment, at the convenience of the Agency Member.

Shipping Terms: Prices that include shipping to any location in the state, delivered to the specific receiving point as identified in the purchase order to the contractor, are preferred. Contractor shall retain title and control of all goods until they are delivered and received. All risk of transportation and all related charges shall be the responsibility of the contractor. Shipping shall be F.O.B. destination. The contractor shall file all claims for visible or concealed damage. Member Agency, or the receiving Agency Member, will notify the contractor and/or Freight Company promptly of any damaged goods and shall assist the freight company/contractor in arranging for inspection. No F.O.B. vessel, car or other vehicle terms will be accepted.

Smoking: All contractors and subcontractors must adhere to local smoking policies when inside a building working on this contract. Smoking will only be permitted in posted areas, or off premises.

Specifications: All specifications in this solicitation are designed to enable a bidder to satisfy a requirement for a product, material, process, or service. A specification may be expressed as a standard, a part of a standard, or independent of a standard. No specification is intended to unnecessarily limit competition by eliminating items capable of satisfactorily meeting the actual needs of the procurement. Any contractor believing a specification is unnecessarily restrictive, and submits a bid, must indicate such in its initial response. The fact that a manufacturer or supplier chooses not to produce or supply equipment, supplies, or services to meet these specifications will not be considered sufficient cause to adjudge these specifications as restrictive. Bidders shall bid equipment, supplies and/or services which they believe comply with these specifications. If the bidder deviates from these specifications, reasons must be stated for such deviation and state why, in their opinion, the equipment, supplies and/or services they bid will render equivalent reliability, coverage, performance and/or service. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire bid.

State Agency: means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state.

Standard of Responsibility: Factors to be considered in determining whether the standard of responsibility has been met may include but is not limited to whether a bidder has:

1. submitted a responsive bid;
2. possesses the qualifications stipulated herein that may include but is not limited (to) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction, or items of tangible personal property described in the invitation for bids to those AEPA member states who have indicated their participation;
3. a demonstrated and documented satisfactory track record of performance in the national market place;
4. a satisfactory record of integrity, adherence of and compliance with federal, state, local and industry standards, rules, regulations and codes;
5. supplied all necessary information and data in connection with the inquiry concerning responsibility.

Stored Materials: Upon prior written agreement between Contractor and Agency Member, 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 Agency Member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by Contractor against loss and damage. Contractor agrees to provide proof of coverage and/or addition of Agency Member as an additional insured upon Agency Member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of Agency Member and be separated from other materials. Agency Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by Agency Member, it shall be Contractor's responsibility to protect all materials and equipment. Contractor warrants and guarantees that title for all work, materials and equipment shall pass to Agency Member upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

Suspension or Debarment Status: If within the past five (5) years, any bidder has been disbarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with a federal, state or local government, the bidder must include a letter with its response or bid setting forth the name and address of the public procurement 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. Any failure to supply such a letter or to not disclose in the letter all the pertinent information may result in the cancellation of any contract. By signing the bid section, the bidder certifies that no current suspension or debarment exists.

Tare: If the contractor requires the buyer to pay for shipping, the weight of the empty container and any material used for packing shall be of the lightest weight practical for safe delivery of the contents.

Term of Contract and Extensions: The term of the agreement shall commence on the date of the award by the Member Agency and continue until **February 28, 2012** unless terminated, canceled or extended.

By mutual written agreement, the contract may be extended for three additional 12-month periods, ending on the last day of February. Member Agency reserves the right to offer month-by-month extensions until a new contract is awarded. AEPA may choose to recommend the contract extension. If so recommended, an individual Member Agency may choose to not extend the contract.

Termination by Member Agency: Member Agency may cancel any contract secured by the solicitation without any further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the Member Agency is or becomes, at any time while the contract or any extensions of the contract is in effect, an employee of, or a consultant to any other party to this contract with respect to the subject matter of the contract. Such cancellation shall be effective when the parties to this contract receive written notice from the Member Agency unless the notice specifies a later time. Cancellation by one Member Agency does not require other Agencies to cancel their contracts.

Termination for Convenience: Member Agency reserves the right to immediately terminate this contract, without penalty or recourse, in whole or in part, if the Member Agency determines that termination is in the best interest of Agency Members. The Contractor, after receipt of a "Notice of Termination," shall not accept any new orders after the termination date specified in the notice. Any termination shall have no effect on projects that are in progress at the time the cancellation is received by the Member Agency.

Contractor shall be entitled to receive just and equitable compensation in accordance with applicable contract pricing for work in progress, work completed and materials accepted before the effective date of the cancellation. The contractor will not be reimbursed for any anticipated profit.

The Member Agency reserves the right to cancel, or suspend the use thereof, any contract resulting from this IFB if the contractor files for bankruptcy protection, or is acquired by an independent third party.

Contractor may cancel this contract upon written notice to the Member Agency prior to the intended termination date (or on the yearly anniversary of the bid). Any termination shall have no effect on projects that are in progress at the time the cancellation is received by the Member Agency.

Termination for Default: If either party is in default under this contract, it shall have an opportunity to cure the default within the time indicated (ten business days in most states) after it is given written notice of default by the other party, specifying the nature of the default. Upon receipt of the notice of default, the defaulting party shall have ten business days to provide a satisfactory response to the Member Agency. Failure on the part of the defaulting party to adequately address all issues of concern may result in contract termination. If the default is not cured within the time specified in the notice of default, the non-defaulting party shall have the right, in addition to all other remedies at law or equity, to immediately terminate this contract. Failure to complain of any action, non-action or default under this Agreement shall not constitute a waiver of any of the parties' rights hereunder.

The Member Agency reserves the right to terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Member Agency, upon request, with adequate assurances of future performance. In the event of termination for cause, the Member Agency shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Member Agency or any Agency Members for any and all rights and remedies provided by law. If it is determined that the Member Agency improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

The Member Agency will issue written notice to the contractor for acting or failing to act in any of the following:

1. The contractor provides material that does not meet the specifications of the contract;
2. The contractor fails to adequately perform the services set forth in the specifications of the contract;
3. The contractor fails to complete the work required or to furnish the materials required within a reasonable amount of time;
4. The contractor fails to make progress in the performance of the contract and/or gives the Member Agency reason to believe that the contractor will not or cannot perform to the requirements of the contract;

5. The contractor fails to observe any of the terms and conditions of the contract;
6. The contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the Member Agency.

Title and Risk of Loss: The title and risk of loss of material or service shall not pass to the procurement unit purchasing the material or services until it actually receives the material or service at the point of delivery, unless otherwise provided within this document.

Trade-in Equipment: Equipment for trade-in shall be dismantled by the bidder and removed at its expense. The conditions of the trade-in equipment at the time it is turned over to the contractor shall be the same as when the original agreement was made, except as affected by normal wear and tear from use between the time of the bid and the trade-in. Values placed on trade-in products are between the Agency Member purchasing the new unit and the contractor.

Vendor contract documents: Member Agency will review proposed vendor contract documents. Vendor's contract document shall not become part of Member Agency's contract with vendor unless and until an authorized representative of Member Agency reviews it.

Warranty: Contractor warrants that all equipment, software and service delivered under this contract shall conform to the specifications of this contract. All equipment should carry a minimum 12-month manufacturer's warranty that includes parts and labor. The manufacturer has the primary responsibility to honor a manufacturer's warranty; a distributor or dealer agrees to assist the purchaser reach a solution in a dispute with the manufacturer over a warranty's terms. Any extended manufacturer's warranty will be passed on to the Agency Member. For example, if a voice board has a three-year warranty, but the board is in a turnkey system that has a one-year warranty, the voice board's three-year warranty must be honored by the contractor. All extended warranties must be passed on, without exception. If upon discovery, the contractor charges an Agency Member for a replacement part that the contractor actually received at no cost under a warranty, the contractor will rebate the amount billed and the Agency Member reserves the right to cancel the contract.

IV. MEMBER AGENCY SPECIFIC TERMS AND CONDITIONS

A single IFB 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 *General Terms and Conditions*, the *Member Agency/State Specific Terms and Conditions* will prevail.

Common Terms and Conditions of all individual states are as follows:

Active Promotion of Contract: Agencies require that the contractor take ownership and actively promote the contract in cooperation with the **Member Agency** to all of the Agencies' qualified Agency Members.

Sales to Agency Members: Member Agencies require that all awarded contractors offer the **Member Agency** contract opportunity to all qualified Agency Members of the cooperative.

Legal Obligations: All Contractors 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.

Fees: Many of the AEPA Member Agencies charge contractors an administrative or participation fee. Details of how these fees are charged will be found under each state's Terms and Conditions. The fee amount is additionally listed here for the convenience of the prospective bidder.

| | | |
|----------|----------|-----------|
| CA 2 % | MI 1.5 % | OR 2 % ** |
| CO 1 % | MN 2% | PA 2 % ** |
| CT 1.5 % | MO 2%* | VA 1.5 % |
| FL 2% | MT 2 % | WA 2 % ** |
| IN 2.2 % | NE 2 % | WY 1 % |
| IA 2 % | NM 2% | |
| KS 2 % | ND 2 % | |
| KY 2 % | OH 1 % | |

*Fees are added by the Member Agency. Bidder supplies net pricing.

** Fees may vary, consult Member Agency.

In addition to the common Terms and Conditions above, each *Member Agency* has submitted Terms and Conditions appropriate for their State. Each State consists of the following information:

A. Additional Member Agency Terms and Conditions identify items that apply to the procurement process in addition to the previously listed *General Terms and Conditions*.

B. Procedure for Processing Orders defines the process for accepting purchase orders, delivering the services and goods, invoicing for the items and obtaining the funds in payment for the goods and services. Some Member Agencies will have the Agency Members send them the purchase orders; others will have the individual Agency Members send the purchase orders directly to the contractor. *Member Agency* processes differ, and it is the responsibility of the contractor to become familiar with the procedures in each state.

C. Agency Members Purchasing under the Member Agency describes who is able to purchase under this contract in each of the states. Several Member Agencies provide services to all districts in those states. Other Member Agencies may have fewer Agency Member districts, but actually have a greater potential because of the population density. A few Member Agencies will provide services to more than the education community. The table at the beginning of the IFB summarizes the Member Agencies and the number of students contained in the member procurement units.

1. California, Monterey County Office of Education d/b/a CalSAVE

A. Additional Agency Terms and Conditions

(1) **Governing Law and Venue.** The laws of the State of California 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 be with 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) **Other Agencies' Right to Purchase.** Subject to the following terms and conditions, the Monterey County Office of Education (MCOE) consents to public school districts, K-12 private schools, charter schools, community college districts, and other state and local public agencies in California throughout the State of California (such agencies are collectively denominated as "Other Agencies" and each individually denominated as "Other Agency") purchasing identical items at the same unit price(s) under the terms and conditions of this Contract, as may be authorized by Sections 20118 and 20652 of the Public Contract Code or other legal authority:

- a) Any Other Agency authorized by law to use this Contract for its own purchase(s) from the contractor/vendor shall 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* and *c* below.
- b) After entering into a standard agreement with MCOE, an Other Agency electing to use this Contract will enter into a separate contract or purchase order ("Separate Contract") with the contractor/vendor. The Separate Contract must include and/or incorporate all applicable terms of this Contract and a specific requirement that the contractor/vendor comply with the provisions set forth in paragraph below regarding payment of the two percent (2%) participation fee to be collected by the Epylon Corporation. The MCOE will not be a party to any Separate Contract, but will be considered a third party beneficiary of such Separate Contract.
- c) The contractor/vendor understands and agrees that failure or refusal to comply with the provisions set forth in this agreement regarding payment of the two percent (2%) participation fee in conjunction with any Separate Contract or any other use of this Contract by an Other Agency is grounds for cancellation of the Contract. The contractor/vendor also understands and agrees that if the Contract is cancelled for this or any other reason, MCOE may give notice of such cancellation by any other means appropriate to inform Other Agencies of that cancellation.
- d) The MCOE waives any right it may have to require any Other Agency 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 contractor/vendor.
- e) Sales tax and freight/shipping charges included in the Contract apply to the MCOE only. Additional sales tax and freight/shipping charges may be required on purchases by any Other Agency and are outside the scope of this Contract.
- f) This Contract and any Separate Contract are for the purchase of the items covered by Contract. An Other Agency may, however, exercise its authority under Education Code section 17597 or 81645 or other legal authority to sell and lease back any item owned by, or to be owned by, it pursuant to any Separate Contract. The contractor/vendor agrees to take any and all actions requested by any Other Agency that are necessary to effect 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 contractor/vendor and any Other Agency 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, contractor/vendor and any Other Agency considering such use consult with their own legal counsels before doing so.
- h) Both the contractor/vendor and any Other Agency using this Contract agree to defend, indemnify and hold the 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 contract fails to pay participation 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:
 - i. Step 1 - Issue a warning Letter of Concern outlining the violations and length of time to correct the problem(s).
 - ii. Step 2 - Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.
 - iii. Step 3 - Issue letter to cancel contract.
Upon receipt of the written notice 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.
- j) The term of the agreement shall commence on the date of the award, and continue as stipulated in general terms and conditions, unless terminated, canceled or extended. Contract may be terminated by MCOE if members have not used the contract in any 12-month period, or if orders from participating members do not total \$10,000 in any 12- month period.
- k) Marketing and Advertising under this Agreement
 - a. Vendor will include the approved CalSAVE logo, web address, and toll free number in all print electronic mail and other advertising and promotion intended for release to California K-12 schools, excluding national marketing releases.
 - b. The CalSAVE logo and associated CalSAVE information shall be of a clearly readable size and in appropriate proportion to other elements in the print material.
 - c. Vendor agrees to provide CalSAVE with a copy or proof sheet of the advertisement or promotion material. Vendor will provide CalSAVE with date of release and name of publication, journal, etc.
 - d. Vendor shall place a supplied CalSAVE vendor sign on booths, tables, etc. of any or all exhibits for which the vendor displays/participates at California tradeshows, conventions and the like. Vendor will supply in advance scheduled exhibit dates. Vendor agrees to make available at the exhibit CalSAVE supplied brochures or other promotion materials.

- e. Vendor agrees to insert the approved CalSAVE logo, web address, toll free number on the vendor's web site promoting and providing a link to the CalSAVE website.
- f. Vendor will supply product catalog information, product description, pricing, etc. as requested by CalSAVE in a spread sheet format as specified by CalSAVE for inclusion in the CalSAVE website.
- g. Requested materials will be submitted to CalSAVE within 30 days.

3) **Authority.** For California, this bid is issued under the authority of the elected Monterey County Superintendent of Schools, who administers the Monterey County Office of Education, located at 901 Blanco Circle, Salinas California, 93912.

4) **Types of Products and Services to be Purchased.** An award by the Monterey County Superintendent of Schools 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. When any services or repairs fall into a category of Public Works as defined in Public Contract Code 22002, a buying agency may use this California contract for services only up to \$14,999. For projects that cost \$15,000 or more, a local agency must bid itself independently for the services and labor related to the public work, but may use this California contract for the supplies, material or equipment related to the project.

5) **CalSave Administration and Agent.** *CalSAVE* is the cooperative purchasing program founded by the Monterey County Office of Education and administered by the Epylon Corporation under contract with MCOE, in cooperation with the California County Superintendents Educational Services Association (CCSESA). Epylon serves as MCOE's agent. Correspondence and communication related to the contract award or administration of the program should be directed to Epylon, 3675 Mt. Diablo Blvd, Suite 110, Lafayette, CA 94549.

6) **Participation Fees.** Transaction Fees are the funding source for the operation of the CalSAVE cooperative purchasing program. Awarded Vendors shall be required to pay a Transaction Fee ("Transaction Fee") for all purchases by entities made through the awarded Contract. For the purpose of this bid through Monterey County Office of Education and all Contracts awarded using this document, the Transaction Fee shall be 2 (two) percent of "Net Sales," which means gross sales less returns and cancelled orders within thirty (30) 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 themselves. Awarded Vendor or its designated authorized reseller(s) shall not include any additional amount corresponding to the Transaction Fees in the bid responses or awarded Contract prices. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order. Epylon will collect the Transaction Fee on behalf of the CalSAVE program.

B. Procedure for Processing Orders

1) Once the award is made to the contractor/vendor, MCOE will inform Other Agencies of the Contract. At this point the contractor/vendor may directly contact any Other Agency and any Other Agency may directly contact the contractor/vendor.

2) The total cost of the MCOE's program is funded through a two percent (2%) participation fee paid to MCOE by the participating contractor/vendors. The administrative fee percentage is based upon the total sale of goods and services, including installation, if included. This fee shall be reflected in all price quotations under the MCOE agreement. Do not print the 2% fee as a line item on the quotation.

3) After entering into an agreement with MCOE, an Other Agency electing to use this Contract will enter into a separate contract ("Separate Contract") with the contractor/vendor. Purchase orders will be issued

by participating Other Agencies to contractor/vendor. Other Agencies will fax or mail purchase orders directly to the CalSAVE office (fax (866) 488-3729. All purchase orders received by 3:00 PM PST will be logged and forwarded to the appropriate vendor on the same day received whenever possible. Contractor/vendor will deliver goods/services and invoices directly to the participating Other Agencies and receive payments directly from the participating Other Agencies.

4) The contractor/vendor will make all participation fee payments to the Epylon within two weeks after sending the quarterly report. Checks are to be made payable to the Epylon Corporation and sent to 3675 Mt. Diablo Blvd., Suite 110, Lafayette, CA 94549. ATTN: CalSAVE.

The contractor/vendor will compile a quarterly report listing each purchase made by participating Other Agencies under this contract, and send them by the 15th of April, July, October, and January to Jodi Szuter with the e-mail address of Jodi@CalSave.org. These reports shall be in Microsoft Excel format and shall have file names that identify the contractor/vendor and the month being reported. They shall include the fields listed below, and shall allow for sorting on any of these fields: Date of Order, Name of Participating Other Agency, Item Purchased, Quantity, Unit Price, Extended Price.

The current agent for administration of this contract is the Epylon Corporation. MCOE reserves the right to change agents or to change the contact name of existing Agent's personnel administering the contract. If Agents or Agent personnel change, then reports and payments will be sent to the new contact specified.

C. Additional Piggyback and Standard School Supply and Equipment Authority

This project is a self-supporting function of the Monterey County Office of Education. Contracts are made available to all California public school districts, K-12 private schools, charter schools, community college districts, and any other California public agency.

The Monterey County Office of Education declares that items, 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 create both the EdBuy and the CalSAVE programs 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 Contracts Code [20118](#) and [20652](#), but also in accordance with Education Code [38110](#) and [38112](#) dealing with cooperatives and Standard School Supplies & Equipment.

2. Colorado, Colorado BOCES Association (CBA)

A. Additional Agency Terms and Conditions

Advertising: CBA will require a marketing flier from each vendor promoting the contract and AEPA relationship. CBA will assist in the development of the marketing flier and material. This flier will be for distribution as well as posted on the CBA online catalog and disseminated to all members.

Sales to Members: CBA requires that all participating vendors offer the Agency contract opportunity to all qualified membership. Qualified membership is defined under 3.

Special Bid Security: All Bidders shall comply with the State of Colorado procurement code bidding requirements.

B. Procedure for Processing Orders

- Once the award is made to the vendor, CBA will inform its members of the contract by:
 - a. Including the contract in the agency database that is available on the CBA website.
 - b. Announcing the award in its periodic newsletter and other CBA Member presentations as well as regular electronic and direct mail communications to members
 - c. Offering the opportunity to the vendor to publish the marketing information in a hard copy CBA purchasing catalog.
- A list of members, institution names, contact names, addresses and phone numbers via e-mail will be offered to the vendor. At this point the vendor must contact the members and members may contact the vendor. Note: CBA requires the awarded vendor to take ownership and actively promote the contract in cooperation with CBA to all qualified customers.
- When the member identifies a desired product or service as available through the AEPA contract and agrees on price as presented to the member by the awarded AEPA vendor, the member then issues to the vendor a purchase order for that item or service.
- The awarded price must include an additional one percent (1%) administrative fee in the total cost, 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 complete sales history during that period.
- The sale and transaction may continue without delay or anticipation of the CBA denial of said transaction.
- When all the items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, vendor then forwards a copy of the invoice to CBA. The invoice is to be marked "COPY". The administrative fee percentage (1%) is based on the total sale of goods and services including installation and must be included in the original quoted to the member. In the event of a lease, the total administrative fee from the value of goods 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.
- CBA requires that all participating vendors offer the Agency contract opportunity to all qualified membership. Qualified membership is defined under 3.

C. Members Purchasing Under the Agency

BOCES in Colorado are a legislatively created cooperative organization formed and 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 and all non-profit, state or local agencies.

3. Connecticut, Capitol Region Education Council (CREC)

A. ADDITIONAL MEMBER AGENCY TERMS AND CONDITIONS

Applicability of Contract Provisions to Connecticut Participants

The Capitol Region Education Council (CREC) is the AEPA Member Agency. Any entity that uses the contract awarded by CREC under this document is referred to as a "Participant." The bidder that is awarded the contract by CREC is referred to as the "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.

Modifications and Additions to Contract Language in the AEPA Invitation for Bid

A. Event of default and termination of Contract:

CREC shall have the right to cancel the contract based upon a default by Contractor. A 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, CREC and each 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 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. CREC and each 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 CREC or the 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 CREC and the 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 CREC and the Participants may have. In the event of Contract termination by a Participant, such 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 Participant's expenses, losses and damages incurred in replacing Contractor for the remainder of the term of the Contract.

B. 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 CREC and any 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 CREC and any 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.

C. Indemnification:

Contractor shall indemnify, defend, keep and save harmless CREC, each 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 therefrom 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.

D. Participant Policies:

The Contractor must be familiar with a 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 school district or organization policies, town policies, charters, and ordinances.

As each municipality, board of education, governmental agency, educational institution, and non-profit organization in the State of Connecticut 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 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 Participant should obtain its own legal advice on these statutes prior to purchasing under a contract.

E. Performance Bonds:

Each 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 Participant a Surety Performance Bond (“Performance Bond”) with an option to renew each succeeding year of the Contract in a form satisfactory to the 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 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 Participant. The Contractor must send such Performance Bond to the 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 Participant and licensed or authorized to do business in Connecticut and New England. Failure to deliver the bond shall be considered a default under the Contract, at the discretion of and upon notice by the Participant.

F. Governing law:

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

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.

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, 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 Connecticut. The Contractor further agrees to be an "affirmative action-equal opportunity employer."

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.

Incorporation of Bid Documents

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

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.

Marketing and Advertising under this Contract – applicable to Member Agency (CREC) contract only:

- A. Contractor agrees to provide CREC with a copy or proof sheet of all advertisements, customer communications or promotional material for approval. Contractor will provide CREC with date of release and name of publication, journal, etc. if applicable.
- B. Contractor will include the approved CREC and/or CT RESC Alliance logo, web address, and contact information in all print, electronic mail and other advertising and promotion intended for release in Connecticut.
- C. The CREC and/or CT RESC Alliance logo and associated information shall be of a clearly readable size and in appropriate proportion to other elements in the print material.
- D. Contractor agrees to make available CREC supplied brochures or other promotional materials on booths, tables, etc. of any or all exhibits for which the Contractor displays/participates at tradeshows, conventions and the like. Contractor will supply scheduled exhibit dates in advance.

- E. Contractor agrees to insert the approved CREC logo, web address, and contact information on the Contractor's web site promoting and providing a link to the CREC web site. Contractor will also provide CREC with text, links and logos to be posted on the CREC website.

B. PROCEDURES FOR PROCESSING ORDERS – applicable to Member Agency (CREC) contract only

- A. Once the award is made to the Contractor, CREC will inform the potential Participants of the Contract through a webpage dedicated to the contract on the CREC website. At this point the Contractor may directly contact any potential Participant and any potential Connecticut Participant may directly contact the Contractor.
- B. Purchase orders will not be accepted or processed by CREC. All business will be contracted directly with the Participant, which will issue a purchase order and provide payment for the applicable good or service directly to the Contractor.
- C. To the extent not otherwise described in this document, once a purchase order is issued by a Participant to a Contractor, all of the provisions of the contract shall benefit and be enforceable by such Participant, unless specifically identified as applying to CREC only.
- D. The total cost of CREC's program is funded through a 1.5% participation fee paid to CREC 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 Participants and shall not be printed as a line item on the quotation.
- E. Along with the participation fee, the Contractor will produce and provide to CREC quarterly reports throughout the contract period using the standard format required by AEPA.
- F. Quarterly reports and administrative fee payments are to be made payable to CREC and sent to Capitol Region Education Council, Attn: Cara Hart, 111 Charter Oak Avenue, Hartford, CT 06106 or such other address that CREC will provide from time to time.
- G. If no purchases are made in any given quarter, the Contractor shall remit a "No Activities" statement to CREC for that quarter. The Contractor will also produce and provide to CREC an annual summary report for all purchases made under each contract awarded by CREC pursuant to this document for a period beginning with the award of the contract and ending February 28 and all consecutive annual periods, if the contract is extended.

C. AGENCY MEMBERS PURCHASING 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, public colleges or universities, community colleges, vocational or technical schools, 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 6 New England states – CT, MA, ME, NH, RI, and VT. Sales made in any of these states using the AEPA contract are to be reported to CREC, with the 1.5% administrative fee made payable to CREC. The Contractor must advise CREC its intent to use the contract in any of these states so that we may inform the AEPA board.

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.

D. PORTABLE/MODULAR CONTRACTS ONLY

In the state of Connecticut, at the time of this bid posting, the following holds true:

If a school district is seeking state reimbursement, the district is automatically redirected through a process with stringent requirements that precludes the use of a pre-bid contract. Districts will still have to go through a bidding process, but can avail themselves of AEPA pricing through that process. If funds other than state reimbursement dollars are being used, then local policies prevail.

In addition, when public monies are used for a project that exceeds \$100,000 in renovations or \$400,000 for new construction, the state's prevailing wage rates must be met.

4. Florida, Panhandle Area Education Consortium

A. Additional Agency Terms and Conditions

Vendor Contact: Vendor will designate to the Panhandle Area Educational Consortium (PAEC), 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.

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.

B. Procedures For Processing Orders

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

1. Including the award information on the PAEC Web site at www.paec.org/clearinghouse
2. Announcing the award in its PAEC Horizon and FEC newsletters
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.paec.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. The member then issues to the Vendor a purchase order for that item or service. PAEC must also receive a copy of this purchase order by fax or email.

The purchase order must include an additional (2%) administrative fee built into the total invoiced cost, based on the total costs of good, services and installation.

A final copy of the customer purchase order or sales summary must be sent to PAEC 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 does not warehouse items.

All participating Vendors agree to and are subject to audit proceedings of the AEPA sales to members.

The Vendors price will include a (2%) administrative fee that the Vendor shall collect from the member and remit to PAEC on a quarterly basis. The Vendor will produce and provide to PAEC 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 price sales totals
5. Member savings total

Quarterly reports and administrative fee payments to PAEC 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: Finance Department. 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. 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.

Vendor will also submit an annual sales report identifying all member purchases.

5. Indiana, Indiana Association Educational Service Centers (IAESC), represented by the Wilson Education Center (WEC)

A. Additional Agency Terms and Conditions

Participating entities and approved vendors must be in full compliance with statutory requirements for 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.

B. Procedure for Processing Orders

Wilson Education Center will inform all public school corporations, private/parochial schools, charter schools, non-profit 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. A detailed list of eligible buyers will be provided to successful vendors. After contracts are awarded, vendors are free to contact eligible buyers and vice versa.

The Wilson Education Center utilizes an e-procurement facilitation system as the only mechanism for ordering and the primary method of marketing. Bidders are required to use the IAESC Procurement and GovPro systems upon award. A 2.2% administrative fee will be assessed on Gross monthly sales for IAESC Procurement (used by schools) and a 3.2% administrative fee will be assessed on Gross monthly sales on GovPro (all other entities) after a 1% price increase. Acceptance of a purchase order not transmitted electronically will constitute grounds for termination of bid award. Bidders 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. Each participating entity shall submit properly prepared purchase orders electronically which shall be in strict accordance with the bid award and shall be binding upon the entity. All items shall be shipped to the address indicated on the purchase order. All invoices shall be directed to the specific entity at the address indicated on the purchase order.

C. Members Purchasing Under the Agency

All public school corporations, private/parochial schools, charter schools, non-profit 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.

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6. Iowa, Iowa Educators Consortium (IEC)

A. Additional Agency Terms and Conditions

Legal Responsibility

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.

Public Construction Bidding

Any AEPA recommended contract, signed by the Iowa Educators Consortium, does not replace any obligation for IEC members and Vendors to follow all applicable bidding and other legal requirements of the Iowa Code, including Chapter 26 and 573, or the applicable laws of any other State.

Vendor Contact

Vendor will designate to the Iowa Educators Consortium (IEC) one individual who will represent the Vendor to the IEC 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 the Iowa Educators Consortium members upon award of this bid.

B. Procedure for Processing Orders

Once the award is made to the Vendor, the IEC will inform their members of the contract by:

1. Including the award information on the IEC Web site at www.iec-ia.org.
2. Announcing the award in its periodic newsletters.
3. Publishing the award information in catalogs disseminated to all members.
4. Announcing the award via electronic mail to all members.
5. Attending trade shows and distributing award information.

A list of members, contact names, addresses and phone numbers are available at the IEC Web site: www.iec-ia.org. At this point, the Vendor must 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. All participating Vendors agree to and are subject to audit proceedings of the AEPA sales to members.

Vendor makes all deliveries and installations of products and services. The IEC does not warehouse items.

The Vendor's price will include a (2%) administrative fee that the Vendor will collect from the member and remit to the IEC on a quarterly basis. The Vendor will produce and provide to IEC 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 Vendor and the quarter being reported, shall include a minimum of the fields listed below and shall allow for sorting on any of these fields:

1. Date of order.
2. School district.
3. List or academic price sales totals.
4. IEC/AEPA price sales totals.
5. Member savings totals.

Quarterly reports and administrative fee payments to the IEC are due the 15th of the succeeding month, and all checks are to be made payable to the IEC and sent to: Iowa Educators Consortium, 3712 Cedar Heights Drive, Cedar Falls, IA 50613-6290, and Attention: IEC Director. The IEC may designate another agent for collecting an administrative fee that will be negotiated with Vendor for e-commerce transactions.

Vendor will also submit an annual sales report identifying all member purchases.

C. Members Purchasing Under the Iowa Educators Consortium

The IEC is a statewide consortium that includes a voluntary purchasing program developed for schools in Iowa served by Area Education Agencies (AEAs). Iowa's AEAs were established in the spring of 1974 through enabling state legislation to provide effective and efficient educational services to the public school districts and approved nonpublic schools in the state and to families of children from birth to age 5 with disabilities. Since then, the AEAs have also been given the responsibility to lead Iowa School Improvement efforts. Iowa has 370 public school districts and 205 private school buildings. The IEC also serves colleges, universities, city, county, educational agencies, public and private non-profit governmental entities. The IEC serves schools in the following contiguous states: Illinois, Wisconsin, and South Dakota.

7. Kansas, Southeast Kansas Educational Services Cooperative– Greenbush (SEKESC)

A. Additional Agency Terms and Conditions

It is further agreed that the provisions of K.S.A. 44-1030 (1) to (5), both inclusive, and as shown below, shall be applicable to this contract, except as to those contractors, vendors or suppliers whose cumulative dollar total in any fiscal year is \$5,000 or less or have fewer than four employees.

(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, 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 he reports to the commission in accordance with the provisions of section 15 (44-1031) of this act, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or 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 cancelled, terminated or suspended, in whole or in part, by the contracting agency.

(5) The contractor shall include the provisions of sub-sections (1) through (5) inclusively of the present section in every sub-contract or purchase order so that such provisions will be binding upon such subcontractor or vender.

(6) Any purchase order issued by SEKESC, or one of its District’s, is cancelable under provisions of K.S.A. 10-1113. All purchase orders shall be issued by the Kansas school district desiring to acquire the products or services under the bid. Said purchase order shall include adequate reference to identify the bid to which it relates.

B. Procedure for Processing Orders

The SEKESC develops all specifications for bids and proposals. After solicitation according to state law, awards are made to selected vendors. Members may then purchase from the list of approved vendors. To make a purchase, members prepare a purchase order directly to the vendor, the purchase order is submitted to the vendor as well as a copy mailed or faxed to the SEKESC. The SEKESC will review the purchase order and will provide additional quality assurance to the procurement. If the purchase order is in need of modification, SEKESC will notify the district and the vendor of necessary corrections. The supplier provides the product, material, or service to the member and invoices the member. The member makes payment directly to the supplier. The vendor shall add a 2% administrative fee to the bid price. The administrative fee shall be invoiced as part of the overall invoice to the district. *The vendor shall report gross sales quarterly to SEKESC and submit the 2% administrative fees to the SEKESC on a frequency of not less than quarterly.*

C. Members Purchasing under the Agency

The structure of the SEKESC permits all school districts, interlocals and other qualified agencies to participate in awarded contracts under the AEPA bidding process. Virtually all public school districts in the state of Kansas can legally purchase through the SEKESC. *Qualified agencies include all public educational institutions to include, universities, community colleges, and technical colleges, state, private and parochial schools, and charter schools. By mutual agreement with vendor and SEKESC, all awarded Kansas contracts are eligible to be offered to all cities, counties, governmental agencies and nonprofit organizations.* Occasionally purchases are made from school districts and other non-profit institutions in

adjoining states when the purchase is not available through their service agencies. Contracts available to such adjoining state agencies are available upon mutual agreement of vendor and SEKESC. *No agency is obligated to use these services and/or contracts, but they will find the benefits of low price advantageous.*

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

A. Additional Agency Terms and Conditions

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. By mutual agreement among the eight agencies, GRREC serves as contact agency for all AEPA correspondence. 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.

B. 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, quasi-governmental, or non-profit 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: Bids Coordinator. GRREC may designate another agent for collecting an administrative fee that will be negotiated with vendor for e-commerce transactions. GRREC will share information from the quarterly and annual reports and distribute the administrative fee among the other KY Educational Cooperatives according to membership.

C. 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 176 independent and county school districts and all are eligible for membership in a Bidding Cooperative and approximately 94% 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-governmental, or non-profit organizations. 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.

9. Michigan, Oakland Schools, (OS)

A. Additional Agency Terms and Conditions

1. Vendor Pricing

OS requires that vendors must offer prices lower than what they would offer on any single school district contract in Michigan; on other cooperative purchasing contracts available to Michigan public educational institutions, colleges and/or universities, County Government offices, cities, townships, and villages; or State of Michigan purchasing contracts.

2. Advertising

OS will require a marketing flier, brochure, or other similar marketing vehicle, in electronic format, from each vendor promoting the available contract with the vendor, and/or a web page or link. OS may assist in the development of the marketing flier and material (if requested by vendor), but in all cases shall have authority to review and approve any marketing materials. If a web site is used, the link will be made available from the OS web page. Any web page or link, or other marketing tool shall be dedicated to AEPA information only.

3. Conflict of Interest

Vendor shall disclose in writing to ordering Agency any conflicts of interest with Board members, administrators, and or employees of any Agency Member or Other Agency (as defined below). A conflict of interest may include, but is not limited to, a financial ownership interest in, or employment with vendor or subcontractor by an Agency Member or Other Agency 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 Agency Member or Other Agency from entering into a contract with the vendor (MCL 380.634; MCL 15.322 et seq).

4. School Safety Initiative Legislation – K-12 Education Agency Members Only

Depending on the type of service provided, the vendor and all its employees and agents etc. that are assigned to work “regularly and continuously” in any school building and/or on school property under a contract may be required to undergo fingerprinting and criminal background investigations (*see* MCL 380.1230; 380.1230a; 380.1230c; 380.1230d; and 380.1230g). Vendors subject to this legislation shall be required to submit all required individuals for said fingerprinting and criminal background investigations as directed by the Agency Member, at the sole cost and expense of the vendor, have the results sent to the respective Agency Member in which the services will be performed, and provide all information required by the State of Michigan to include those individuals in the appropriate State of Michigan education personnel databases. Addition details should be provided by said Agency Member concerning their respective local procedures.

5. Special Bid Requirements

An award by the OS under this solicitation will be for supplies, materials and/or equipment to be furnished, sold, or leased to Agency Members in accordance with MCL 380.623a and 380.1274 or Other Agencies in accordance with applicable law. 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 a Agency Member requires the Agency Member to obtain competitive bids and the purchase must be approved by the Agency Member’s Board of Education. An award by OS under this solicitation may also be for select services for Agency Members or Other Agencies. All vendors and K-12 Agency Members understand and agree that the use of AEPA solicitations is not intended for construction projects

under MCL 380.1267 and agree to comply with all applicable standards and statutes for said construction projects.

6. Vendor Relations

Bidders shall not contact or communicate with Agency Members or Other Agencies prior to or during the solicitation process. Vendors shall direct all inquiries concerning this solicitation and/or solicitation process to OS.

7. Brand Names

Whenever any supplies, material or equipment are specified in this solicitation by patent or proprietary name or by the name of the manufacturer, unless stated differently, such specification shall be considered as if followed by the words “or acceptable equal,” whether or not such words appear.

8. Taxes

The Agency Members and Other Agencies are exempt from State Sales Taxes and such taxes shall not be included in any solicitation prices. Exemption certificates will be provided upon request.

9. Shipping Costs

Prices for all supplies, materials and equipment **MUST include total freight, insurance and delivery** charges to the ordering destination (“FOB Destination”).

10. Delivery

Delivery must be made as instructed on the contract/purchase order with the Agency Member or Other Agency. All services must be delivered as specified by the Agency Member or Other Agency.

11. Acceptance

Inspection and acceptance of supplies, materials and/or equipment will be made after delivery at destinations specified on the contract/purchase order with the Agency Member or Other Agency, unless otherwise stated. Final inspection shall be acceptance except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the supplies, materials and/or equipment will be made as promptly as practicable, but failure to inspect and accept or reject supplies, materials and/or equipment shall not impose liability on the Agency Member or Other Agency for such supplies, materials and/or equipment that are not in accordance with the specifications of this solicitation or the contract/purchase order of the Agency Member or Other Agency.

12. Order of Precedence

The vendor understands and agrees that each of this solicitation and any contract/purchase order of the Agency Member or Other Agency is a part of the complete agreement between the Vendor and the Agency Member or Other Agency as if each were set forth entirely within the agreement between the Vendor and the Agency Member or Other Agency. Where conflicts exist between the various contract documents, the order of precedence shall be determined as follows: this solicitation including all addenda, the contract/purchase order of the Agency Member or Other Agency, the vendor’s bid, and any modifications in writing.

13. Termination

Default is defined as the failure of a vendor to fulfill the contract, including but not limited to, not honoring bid prices, failure to deliver on time, or the unauthorized substitution of items or failure to comply with any or all of the specifications and/or terms and conditions contained in this

solicitation or the contract/purchase order of an Agency Member or Other Agency. Should the vendor fail to satisfactorily resolve the default, the contract/purchase order may be terminated with thirty (30) days written notice. In that event, the vendor shall be held liable to the Agency Member or Other Agency for all costs and expenses incurred by the Agency Member or Other Agency arising out of said default. Notwithstanding the foregoing, each Agency Member or Other Agency may terminate their contract/purchase order, with or without cause, or discontinue purchasing from the vendor at any time.

14. Anti-discrimination

The vendor hereby agrees to comply with all federal, state and municipal equal opportunity and antidiscrimination guidelines and regulations, and covenants that the vendor will not discriminate against an employee or applicant for employment with respect to hire, tenure terms, conditions or privileges of employment, or in a manner directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, marital status or disability. Failure on the part of the vendor to comply with said guidelines and regulations shall, upon reasonable notice, constitute grounds for a Agency Member or Other Agency to revoke and otherwise terminate the contract and all obligations of the Agency Member or Other Agency hereunder.

15. 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 Agency Member or Other Agency is located.

16. Indemnification

Vendor agrees to indemnify, defend and hold harmless the OS, each Agency Member and each Other Agency, including their Board of Educations or governing body, in their official and individual capacities, employees, agents, successors and assignees, from and against any and all costs, expenses, damages, and liabilities, including reasonable attorney's fees, arising out of the: (i) negligent act or omission or willful misconduct of the vendor, its officers, directors, employees, successors, assignees, vendors and agents; (ii) any breach of the terms of the contract between the Agency Member or Other Agency and the vendor; or (iii) any breach of any representation or warranty by vendor under the contract with a Agency Member or Other Agency or this solicitation.

17. Assignment and Subcontracting

The Vendor shall neither assign nor subcontract any of its obligations under any contract/purchase order with a Agency Member or Other Agency without the written consent of the Agency Member or Other Agency.

18. 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 vendor. All MSDS sheets shall be sent to the attention of the Agency Member or Other Agency. 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 vendor. 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 vendor will be responsible for additional freight charges. Payment may be withheld until the Agency Member or Other Agency receives the MSDS.

19. Modifications to Contracts

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

20. Quality of Goods

Bidder shall only bid new (not used or refurbished) items only. Seller warrants that all supplies, materials and equipment and services covered by a contract/purchase order with an Agency Member or Other Agency 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.

21. Insurance

Vendor shall at all times carry and maintain insurance coverage in reasonable amounts covering workers compensation, comprehensive general liability (including products/completed operations and blanket contractual liability), and automobile liability. Vendor shall fully insure any and all property of an Agency Member or Other Agency which is in vendor's possession (including work-in-process for which an Agency Member or Other Agency has paid, whether or not title has passed) against loss or damage to the extent of its insurable value, without deductible, at vendor's cost, and to designate the Agency Member or Other Agency as the loss payee. Vendor shall provide evidence of such coverage to an Agency Member or Other Agency upon request. Vendor shall provide the Agency Member or Other Agency with not less than 30 days advance written notice of any threatened or proposed reduction or termination of insurance coverage by those person providing insurance to vendor.

22. 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.

B. Procedure for Processing Orders

1. Once the award is made to a vendor, OS will inform the Agency Members and Other Agencies of the award by announcing the award through its general and usual methods of disseminating information.
2. OS requires the awarded vendor to take ownership and actively promote the contract in cooperation with OS to all qualified Agency Members and Other Agencies.
3. When the Agency Member or Other Agency identifies a desired supply, material or equipment as available through the AEPA contract and agrees on price as presented to the Agency Member or Other Agency by the awarded AEPA vendor, the Agency Member or Other Agency will then issue to the vendor a purchase order or contract for those supplies, materials and/or equipment.
4. Awarded Vendors shall be required to pay a one and one half percent (1.5%) 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 vendor at the front end of the lease. Vendor or its designated authorized reseller(s) shall not include any additional amount corresponding to the Fee in the bid responses or awarded prices.

5. When all the items and services on the contract/purchase order with the Agency Member or Other Agency have been delivered to, and accepted by, the Agency Member or Other Agency, vendor shall then forward a copy of the invoice to OS. The invoice is to be marked "Copy." The one percent and one half percent (1.5%) Fee shall be provided to OS with the "copy" of the appropriate contract/invoice.
6. Vendor makes all deliveries and installations of all supplies, materials and equipment and services. OS will neither warehouse items/goods nor provide services.
7. All participating vendors agree to and are subject to audit proceedings of AEPA member sales.

C. Members Purchasing Under the 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 and intermediate school districts** in the State of Michigan shall be permitted to use AEPA solicitations approved by OS and are considered members (each an "Agency Member" and collectively the "Agency Members"). In accordance with the terms and conditions set forth in this solicitation, **colleges, universities, counties, cities, townships, villages, and non-profit organizations** may also use select AEPA solicitations (each an "Other Agency" and collectively the "Other Agencies"). It should be clearly understood that OS is assisting the Agency Members and Other Agencies as a service to procure selected supplies, materials and equipment and services desired by the Agency Members and Other Agencies. Both the vendor and any Agency Member or Other Agency using this solicitation agree that the OS makes no representation that use of this solicitation by any Agency Member or Other Agency is, in fact, in compliance with rules, regulations, policy or procedures of the Agency Member or Other Agency. In this regard, the OS strongly suggests that, at a minimum, the vendor and any Agency Member or Other Agency considering such use consult with their own legal counsels before doing so. All Agency Members and Other Agencies 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.

D. Local Contract Terms and Conditions

For procurements of supplies, materials, equipment and/or services resulting from this solicitation, it is clearly understood and agreed to by the vendor that any clause, term, or condition not addressed in this solicitation, but required by a Agency Member or Other Agency, shall be adhered to by said vendor.

10. Minnesota, Minnesota Service Cooperative (MSC)

A. Additional Agency Terms and Conditions

Lease and Rentals: Vendor may allow MSC customers to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with Minnesota Statutes and guidelines as well as the State Department of Education policies, rules and regulations. MSC must receive a report annually summarizing the executed lease purchases along with a summary of the customer purchases. MSC 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 MSC customer. Vendor agrees that leases will be in compliance with the Uniform Commercial Code. A 2% 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 ordering process.

B. Procedure for contract award, notification and Processing Orders

Once the award is recommended by the AEPA Review Committee, MSC considers the recommendation based on the value of the potential contract for its qualified members. Member is defined as any city, county, public or private educational agency, non-profit or governmental agency that is a member of MSC as described in Section C. In the event of an award by the MSC Board of Directors, MSC will inform its members of the award and contract by the following methods along with contract instructions and ordering process.

- (1.) The contract opportunity is listed and promoted on the MSC website.
- (2.) Announcing the award in MSC newsletters.
- (3.) MSC will publish the contract and marketing information through a hard copy marketing flier and electronic email. Contracts are promoted through PDF and hard copy product catalog distributed at statewide trade shows and member meetings on a regular basis.
- (4.) When the 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 in the quoted price. The administrative fee shall be based upon the total cost of goods and/or service 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 Agency contract, the member issues the purchase order directly to the vendor,
- (5.) The purchase order must include the total invoiced cost, based on the total cost of goods, service, and installation, including the 2% administrative fee.
- (6.) This administrative fee is to be paid by the vendor to MSC quarterly within 20 working days after the end of the fiscal quarter. The AEPA vendor shall also submit to MSC a sales report, in Excel format, listing all sales made and payments received by the vendor in said quarter. The sales report shall be e-mailed to Jane Eastes at jeastes@lcsc.org and copied to Jan Eklund at jeklund@lcsc.org. The administrative fee payment shall be delivered to Jane Eastes, MSC, 1001 E. Mt. Faith, Fergus Falls, MN 56537. The check shall be made out to MSC.
- (7.) In the event of a lease, the total administrative fee for the value of goods shall be paid to MSC by the vendor at the front end of the lease.
- (8.) MSC reserves the right to review all purchase orders and lease documents to insure contract compliance.
- (9.) 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. MSC and the vendor will mutually resolve any issues with regard to past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by MSC otherwise.
- (10.) All sales and transactions may continue without delay or in anticipation of the MSC purchase order verification.
- (11.) Once all the items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, the vendor then files a copy of the final invoice, which is available to MSC by request in support of the quarterly sales summary. The invoice is to be marked "Copy".
- (12.) Vendor makes all deliveries and installations of products and services. MSC does not warehouse items or provide services.
- (13.) MSC requires that all participating vendors offer the contract opportunity to all MSC qualified members. Qualified membership is defined under C.

C. Members Participating Under the Agency

The Minnesota Service Cooperatives is a Joint Powers organization comprised of eight Service Cooperatives. The service cooperatives were created by the legislature under Minnesota Statute 123A.21 to serve all qualified agencies in a cooperative manner. MSC is governed by a publicly elected Board of Directors. Qualified agencies include all public and private educational institutions as well as all cities, counties, governmental agencies and all non-profit organizations. Membership with MSC is required for contract participation.

D. Governing Law

The laws of the State of Minnesota 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

11. Missouri, Cooperating School Districts of the Greater St. Louis Area, (CSD)

A. Additional Agency Terms and Conditions

Lease and Rentals: Vendor may allow CSD members to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with Missouri statutes and State Department of Education policies, rules and regulations. CSD must receive a copy of the executed leasing documents prior to processing a purchase order. CSD 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 CSD member, and what that cost will be. No sale of a contract to a third party will be made without first informing CSD and the CSD member 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, CSD will inform its members of the contract by announcing the award in its periodic newsletter and other CSD member presentations as well as regular electronic and direct mail communications to members.
- (2.) CSD may require a marketing flier from each vendor promoting the contract and AEPA relationship. CSD will assist in the development of the marketing flier and material. This flier will be for distribution as well as posted on the CSD online catalog and disseminated to all members. At this point the vendor must contact the members and members may contact the vendor. Note: CSD requires the awarded vendor to take ownership and actively promote the contract in cooperation with CSD to all qualified customers.
- (3.) When the member identifies a desired product or service as available through the AEPA contract and agrees on price as presented to the member 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 CSD after the sale and payment is made to vendor. Payment shall be made to CSD on a quarterly basis along with complete sales history during that period.
- (5.) When all the items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, vendor then forwards a copy of the invoice to CSD. The invoice is to be marked "Copy". The invoice shall include the additional 2% administrative fee to the total amount invoiced based on the goods and services as defined and provided by the vendor. The administrative fee percentage is based on the total sale of goods and services including installation and freight if applicable. In the event of a lease, the total administrative fee for the value of goods shall be paid to CSD by the vendor at the front end of the lease.
- (6.) Vendor makes all deliveries and installations of products and services. CSD does not warehouse items nor provide services.
- (7.) All participating vendors agree to and are subject to audit proceedings of AEPA member sales.

C. Members Purchasing Under the Agency

We take great pride in the fact that the Business Services Division of CSD is providing a complete line of purchasing services to our 56 member school districts and over 265 additional school districts and educational institutions throughout Missouri and Illinois. For those of you who have not participated in the past with the Business Services Division, it is important to note that we serve students in 321 public, private and parochial schools within our service area. CSD 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 CSD. The Cooperating School Districts of Greater St Louis serves schools and political subdivisions in the following states: Illinois, Wisconsin, Oklahoma, Arkansas, North and South Carolina, South Dakota.

12. Montana, Montana Cooperative Services (MCS)

A. Additional Agency Terms and Conditions

Advertising: MCS will require a marketing flier in electronic form from each vendor promoting the contract or a web page of contact. MCS will assist in the development of the marketing flier and material. This flier will be for distribution and used as a page on the MCS web site. If a web site is used, a link will be established on the MCS web page.

Special Bid Security: All vendors shall comply with the state of Montana procurement code bidding requirements if applicable.

Price and Packaging Information: It is mandatory that all bidders include both the LIST PRICE and BID PRICE on each item for consideration. Failure to include both prices could disqualify the bid. Complete Product Specification Sheets or brochures must be submitted when requested. Failure to provide said specification sheets could disqualify the bid.

B. Procedure for Processing Orders

- (1.) Once the award is made to the vendor, MCS will inform its members of the contract by:
 - (a.) Including the contract in the agency database that is available on the MCS website
 - (b.) Announcing the award in its periodic newsletter and other MCS member presentations as well as regular electronic and direct mail communications to members
- (2.) A list in electronic form of members, institution names, contact names, addresses and phone number will be offered to the vendor. At this point the vendor must contact the members and members may contact the vendor.
- (3.) When the member identifies a desired product or service as available through the Agency contract and agrees on price as presented to the member by the awarded Agency vendor, the member then issues to the vendor a purchase order for that item or service.
- (4.) An additional two percent (2%) administrative fee is to be included in the cost, based on the total cost of goods and services, including installation. This fee is to be forwarded by the vendor to MCS after the sale and payment is made to the vendor.
- (5.) When all the items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, vendor then forwards a copy of all sales to MCS. These sales are to be reported on a quarterly basis and include purchaser and sales.
- (6.) Vendor makes all deliveries and installation of products and services. MCS does not warehouse items nor provide services.
- (7.) MCS requires that all participating vendors offer the contract opportunity to all qualified membership. Qualified membership is defined under C.

C. Members Purchasing Under the Agency

MCS is a Montana based, legislatively created, cooperative organization formed under Montana state statute section 20-9-204 house bill # 108 allowing services to all qualified agencies in a cooperative manner. No agency is obligated to use these services and contracts, but they will find the benefits of low price advantageous. Qualified agencies include all public educational institutions to include universities, community colleges, technical colleges, state and private schools, charter schools, as well as all cities, counties, governmental agencies and all nonprofit organizations that are members of MCS.

13. Nebraska, Nebraska Educational Services United Cooperative Purchasing (NESUCP)

A. Additional Agency Terms and Conditions

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.

Natural Gas Contractors: Any bids relating to natural gas shall be based upon an awareness of Section 75-501 Neb. Rev. Stat. Rules and Regulations, adopted in conformity with Rules, Regulations, and Interpretations of Federal Agencies with authority to regulate pipeline common carriers and interstate commerce.

Performance Bonds (Construction Only): Upon execution of a contract between a NESUCP member and the prime contractor, performance and payment bonds shall be provided the member. If so required, a performance bond in an amount equal up to 100% of the price specified in the contract between the member and a surety company authorized to do business in Nebraska shall be executed by the prime contractor. Performance bonds between the member and the prime contractor shall be on standard forms. If so required, a payment bond in an amount equal up to 100% of the price specified in the contract between the member and a surety company authorized to do business in Nebraska, shall be executed by the prime contractor. This bond will protect all persons supplying labor and material to the prime contractor for the performance of the work provided in the contract. Payment bonds between the member and the prime contractor shall be on the standard form. The prime contractor shall deliver copies of both the performance and payment bonds to NESUCP 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. The prime contractor will be responsible for providing NESUCP with copies of all contracts and bonds in accordance with NESUCP purchasing procedures. In the event the NESUCP finds it to be in the best interest of the cooperative or any Educational Service Unit within Nebraska or any member served by the cooperative to waive any bond requirement, it may do so by notifying any contractor of that fact in writing. Any purported waiver of any bond requirement in any form other than in written form signed by the CEO of the NESUCP shall be non-binding and of no effect.

Special Bid Security: All Bidders shall comply with the state of Nebraska procurement code bidding requirements. Nebraska ESU Cooperative Purchasing reserves the right to reject any or all bids in whole or in part; to waive any formalities or irregularities in any bids, and to accept the bids, which in its discretion, may be for the best interest of Nebraska ESU Cooperative Purchasing. Any bids relating to natural gas should be based upon an awareness of Section 75-501, Neb. Rev. Stat. and Rules and Regulations adopted in conformity with Rules, Regulations and Interpretations of Federal Agencies with authority to regulate pipeline common carriers and interstate commerce. Nothing in the solicitation for bids or acceptance of bids is to be construed as an assertion that zoning or other land use authority is appropriate to the placement of any portable classrooms, the subject of any bids hereto. As to whose duty it is to ascertain whether zoning and land use is appropriate as to any portable classrooms upon which any vendor is the successful bidder, shall be set forth in the bid specifications by the vendor. Any deviation from housing and urban development standards or uniform building code standards that may be a term of the bid by any vendor shall be clearly set forth in the bid. Whether or not any portable or other building as bid includes architectural or engineering services as required by Section 81-3446, Neb. Rev. Stat. or if the building is exempt under Section 81-3449 because it is a public work not to exceed \$40,000.00 or whether the building is not exempt, the bid shall include specific statements as to how the aforementioned statutes will be complied with. Neb. Rev. Stat. Section 73-101 provides for the manner and methods which public letting will occur. Section 73-106 exempts the expenditure of funds for construction, remodeling, or repair of any school owned building or for site improvement, if the common plated expenditure for the complete project does not exceed \$40,000.00. See Section 73-106. The granting of a bid to a vendor does not absolve the bidder from also complying with Section 73-101 and Section 73-106, Neb. Rev. Stat. Any bid accepted by the Nebraska Coop shall also be subject to Section 73-102, Neb. Rev. Stat. to file a statement that the vendor or bidder is complying with and will continue to comply with fair labor standards in the pursuit of his business and in the execution of the contract on which he is bidding. A form statement to that effect is available from Mr. Lynn W. Thorpe at Nebraska ESU Cooperative Purchasing.

Debarment and Suspension: Contractors shall comply with Executive Orders 12549 and 12689 as applicable. Contractors shall be debarred for a period of two (2) years, unless earlier modified by the Special Awards Committee of the Nebraska ESU Cooperative Purchasing 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.) Violation of any State, Federal or other actionable anti-discriminatory law. (i.) Conviction of a crime of dishonesty. (j.) Debarment or suspension by any agency or Federal Agency by the contractor or any of its key employees. (k.) Other conducts which materially and adversely affects the services of the ESU Cooperative Purchasing program.

Statement Filed: A bidder who is awarded a contract for any goods or services pursuant to this IFB shall file with NESUCP a statement as required by Neb. Rev. Stat. § 73-102.

B. Procedure for Processing Orders

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

C. Members Purchasing Under the Agency

NESUCP provides service to 16 Educational Service Units state wide, which in turn serve approximately 650 school districts.

14. New Mexico, Cooperative Educational Services (CES)

A. *Additional Agency Terms and Conditions*

The term Bidder, Contractor, Offeror and Proposer can be used to identify the person(s) or firm(s) submitting a response to a Request for Bid or Request for Proposal.

Cooperative Educational Services (CES) is the administering agency of a Joint Powers Agreement as authorized by Section 11-1-1, et. seq. NMSA 1978, which is based in Albuquerque, New Mexico and is composed of 180 New Mexico public educational institutions (Members) such as k-12 public school districts; charter Schools; college and universities and their branch campuses; community colleges and vocational schools; bureau of Indian education (BIE) schools; that are parties to the Revised and Amended Joint Powers Agreement (JPA) to establish an educational cooperative. CES was organized in 1979 as a direct response to the needs of small and rural Local Education Agencies (LEA's). CES offers numerous programs and services in the following areas: administrative support, special education services and cooperative purchasing.

Eligible Agencies: consist of any CES Member or Participating Entity can use the services of Cooperative Educational Services. CES reserves the right to reject any purchase authorizations it receives under its cooperative purchasing program from New Mexico eligible agencies without cause.

Most Favored Customer: CES requires that vendors must offer prices lower than what they would offer on single school district contracts in New Mexico, on other cooperative purchasing contracts available to New Mexico public educational institutions, or state purchasing contracts for equal or less volume. Vendor awarded a CES contract must lead with and/or offer their CES contract as the agencies' first option however, it is understood that the agency has the option to user whatever procurement method they choose.

The following terms and conditions apply of all transactions.

Administration Fee: CES charges its members and participating entities a two percent (2%) administrative fee on the total amount invoiced on a purchase/project. CES' two percent (2%) administration fee shall be included in Offeror's net price. Depending on the pricing format and purchasing process utilized, the CES fee will either be collected by the Contractor and rebated to CES or collected by CES during the processing of the transaction.

Applicable Law: The CES awarded contract 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 this contract 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.

CES Supplemental Packet: Upon acceptance of the vendor's offer by AEPA, CES will issue a vendor's supplemental packet requesting specific information necessary to enter and execute a contract in the state of New Mexico including information relating to: the vendor's qualifications, ability to conduct business in the state of New Mexico and who will be coordinating, promoting, receiving and processing orders and providing the prime contractor's goods and services in New Mexico. Once the prime contractor provides this information, CES will review, seek clarification if needed and conduct a vendor conference to complete the contract execution process. Please note the information regarding deadlines as described in "**Offer Acceptance Period to Execute a Contract with CES**".

CFR - Code of Federal Regulations www.gpoaccess.gov/cfr/index.html

Civil and Criminal Penalties: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

Construction: As defined in the New Mexico Procurement Code Regulations under 13-1-40 NMSA 1978. Definition; construction, "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.

DOE - Department of Energy www.energy.gov

EPA – Environmental Protection Agency www.epa.gov

Execution of Contract and Compliance with Bid Instructions: By submitting a bid, the Offeror acknowledges its understanding of the Instructions to Bidders, the New Mexico additional terms and conditions, and its willingness to comply with the requirements of the bid documents.

FCC – Federal Communications Commission www.fcc.gov

Federal Agency: [25 USC 3001 (4) Is defined as any department, agency, or instrumentality 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.

Federal Requirements: Contractor agrees, when working on any federally-assisted projects with more than \$2,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland “Anti-Kickback” Act and the Equal Opportunity Employment requirements of Executive Order 11375. In such projects, the Contractor agrees to post wage rates at the work site and submit a copy of their payroll to the CES Member for their files. In addition, to comply with the Copeland Act, the Contractor must keep records for three (3) years, and allow the federal grantor agency access to these records upon demand. All federally-assisted contracts to CES Members that exceed \$10,000 may be terminated by the federal grantee for noncompliance by the Contractor. In projects that are not federally funded, Contractor must agree to meet any federal, state or local requirements as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed on costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee. On all other projects, the prices must agree with this contract.

Insurance: On 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 this contract, where those activities are performed by it, by any subcontractor, by anyone directly or indirectly employed by any of the contractors or by anyone for whose acts contractor may be liable during the entire performance period of this contract. The contractor must furnish a Certificate of Insurance to the CES procurement officer prior to official award. If policy changes occur during the life of the contract, it is the contractor’s responsibility to provide updated proof of coverage to the CES procurement officer. Bidders will submit proof of coverage under the Workman’s Compensation Insurance, as required by the Labor Laws and New Mexico Statutes. Bidders will submit a certificate of general liability insurance for personal injury, occupational disease, sickness or death, and property damage. Insurance will include “occurrence” claim provisions. Minimum acceptable coverage is \$1,050,000 combined single limit for bodily injury and property damage, or \$750,000 bodily injury and \$250,000 property damage (each occurrence). The Offeror will name CES and the CES Member as co-insured up to the limits of the Tort Claims Act. Additional punitive damages liability to \$500,000 will be provided naming CES as co-insured. In addition, contractor must provide, upon request, identical certification of insurance to any CES Member 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.

Lease and Rentals: Offeror can allow CES Members to enter into rent, lease or lease/purchase agreements, providing such agreements are in compliance with New Mexico statutes and Public Education Department policies, rules and regulations. CES must receive a copy of the executed leasing documents prior to processing a purchase order. CES will not collect lease payments. Offeror 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. Offeror 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 CES Member and what that cost will be. No sale of a contract to a third party will be made without informing CES and the CES Member 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 contractor.

As required by New Mexico law, the lease agreement with the CES Member or Participating Entity will need to contain a termination provision for Non-Appropriation of Funds. In the event no funds or insufficient funds are appropriated and budgeted by CES, its Members or Participating Entities (Lessee) governing body or are otherwise unavailable in any fiscal year for the payment of lease and other amounts due under any lease, the lease shall terminate on the last day of the fiscal period for which appropriations were received or other amounts are available to pay amounts due under the lease without penalty or expense to Lessee. It is up to CES, its Members or Participating Entities to determine sufficiency of funds, which determination shall be accepted by the Lessor and is final. Lessee shall give Lessor or its assignee written notice at least thirty (30) days in advance of such occurrence.

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

Member of CES: Any public educational institution within the State of New Mexico that has by their board resolution resolved to become a party of the Joint Powers Agreement and has been approved for membership by CES' Board of Directors and the New Mexico Department of Finance and Administration in accordance with Section 11-1-1, et. seq. NMSA 1978.

Local Public Body: All political subdivisions of the State, its agencies and institutions thereof as defined in 13-1-67 NMSA 1978 of the New Mexico Procurement Code.

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.

NM Workforce Solutions: is a state agency responsible for the overseeing, administering, issuing, implementing and ensuring that all employers, contractors, and subcontractors follow and comply with New Mexico and Federal labor laws, rules, regulations, policies and procedures governing employment and the general workforce.

NM Workforce Solutions Contractor Registration Requirement: The 2004 legislative session passed HB 471 that: *“All contractors and all tiers of subcontractors bidding or performing on public works construction projects, except for street, highway, bridge, road and utility contracts, after May 19, 2004 shall be registered with the Labor and Industrial Division of the Labor Department if the amount of their bid or contract is more than \$50,000. All contractors and all tiers of subcontractors on street, highway, bridge, road and utility paving projects do not have to be registered with the Labor and Industrial Division of the Labor Department prior to bidding on public work, but must be registered before performing on a public work contract in excess of \$50,000 signed after May 19, 2004.”* 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.

Offer Acceptance Period to Execute a Contract with CES: In order to allow CES the opportunity to evaluate the proposals offered and approved by AEPA. CES requires that the AEPA vendor submit to CES its response to AEPA's solicitation and the CES supplemental packet within sixty (60) days after receipt of CES' supplemental packet. CES will consider failure to comply with this requirement as a failure to comply with AEPA's solicitation's terms and conditions.

Participating Entities: Is defined as local public body or state agency or non-public/not-for-profit educational entities or other not-for-profit organizations or external procurement organizations within the State of New Mexico or outside the state that if in the state they would fall under one of these groups. These agencies and organizations may participate in and purchase tangible personal property, professional, and non-professional and construction services through their cooperative purchasing or external procurement agreement with CES.

Price List: The AEPA vendor will submit to CES and/or its members and participating entities, if requested or make available on its website all applicable pricing for all products and services proposed and awarded under this solicitation. Price list submitted must be in accordance with and comply with the AEPA's terms, conditions and the requirements of the purchasing process utilized to facilitate eligible procurement agencies staff to place and process orders. When the Contractor offers a discount off retail price, the Manufacturer's Suggested Retail Price (MSRP), such discounts will include the CES two (2%) percent administrative fee and must be submitted in the format required and be auditable by CES.

Pricing-Alternative Method of Costing: CES will allow alternative pricing/costing and this pricing method will covers any product and/or service not covered by an established and approved price list or is a custom design and manufactured item to meet the requirements of an individual project's needs and requirements. The alternative pricing/costing is calculated as follows:

1. The vendor must prepare, issue, and receive three written quotes from available suppliers and select the supplier that offers the products and services that meets the stipulated requirements and specifications and the most cost effective solution. All quotes must be made available upon request.
2. The vendor must indicate the percent of overhead and/or markup as part of their response to be added to these costs to obtain the normal and customary retail price.
3. The vendor must indicate the percent of discount offered under CES to its Members/Participating Entities on the normal and customary retail price.
4. The CES price is calculated by taking the product and services cost to the vendor plus the indicated percent of profit/overhead to equal the normal and customary retail price. The vendor will then subtract the approved CES discount to obtain the CES price. Example: item cost \$1,000; percent of profit/overhead of 20% equals retail price of \$1,200; less the CES discount of 10% or \$120 equals the CES price of \$1,080.

State Agency (13-1-90 NMSA 1978) is defined as any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

The following items refer only to construction:

BONDS

1. Upon execution of a contract between a CES Member/Participating Entity and the prime contractor for a project with a value twenty-five thousand (\$25,000.00) or more, performance and payment bonds from a surety company authorized to do business in New Mexico will be provided the Member/Participating Entity as required by New Mexico law.
2. The prime contractor will execute a performance bond in an amount equal to one hundred percent (100%) of the price specified in the contract between the Member/Participating Entity and the prime contractor by a surety company authorized to do business in New Mexico. Performance bonds between the Member/Participating Entity and the prime contractor will be on standard forms. This bond will protect all persons supplying labor and material to the prime contractor for the performance of the work provided in the contract.

3. The prime contractor will deliver both the performance and payment bonds to the CES Member/Participating Entity at the time the contract between the Member/Participating Entity and the prime contractor is executed and a copy will be provided to CES for its records.
4. All suits for nonpayment or nonperformance will be filed as allowed under New Mexico law.
5. Performance and payment bonds for public agencies outside New Mexico must be provided by companies licensed to provide bonds for public entities in the state of the agency.
6. Any subcontractor providing and/or performing one hundred and twenty-five dollars (\$125,000) or more of work for an individual project in New Mexico must obtain and submit to the prime contractor a performance and payment bond equal to one hundred percent (100%) of the total project's cost from a surety company authorized to do business in New Mexico.

CONTRACT BETWEEN OWNER, BUYER AND CONTRACTOR (Three Party Agreements)

1. An agreement by CES, its Member/Participating Entity and a CES contractor for the purpose of procuring construction and professional services for a particular project must be completed for any construction project offered and performed under this RFP with a total value of Sixty Thousand Dollars (\$60,000) or more. This agreement must be signed by all parties prior to the contractor starting any work.
2. Owner (Member) is an educational institution which is a party to the aforementioned Joint Powers Agreement or NMPSFA (New Mexico Public School Facilities Authority), a state agency or Participating Entity which is a local public body desiring to receive certain goods and services offered by the CES contractor under this RFP.
3. Buyer (CES) is an entity created by a Joint Powers Agreement as Authorized by Section 11-1-1, et. seq., NMSA 1978, which is acting as a conduit through which title to tangible goods may be vested in Owner. Buyer warrants and assures the Owner that it has complied with the Procurement Code, the Public Works Contract Act and the Subcontractor Fair Practices Act in contracting for procurements from CES contractors.
4. Contractor is a vendor who has responded to a Request for Proposal published by buyer in accordance with the Procurement Code, Section 13-1-137 (A), NMSA 1978, and a resultant contract has been issued to the vendor of goods and services in the construction area.
5. The contractor will be responsible for providing CES with the information required to complete this form.
6. It is at the discretion of the owner and the contractor to determine if an additional industry standard owner/contractor contract is to be executed in addition to this contract.

Licenses: The prime contractor shall possess the appropriate New Mexico Construction Industries Division contractor's license required to provide the construction products and perform the construction services covered by this solicitation as of the due date and time. The contractor must maintain and keep current all federal, state, and local licenses required for the performance and delivery of any and all products and services offered in its response to this RFB. Any offer using subcontractors, the subcontractor must hold and maintain the appropriate New Mexico Construction Industries Division licenses. The contractor shall submit copies of licenses with the response to the RFB (place behind Tab 4) and submit copies of any subcontractors' licenses to CES prior to CES issuing a purchase order.

New Mexico State Wage Rate Documentation

1. 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 contractor, as established by the New Mexico Department of Workforce Solutions and Industrial Commission, will pay wage rates for every job performed under this contract with a total project cost of more than Sixty Thousand Dollars (\$60,000) on an individual basis. The contractor 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.

2. The New Mexico Department of Workforce Solutions requires that certain forms be completed for every project that needs a wage decision issued. 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 NM Department of Workforce Solutions 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.

Payment Retention, Progress Payments

1. In order to comply with New Mexico House Bill 320, NMSA, 2001, Section 4. A., Retain age Act, CES will not retain any funds on progress payments during any construction projects. The prime contractor agrees to only request payment for goods and services delivered, received and accepted by the Member/Participating Entity.
2. CES will not withhold any amount for retain age. However, Final payment of a contract, for which progress payments have been made, will not be made until project is totally completed (including punch list items, closeout documents delivered), and the final application for payment is signed by the CES Member/Participating Entity, received and audited by CES.
3. If the Member/Participating Entity and the prime contractor agree to retain age or a substitute security, the agreement must be in full compliance with New Mexico Procurement Code and House Bill 320. If a substitute security or retain age is agreed upon, written notice must be provided to all parties prior to the issuing of a CES purchase order.

Progress Payments: Under this solicitation, 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 agency and the Contractor agree to the terms of the progress payments prior to issuing a purchase order to the Contractor.
2. The purchase order and/or the cost proposal in which the purchase order is based clearly identify and describe the amount(s) to be paid and the date(s) payment(s) are to be made.
3. The agency has satisfactory method/criteria of verifying progress (milestones) stated and agreed to in the written cost proposal and/or purchase order.
4. Payments will be made only after actual goods and/or services are verified, received and accepted.
5. Payments will be made in full compliance with the agency's local administrative procedures, board policies and any/all other applicable state rules, regulations and statutes.

Progress Payments Processing: All progress payments must be invoiced through CES. It is the responsibility of the procurement unit and/or its designee to review and approve any estimates of work completed. If the procurement unit or their designee issues a written statement to the contractor that the estimate of work is not approved and certified, the procurement unit may withhold an amount from the progress payment determined to be reasonably sufficient to cover the deficiency set forth in the written finding. In such cases, the contractor agrees to hold CES harmless for any deficiency of payment. If any payment is delayed beyond 45 days from the due date, the contractor agrees not to charge CES interest on the late payment. Any late charges will be the total responsibility of the procurement unit. The contractor can extend any due date to avoid the requirement to pay interest. Acceptance of final payment is a waiver of all claims, except unsettled claims previously made in writing.

B. Procedure for Processing Orders

Once the contractor is notified of a member/participating entity interested in having them provide construction products and perform services. The will familiarize itself with the site and project scope of work by conduct and perform its own site investigation, research, analysis and ask the pernet questions in order to obtain a complete and comprehensive knowledge and understanding of the

project's terms, conditions, requirements and the owner's expectations prior to developing, preparing and submitting a project cost proposal.

Ordering Process: CES currently offers two (2) procurement/purchasing options: the *traditional method* which occurs when online purchasing is not selected by the Member/Participating Entity; all orders accepted by the Contractor under this method must be issued by CES. CES Members/Participating entities will submit signed purchase orders to CES. CES will then issue a purchase order to the Contractor. When necessary, one or more orders may be combined. The Contractor must agree never to accept a purchase order based on this procurement method, unless the purchase order is issued by CES. The second method is the *CES e-commerce CPP (Cooperative Purchasing Program)* online ordering solution, which allows the CES Members/Participating Entities to go online and create an order and issue a purchase order through the system directly to the Contractor; the Contractor delivers the product/services; invoices the Member/Participating Entity; the Member/Participating Entity pays the Contractor; and the Contractor rebates the CES administrative fee to CES, unless an agreement to deviate from this process has been approved in writing by both parties.

1. Contractor provides quote to the member and the quote includes the CES two percent (2%) administration fee.
2. If acceptable, the member issues CES a purchase order for the quoted amount.
3. CES verifies the quote with the solicitation response and issues a purchase order to the Contractor for two percent (2%) less than the Contractor's quote to the member.
4. The Contractor provides the items or services and invoices CES for the amount of CES' purchase order to the Contractor.
5. CES invoices the member.
6. The member pays CES.
7. After receipt of the member payment, CES pays the Contractor for items and services delivered and accepted by the member, not to exceed the purchase order amount.

Contractor's Quote/Proposal to CES Member/Participating Entity: When preparing a quote/proposal under a CES awarded contract, the contractor must clearly identify and break out supplies, materials, equipment and services into individual line items as they appear on the contractor's awarded price schedule or pricing methodology. Stated prices must include the CES two percent (2%) administrative fee.

Billing: All invoices will be from the Contractor to CES, its Members or Participating Entities and will list the agency's purchase order number(s) issued. If issued by CES, the CES Member's/Participating Entity's name will be on the invoice. The Contractor will only issue invoices to CES, CES Member or Participating Entity from which the purchase order was issued. The Contractor will only accept a purchase order from a Member or Participating Entity in accordance with the purchasing process identified and agreed to by CES and the Contractor.

Once the award is made to the contractor, CES will inform its members of the contract by: 1) including the contract in the agency database that is available on the CES 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' and participating entities' names, contact names, addresses, and phone numbers can be viewed or downloaded by going to CES' website (www.nmedu.org).

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

A. Additional Agency Terms and Conditions

Contractors engaging in business in the State of North Dakota must hold a North Dakota State License. This is defined in the North Dakota Century Code Chapter 43-07-01 through 43-07-04. All bidders who will provide construction services or sub-contract construction services must attach a copy of copy of applicable North Dakota Contractor Licensure to the bid.

Lease and Rentals: Vendor may allow NDESC customers to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with North Dakota Statutes and guidelines as well as the State Department of Education policies, rules and regulations. NDESC must receive a report annually summarizing the executed lease purchases along with a summary of the customer purchases. 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 NDESC customer. Vendor agrees that leases will be in compliance with the Uniform Commercial Code. A 2% 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 ordering process.

B. Procedure for Processing Orders

(1). Once the award is made to the vendor, NDESC will inform its members of the contract by one or more of the following means:

- (a) Including the contract on the NDESC website.
- (b) Announcing the award by direct communication to all NDESC members through mailings, presentations, electronic communication and on-site member marketing visits.
- (c) Including the contract in all on-going marketing efforts, including cooperative purchasing catalogs (paper and electronic).

(2) An electronic list of members' names and addresses will be given to the awarded vendor. The vendor may then contact each member and members may contact the vendor.

(3.) NDESC has designated Cooperative Resources, Inc. (CRI), 1001 E. Mt. Faith, Fergus Falls, MN as its purchasing agent. All vendors agree to work with CRI on all purchasing issues related to NDESC.

(4) When the 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 that includes a two percent (2%) administrative fee. The administrative fee shall be based upon the total cost of goods and/or service including installation costs. When a member decides to purchase through the Agency contract, the member issues the purchase order directly to the vendor,

(5) Upon receipt of a purchase order, the vendor agrees to fax a copy of said purchase order to CRI for confirmation and approval. The sale and transaction may continue without delay or anticipation of NDESC/CRI denial. Notification will be made to the vendor within three (3) working days in the event the purchase order is NOT in compliance with the contract and deemed void. The vendor will make all deliveries and installations of products and services. CRI does not warehouse items or provide services.

(6) The contractor/vendor will compile quarterly reports listing each purchase made by participating agencies under this contract. Reports will be sent by the 15th of the succeeding month to Jane Eastes, NDESC/CRI, 1001 E. Mt. Faith, Fergus Falls, MN 56537 or emailed to jeastes@lcsc.org. The report should include the date of order, the name of the purchasing agency and the total dollar amount of the order.

(7) The vendor agrees to pay all administrative fees to NDESC/CRI by the 15th of the month following the end of the quarter. All checks are to be made payable to Cooperative Resources Incorporated, 1001 E. Mt. Faith, Fergus Falls, MN 56537.

(8) NDESC requires that all participating vendors offer the contract opportunity to all NDESC qualified membership. Qualified membership is defined under C.

C. Members Purchasing Under the Agency

The NDESC has been established pursuant to the provisions of Chapter 54-40.3 of the North Dakota Century Code, as amended. The purpose of NDESC is to assist in meeting those specific needs of the members which are determined to be better provided by a cooperative effort, including without limitation the joint purchasing of programs, goods, and services which are deemed to be priority needs of the members. Currently 166 public school districts are members of NDESC. Qualified members of NDESC include all North Dakota public schools, private schools and higher education institutions and any other North Dakota political subdivisions eligible to enter into a joint powers agreement with NDESC.

16. Ohio, Ohio Council of Educational Purchasing Consortia (OCEPC)

A. Additional Agency Terms and Conditions

All bidders shall comply with the State of Ohio procurement codes and regulations, bidding requirements, bonding, etc. as well as any local terms and conditions. All vendors/contractors providing products or services will verify to the OCEPC, its membership and other qualifying purchasers that they are complying with all federal, state and local laws, codes and regulations while fulfilling the contract.

B. Procedures for Processing Orders

The Ohio Council of Educational Purchasing Consortia (OCEPC) will inform its membership and other qualified purchasers of contract information via web site and through other marketing strategies. A list of OCEPC members along with addresses, phones, contacts, etc. will be made available to successful vendors/contractors. After contracts are awarded, vendors/contractors may contact the OCEPC members and other qualifying purchasers concerning their products and services.

Participating members and other qualified purchasers will submit all purchase orders directly to the vendor/contractor.

The vendor/contractor price shall include a two percent (2%) administrative fee that the vendor/contractor will collect from the member or other qualified purchaser. Administrative fees are to be remitted to the OCEPC on April 15, July 15, October 15 and January 15 with checks payable to the Metropolitan Educational Council, 2100 City Gate Drive, Columbus, Ohio 43219.

The vendor/contractor will compile a quarterly report showing all purchases made by the OCEPC members and other qualified purchasers under this contract at the conclusion of each quarter. These reports shall be attached to the administrative fee remittance.

C. Members Purchasing Under the Agency

All member cooperatives of the Ohio Council of Educational Purchasing Consortia and their individual membership 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 are eligible to participate if the AEPA contracts satisfy the individual college or university procurement requirements.

17. Oregon, Umatilla-Morrow Educational Service District (UMESD)

A. *Additional Agency Terms and Conditions*

Umatilla Morrow Education Service District (“UMESD”) is an educational service district organized under the laws of the STATE OF OREGON. Pursuant to Oregon Law, UMESD 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 UMESD 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.

These provisions provide: (1) instructions to bidders that are required for certain public contracts in Oregon, (2) procedural provisions, and (3) provisions that must be in Oregon public contracts depending upon the subject matter of the contract.

INSTRUCTIONS TO BIDDERS

1. Prevailing wage rates/Davis-Bacon.

As set forth in the general Oregon 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, Public Works, and Improvements and Miscellaneous Provisions.

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.

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.

FRST 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 SUBCONTRACTOR | CATEGORY OF WORK | DOLLAR VALUE |
|-----------------------|------------------|--------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

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/WHD/PWR 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 OAR 952-001-0010 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 the contract involves asbestos abatement, the contractor or subcontractor must be licensed under ORS 468A.720.

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

(18) 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.

(19) 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 attorneys fees and costs at trial and upon any appeal thereof.

B. Procedures for Processing Orders

PROCEDURAL

Once the award is made to the vendor, UMESD will inform its members of the contract by: 1) including the contract in the agency database that will be available on the UMESD website, 2) announcing the award in a periodic newsletter, and 3) publishing the contract information in a cooperative purchasing catalog hard copy and online catalog and disseminated to all members. A list of members, institution names, contact names, addresses and phone number on a computer disk is made available to the vendor. At this point the vendor contacts the members and members may contact the vendor. When the member 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 one percent (1%) administrative fee in the total to be forwarded by the vendor to UMESD after the sale. All participating vendors agree to and are subject to audit proceedings of UMESD 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 UMESD. 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 one percent (1%) 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 one percent (1%) administrative fee. UMESD then invoices the Vendor for the 1% administrative fee based on the sale of goods and services collected by the vendor.

C. Agency Members Purchasing under the UMESD

UMESD is an educational service district organized under the laws of the State of Oregon. Pursuant to Oregon Law, UMESD is authorized to cooperate with other entities and in such regard is authorized to cooperate with them in purchasing of goods and services pursuant to these contract documents. As other entities cooperate with UMESD 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.

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

A. Additional Agency Terms and Conditions

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, West Virginia 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.

Advertising: The KPN will require all vendors to develop a marketing program to include printed, web-based, e-mail, telemarketing and other methods approved by the KPN. All promotional marketing materials must have the prior approval of the KPN before distribution and must include the KPN logo and other contract information. KPN staff will work jointly with all vendors and their representatives to joint market these bids/contract to it's members and prospective members. An annual meeting with key marketing staff will be required with one month bid award and then annually after renewal on contract. Complete member listing will be shared electronically with all vendors for advertising and marketing. Vendors may be requested to do joint presentations to KPN members in either a one to one or a group setting. Some group presentations may be done in conjunction with other vendors. Display exhibits at various statewide conferences are encouraged.

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.

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

Vendor and/or Contractor agrees that, in performance of the services required under this Agreement, Vendor and/or Contractor shall abide by all Federal, State, Local, and Pennsylvania Department of Education laws, and regulations that may apply to renovation under this bid, including, but not limited to, those listed below. Vendor and/or Contractor shall also abide by the laws and regulations of other states where a member is located. It is the responsibility of the Vendor or Contractor to determine applicability and requirements of any such laws and to abide by them. Additionally, Contractor has the sole responsibility for compliance will all other matters in conjunction with the services to be performed hereunder and in the Invitation for Bid.

PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS: the contractor shall provide a performance bond and a labor and material payment bond, each in the amount of 100% of the contract price, before the award of the contract. (Sections 756 and 757 of the Public School Code of 1949, as amended, and the Public Works Contractors Bond Law of 1967.)

DISCRIMINATION PROHIBITED: According to 62 Pa.C.S.A. 3701, the contractor agrees that:

(1.) 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 shall 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.

(2.) No contractor or subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.

(3.) 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 or conditions of that portion of the contract.

HUMAN RELATIONS ACT: The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P. L. 744) (43 P.S. Section 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 shall agree to comply with the provisions of this Act as amended that are made part of this specification. Your attention is directed to the language of the Commonwealth's non-discrimination clause in 16 Pa. Code 49.101.

COMPETENT WORKMEN: Projects where the total estimated cost is \$25,000 or less, Section 7-752 of the Public School Code of 1949, no person shall be employed to do work under such contract except competent and first class workmen and mechanics. No workmen shall be 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 shall be paid not less than such rates of wages and for such hours work as shall be established and current rates of wages paid for such hours by employers of organized labor in doing of similar work in the district where work is being done.

PENNSYLVANIA PREVAILING WAGE RATES: Projects where 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 must specify "Prevailing Wages." Further information on implementation of the act, definition of maintenance work and prevailing wage rates may be requested from the Pennsylvania Department of Labor and Industry (800-932-0665 or 717-787-4763). When applicable, use Davis-Bacon wage rates for federally assisted projects. This regulation and the general Pennsylvania prevailing minimum wage rates, (Act 442 of 1961, P.L. 987, amended), as determined by the Secretary of Labor and Industry, which shall 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 public work is performed, are made part of this specification.

(1.) The general prevailing minimum wage rates including contributions for employee benefits as shall have been determined by the Secretary of Labor and Industry (hereinafter "Secretary"), which must be paid to the workmen, employed in the performance of the Contract.

(2.) The Contractor shall pay no less than the wage rates as determined in the decision of the Secretary and shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442), as amended August 9, 1963 (Act No. 342), and the Regulations issued pursuant thereto, to assure the full and proper payment of said rates.

(3.) These Contract provisions shall apply to all work performed on the Contract by the Contractor and to all work performed on the contract by all subcontractors.

(4.) The Contractor shall insert in each of his subcontracts all of the stipulations contained in these required provisions.

(5.) 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 shall be followed.

(6.) All workmen employed or working on the Work shall 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 shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary to the workmen on the Work.

(7.) The Contractor and each subcontractor shall 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:

- a. Name of project.
- b. Name of public body of which it is constructed.
- c. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
- d. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.

e. A statement advising workmen 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 shall 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.

(8.) The Contractor and all subcontractors, shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with the Work and such record must include any deductions from each workman. The record shall be preserved for two (2) years from the date of payment and shall open at all reasonable hours to the inspection of the Owner and to the Secretary or his duly authorized representative.

(9.) Apprentices shall be limited to such numbers as shall be 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 Regulation issued pursuant thereto shall be employed on the Work. Any workmen using the tools of a craft that does not qualify as an apprentice within the provisions of this submission shall be paid the rate predetermined for journeyman in that particular craft and/or classification.

(10.) Wages shall be paid without any 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 general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workman.

(11.) Payment of compensation to workmen 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 shall be deemed a violation of the Act and the Regulations, regardless of the average hourly earnings resulting there from.

(12.) Each Contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the Work on the Contract with Owner, under oath, and in form satisfactory to the Secretary, certifying that all workmen have been paid wages in strict conformity with the provisions of the Contract as prescribed by the Regulations, or if any wages remain unpaid, to the amount of wages due and owing to each workman respectively.

(13.) The provision of the Act and the Regulations are incorporated by reference in the Contract.

STANDARD OF QUALITY: The various materials and products specified in the specifications by name or description are given to establish a standard of quality and of cost for bid purposes. It is not the intent to limit the bidder, the bid or the evaluation of the bid to any one material or product specified but rather to describe the minimum standard. When proprietary names are used, they shall be followed by the words "or alternatives of the quality necessary to meet the specifications". A bid containing an alternative, which does not meet the specifications, may be declared non-responsive. A bid containing an alternative may be accepted but if an award is made to that bidder the bidder will be required to replace any alternatives, which do not meet the specifications.

PROVISIONS FOR THE USE OF STEEL AND STEEL PRODUCTS MADE IN THE U.S.: 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 shall be used or supplied in the performance of the contract or any subcontracts thereunder in accordance with Act 161 of 1982, cast iron products shall 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.

PROHIBITION ON CASH ALLOWANCES: Cash allowances are prohibited.

TIME(S) OF COMPLETION OF THE PROJECT: Contractor/Vendor shall complete all work within 180 days after entry into a contract with the individual Member. Member and Contractor/Vendor may agree in writing on a lesser number of workdays depending on the scope of the project.

Owner's Compliance in Retaining Payments: Unless a member stipulates otherwise, Payment Retentions and Progress Payments shall be as follows: Ten percent (10%) of all contract payments shall be retained by the member as insurance of proper performance of the prime contractor. Prime contractor agrees to identify the amount of the invoices sent to the member school districts, then send copies of the invoices to the KPN. When fifty percent (50%) of the work is completed, as determined by the school district, one-half (1/2) of the amount retained shall 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 the work is fifty percent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments shall be retained, unless the governing board of the member determines that satisfactory progress is not being made, at which point ten percent retention shall be reinstated. If the member and the prime contractor agree to a substitute security, the agreement must be in full compliance with Pennsylvania law. If the substitute security is agreed to, the prime contractor must provide KPN and the member with assigned 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 by KPN 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 authorized agent of the member will agree in writing upon a schedule of payments based on identifiable milestones. Retaining of payments must be done in accord with 62 Pa.C.S.A. § 3921.

A contract containing a provision for retainage as provided in section 3921 (relating to retainage) shall contain a provision requiring the architect or engineer to make final inspection within 30 days of receipt of the request of the contractor for final inspection and application for final payment. If the work is substantially completed, the architect or engineer shall issue a certificate of completion and a final certificate for payment, and the government agency shall make payment in full within 45 days except as provided in section 3921, less only one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the architect or engineer and, upon receipt by the government agency 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 given by the architect or engineer shall 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 shall be paid upon completion of the items in the certificate of the engineer or architect.

WORKERS' COMPENSATION ACT: The contractor shall accept, insofar as the work covered by their contract is concerned, the provisions of the Workers' Compensation Act 44 of 1993, and any supplements of amendments thereof, including any which may hereafter be passed, and shall insure the contractor's full liability there under for all parts of their contract being performed by the contractor, the contractor's partners, associates, employees or those of any the contractor may employ herein, or file with the Entity a certificate of exemption from insurance from the Bureau of Workers' Compensation of the Department of Labor and Industry.

The contractor shall, at all times, indemnify and save harmless the school entities of and from all claims for Workers' Compensation which may be made by any of the employees of the contractor or by any of the employees to whom the contractor may have let the performance of any part of the work embraced by their contract and the contractor shall appear for and defend the school entities against any and all such claims. The contractor shall 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.

ACT 34 CRIMINAL BACKGROUND CHECKS: Independent contractors and their employees who provide services to a Pennsylvania school entity are required to obtain a report of "Criminal History Record Information" from the Pennsylvania State Police. In the case of non-Pennsylvania residents, a report of "Federal Criminal Record Information" from the FBI is required in addition to the Pennsylvania State Police Report.

Contractors shall be required to do the following:

(1.) Present the original document/s Report of Criminal History Records information from the Pennsylvania State Police, report of Federal Criminal History Record Information from the Federal Bureau of Investigation to the Superintendent or the Superintendent's designee prior to the beginning of

work for the school entity. The school entity shall retain a copy of the background check information and shall note on that copy the date on which the original document was inspected and the name of the administrator who viewed the original. This copy shall be retained in the school entity records with the original being returned to the contractor.

(2.) If any new employees are added to the workforce during the course of the work, such employee(s) must follow the same procedure described above prior to any work for the school entity.

(3.) All costs for the Criminal History Information check(s) shall be borne by the perspective contractor.

(4.) The school entity shall notify the contractor in writing if the decision not to employ the contractor or the contractor's employees is based in whole or in part on criminal history records information.

(5.) The school entity shall follow the regulations promulgated by the State Board of Education concerning the confidentiality of the Criminal History Report Information obtained pursuant to the Act.

Upon written notice from the school entity, contractors shall have all such persons removed from the project. School entity's right to declare such persons unfit shall not be 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.

CHILD PROTECTIVE SERVICES BACKGROUND CHECKS: Prior to commencing work under the contract, the contractor shall submit for any employee or independent contractor who would be working on a school entity's site pursuant to work contemplated in the contract, an official clearance statement obtain from the Pennsylvania Department of Welfare pursuant to Act 151 of December 16, 1994 (P.L. 1292) subchapter C2 of the Child Protective Services Act. Contractor shall not allow any prospective employee or independent contractor on the job site prior to providing the school entity with the above-referred clearance statement for prospective employees or independent contractors.

ANTIBID-RIGGING ACT (NON-COLLUSION): In accordance with the Commonwealth of Pennsylvania's Antbid-Rigging Act, 62 Pa. C.S.A. § 4501 et seq., the contractor shall execute and submit with the bid a Non-Collusion Affidavit required by the Agency. Each party to the joint venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.

PREVENTION OF ENVIRONMENTAL POLLUTION: Section 3301 of the Pennsylvania Commonwealth Procurement Code requires that all invitations for Bids and requests for proposals for construction projects issued by any governmental agencies shall set forth any provision of Federal and State statutes, rules, and regulations dealing with prevention of environmental pollution and the preservation of public natural resources that affect the Project. A Notice of said provisions prepared by the Pennsylvania Department of Environmental Resources under Act 247 of 1972, 52 P.S. § 1612 (repealed) is available from Jeffrey L. Kimball, Cooperative Purchasing Services Director at the Keystone Purchasing Network, 90 Lawton Lane, Milton, PA 17847. His telephone number is 570-523-1155 x2130, and his e-mail address is jkimball@csiu.org. Said Notice is hereby incorporated by reference. Contractor is hereby notified and agrees to comply with the terms of all statutes, rules and regulations enumerated in the Notice.

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.

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.

MULTIPLE PRIME REQUIREMENTS: For Members which are Pennsylvania Public School Districts, your attention is directed to Subsection 7-751(a) of the Pennsylvania Public School Code (24 P.S. § 7-751(a)), which permits a single prime contractor for a prefabricated unit, including all utilities such as plumbing, heating and ventilating, and electrical work. To the extent a school district's project requires plumbing, heating and ventilating or electrical work outside of the prefabricated unit itself, the Pennsylvania Department of Education requires school districts to separately bid such exterior plumbing,

heating and ventilating and mechanical work. 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.

B. 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. 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 of 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 15th of the succeeding month of each 3-month period (quarterly) 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: Jeff Kimball. All reporting of purchases will be broken down by entity by state and will show purchaser, total dollar and date of purchase. These reporting requirements may change during the contract period.

C. Members Purchasing Under 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, West Virginia, Delaware, District of Columbia and other Northeast & Mid-Atlantic states. Vendors may choose to offer the 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 there 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. The KPN reserves the right to market any AEPA contract under any cooperative program name that may choose in the future on a national basis in any non-AEPA member state.

19. TexBuy, a Cooperative Purchasing Shared Services Cooperative Sponsored by the Region 16 Education Service Center

A. *Additional Agency Terms and Conditions*

- (1) **TexBuy funding:** The total cost of the TexBuy program is funded through a two percent (2%) participation fee paid to TexBuy by the participating Contractors. This fee shall be included in all pricing to TexBuy and its participating agencies. The fee is based on actual Contractor 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 Contractors in the purchase of goods and services. Contractors shall indicate on the proposal form whether or not they are an MWBE.
- (4) **Certification of Residency (TexBuy Contractors will be required to sign a standard affidavit required by the State of Texas):** The State of Texas has a law concerning non-resident Contractors. This law can be found in Texas Government Code under Chapter 2252, Subchapter A. This law makes it necessary for 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.”

- (5) **Felony Conviction Notice (TexBuy Contractors will be required to sign a standard affidavit 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 Background Checks** in accordance with Texas Education Code §22.0834 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).
- (7) **State of Texas Franchise Tax:** By signature hereon, the bidder certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.
- (8) **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.
- (9) **Bid 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.

For Construction only as required by law in the State of Texas:

- (1.) **Security**
 - (a.) **Bid Security**, when required by Texas Law, shall be furnished with the bid. The Bid Security shall consist of a certified check, cashier’s check or a bid bond in the amount of ten percent (10%) of the total bid (or as otherwise stated in the RFB) that shall be a guarantee to furnish Performance and Payment Bonds. Bid Security shall be to TexBuy.
 - (b.) **The Successful Bidder’s Security** will be retained until the Contract is signed and the required Performance and Payment Bonds have been furnished. If any bidder refuses to enter into a contract within 30 days or fails to furnish the required bonds, the TexBuy will retain the Bid Security as liquidated damages, but not as a penalty.
 - (c.) **Performance Bonds** when required by Texas Law, shall be furnished by the successful bidder in an amount equal to one hundred percent (100%) of the total amount of the contract sum, 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.
 - (d.) **Payment Bonds** when required by Texas Law shall be furnished by the successful bidder, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided in said contract, for the use of each claimant.
 - (e.) **Prevailing Wage** must be paid to any contractors or subcontractors or their employees or agents in performing any work under the awarded bid.
 - (f.) **Criminal History Background Checks** in accordance with Texas Education Code §22.0834 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).

(2.) **Insurance:** The Contractor shall file with the Participating Agency’s designee, Insurance Certificates, as described herein, evidencing the coverage required, 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 of companies acceptable to the Owner. 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:

Single Limit—\$500,000.00

Unimpaired Aggregate—\$500,000.00

Comprehensive 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

(b.) Owner’s Insurance: Carry and pay for Owner’s Protective Liability Insurance in the same amounts as specified above for the Contractor’s General Liability. Name the Architect, Engineers, and Consultants as additional insured if applicable.

(c.) Comprehensive Catastrophic Liability: excess over the above liability policies in the amount of \$2,000,000.00 each occurrence. (Combined Limit)

B. Procedure for Processing Orders

(1.) Purchase orders are issued by participating agencies to the Contractor. The purchase orders are sent to TexBuy where they are reviewed and edited by TexBuy and forwarded to the Contractor within one working day.

(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 will invoice the Contractor on a monthly basis for the 2% participation fee. The invoice will be based on total sales made through the TexBuy contract with the Contractor. The Contractor shall remit payment to TexBuy at net thirty-day (30) terms.

C. Members Purchasing Under the Agency

TexBuy is operated by Region 16 Education Service Center, 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.

20. Virginia, Fairfax County Public Schools

A. Additional Agency Terms and Conditions

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 an 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.

7. **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.
8. **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.
9. **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.
10. **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.
11. **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.
12. **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.
13. **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.
14. **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.

b. 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.

- 22. 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.
- 23. 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.
- 24. 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.
- 25. 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

- 26. 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.

27. **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.
28. **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.
29. **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.

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.

21. Washington, King County Directors' Association (KCDA)

A. *Additional Agency 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/vendor and customer using this Contract agree that it is the customer'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/vendor and customer 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 these bids/contracts to members and prospective members. Vendors may be requested to make joint presentations to KCDA 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/Vendor agrees to make available KCDA supplied brochures or other promotional materials at these events. Contractor/Vendor will supply scheduled exhibit dates in advance.

Contractor/Vendor agrees to insert the approved KCDA logo, web address and contact information on the Vendor/Contractor's website promoting and providing a link to the KCDA website. Contractor/Vendor will also provide KCDA with text, links and logos to be posted on the KCDA website.

Cancellation/Default/Termination:

KCDA reserves the right to cancel the whole or any part of this contract due to the failure by of 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 vendor fails to adequately perform the services set forth in the contract
- The vendor 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.
- KCDA shall follow the following procedure if the contract is to be terminated:

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 a given date.

Step 3 – Issue a letter to terminate the contract.

Contract Amendments:

KCDA reserves the right to amend the contract resulting from state law changes or internal boilerplate changes due to state law changes. Vendors/Contractors will be sent written notification of the changes.

Employees who have been Convicted of Crimes Against Children:

The Contractor/Vendor, or any of his 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 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 9S.444 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.

Consultant/Contractors 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, 10.97.0303 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 consultant shall provide a copy of the record to the person applying for employment to the school location. If the Consultant/Contractor or applicant has had a record check within the previous two years, the Consultant/Contractor may waive the requirement. The Consultant/Contractor shall determine whether the applicant or the Consultant/Contractor shall pay costs associated with the record check.

In addition, pursuant to RCW 9.96A.020 and 1993 Chapter Law 71, is disqualified from employment by school districts and their Consultant/Contractors hiring employees who will have regularly scheduled unsupervised access to children because of a prior guilty plea or conviction of a felony involving of sexual exploitation of a child under Chapter 9.98 RCW, sexual offenses under Chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88, 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.

The Consultant/Contractor will comply with all applicable state and federal laws regarding hiring of employees, including provisions of RCW 43.43.830 - 43.43.834 and RCW 10.97.030 and 10.97.050 relating to fingerprint and background checks through the Federal Bureau of Investigation and Washington State criminal identification fingerprint card, and RCW 9.96A.020 and the 1993 Chapter Law 71 relating to disqualification from employment.

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 of otherwise any such provisions 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.

Indemnification/Hold Harmless:

Both the contractor/vendor and customer using this Contract agree to defend, indemnify and hold KCDA's Board members, employees and agents, free and harmless from any claims liabilities, costs, penalties, or interest arising out of any such use.

Lease and Rentals:

If Contractor/Vendor 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. If the KCDA member leasing the goods and/or services loses its funding for those goods and services, the contractor agrees to allow the member to terminate the lease by paying for the balance of the current years lease and any freight charges back to the Contractor/Vendor.

In addition, the member must give a 30 day written notice of lost funding, announce the fiscal period that funding ended and cannot replace the leased goods and/or services with another similar product.

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.

Reciprocity:

KCDA may review responses from bidders outside the State of Washington to see if those bidders are from states that use restrictions against companies from the State of Washington when they respond to public bids. KCDA may use this information in making bid awards when multiple bidders appear to have submitted the same pricing, terms and conditions on a particular bid item or items.

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. Processing Orders Procedure:

- Once the award is made to the Contractor/Vendor, KCDA will inform customer of the contract.
- At this point the Contractor/Vendor may directly contact customers or the customer may contact the Contractor/Vendor.
- A list of members, addresses and phone numbers is available to the contractor/vendor.
- Before a contractor may enter into business with a KCDA customer, they need to verify the customer is a KCDA member which can be viewed under Membership on the KCDA website.
- After entering into an agreement with KCDA, the directions for placement of orders will be posted on the KCDA website for both Contractor/Vendor and customer. They will be posted on each vendor/contractor's awarded vendor page.

C. Invoicing/Reporting:

- KCDA will contact Vendors/Contractors about invoicing procedures.
- KCDA is funded through a service fee paid to KCDA by the participating Contractor/Vendors. The service fee percentage is based upon the total sale of goods and services, including installation, if included. This fee shall be reflected in all price quotations under the KCDA agreement. Do not print the service fee as a line item on the quotation. The service fee may vary for each contract but will generally be structured between 2-3%.
- The Contractor/Vendor will compile a electronic quarterly report listing each purchase made by participating customers and send them 30 days after each quarter period (May 15th, August 15, November 15 and February 15) and send them to the e-mail address of the Executive Director, Jim Borrow jborrow@kcda.org and Director of Finance, Robert Payne rpayne@kcda.org
- These reports shall be in Microsoft Excel format and shall have file names that identify the contractor/vendor and the month being reported. They shall include the following fields and allow for sorting on any of the fields: Date of order, name of customer, item purchased, quantity, unit price, extended price, customer PO #, vendor/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.

D. Construction/Public Work Projects/Prevailing Wage/Bonds/Licenses/Certificates of Insurance:

Vendor and/or Contractor agree that, in performance of the services required under this agreement, Vendor/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 Vendor/Contractor to determine applicability and requirements of any such laws and to abide by them.

- **Public Works:**

Statute requires workers be paid prevailing wages when employed on public works projects and on public building service maintenance. RCW 39.04.010, RCW 39.12.010 and 020. It is the contractor's responsibility to acquaint him/her with, and comply with State regulations regarding payment of prevailing wages on public works projects. The contractor, as established by the Washington State Department of Labor and Industries, will pay prevailing wage rates, for every job which performs public works work. See further explanation in Public Works Application section below.

Application: The Public Works Act regulated 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

Data Collection Requirements

The Contractor or subcontractor directly contracting for "Off-Site, Prefabricated, Non-Standard, Project Specific Items" shall identify and report information required on the affidavit of wages paid form filed with the Department of Labor and Industries. The Contractor shall include language in its subcontracts requiring subcontractors and lower-tier subcontractors to comply with the reporting requirements for "Off-Site, Prefabricated, Non-Standard, Project Specific Item" on the affidavit of wages paid.

The reporting requirement for Items shall apply for all public works contracts estimated to cost over \$1 million entered into by the Owner and Contractor between September 1, 2010 through December 31, 2013.

"Off-site, prefabricated, nonstandard, project specific items" means products or items that are:

- a. Made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work;
- b. Produced specifically for the public work and not considered to be regularly available shelf items;
- c. Produced or manufactured by labor expended to assemble or modify standard items; and
- d. Produced at an off-site location outside Washington.

The Contractor or subcontractor shall comply with the reporting requirements and instructions on the affidavit of wages paid form, and shall report the following information on the affidavit of

wages paid form submitted to the Department of Labor and Industries in order to comply with the reporting requirements for use of “Off-Site, Prefabricated, Non-Standard, Project Specific” items:

- a. The estimated cost of the public works project;
- b. The name of the awarding agency and the project title;
- c. The contract value of the off-site, prefabricated, nonstandard, project specific items produced outside of Washington State, including labor and materials; and
- d. The name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.

- **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 the Department of Labor and Industries for each trade and occupation employed in the performance of public work.

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. KCDA may not make any payments until all vendors/contractors have submitted an approved intent form. KCDA may not release retainage until all vendors/contractors have submitted an 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% for 45 days as dictated by law. The final 5% will be paid when the following is completed: Receipt of Affidavit of Wages Paid Forms, Releases from Washington State Department of Labor & Industries, Employment Security Department and the Department of Revenue and acceptance of goods and services to the satisfaction of the KCDA ordering member.

- **Bonds- Payment & Performance:**

The prime contractor/vendor shall provide a Performance and Payment Bond to both the KCDA customer and KCDA, before work begins, for 100% of the contract price. The only exception is for contracts of thirty-five thousand (\$35,000) dollars or less. In this instance, at the option of the contractor/vendor, the customer may, in lieu of the bond retain fifty 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 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

Performance and Payment bonds for KCDA customers outside Washington must be provided by companies licensed to provide bonds for public entities in the customer’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 an any and all products and services offered in its response to the contract. Any bidder using subcontractors must hold a current and appropriate contractor’s license as required in Washington, as well as states outside Washington in which KCDA may market. It is the responsibility of the contractor to ensure any subcontractors performing under this contract hold and maintain appropriate licenses. Copies of licenses must be submitted to the customer prior to performing the work. The contractor shall submit copies of licenses with the response to this contract. The contractor/vendor agrees to keep and ensure subcontractors keep any required license, permit or bond current and in compliance with Washington rules, regulations and statutes. For work performed for any Washington State school district, public agency or municipality, the Vendor/Contractor must comply with the bidder responsibility requirements of RCW 39.04.350 prior to the KCDA customer awarding a contract. The contractor must verify the responsibility of all subcontractors used in accordance with RCW 39.06.020.

- **Permits:** The acquisition of all permits as well as any drawings needed to obtain those permits is the responsibility of the successful Contractor/bidder.
- **Certificate of Insurance:** Certificate of Insurance: A certificate of insurance must be provided to KCDA and the KCDA customer prior to performance of the work demonstrating current coverage of the types and amounts of insurance required. In addition, the Commercial General Liability policies must be endorsed to name KCDA and the KCDA customer as additional insured's. Such policies must be further endorsed to provide that the insurance is primary as respects KCDA and the KCDA customer, and that any other insurance maintained by KCDA and the KCDA customer shall be excess and not contributing insurance with the Contractor/Vendor's insurance. These endorsements must be provided along with the certificate of insurance. KCDA and the KCDA customer must both approve the certificate of insurance and endorsements.

- **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/Contractor 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.

E. Members Purchasing Under KCDA:

King County Directors' Association (KCDA) is a member owned purchasing cooperative representing 294 Washington State school districts. In addition, KCDA provides purchasing and procurement services for numerous public agencies and political subdivisions in other states, including but not limited to Alaska, Idaho and Montana. KCDA also provides purchasing services for private K-12 schools in Washington State.

All school districts and other public agencies in the State of Oregon who are or may become associate members of KCDA may participate in the contract(s) awarded as a result of this IFB. A listing of all KCDA members is available on the KCDA website, www.kcda.org

22. Wyoming, Northeast Wyoming Board of Cooperative Educational Services (NEW BOCES)

A. Additional Terms and Conditions

Upon execution of this document, the respondent hereby agrees to submit bids and NEW BOCES agrees to accept such bids under the following conditions:

Public Works and Contracts: Vendor shall comply with any and 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) (copies available upon request).

B. Procedure for Processing Orders

Upon bid award to the contractor/vendor, NEW BOCES will inform its members and other qualifying purchasers of the contract by: 1) including the contract on the NEW BOCES website, 2) announcing the award in its periodic newsletter, and 3) publishing the contract information in a catalog disseminated to all members and other qualifying purchasers. A list of members and other qualifying purchasers, contact persons, addresses, and phone numbers will be made available to the contractor. When a member or other qualifying purchaser identifies a product or service for procurement, they issue a purchase order for that product or service. The vendor's price shall include a one percent (1%) administrative fee that the vendor will collect from the member or other qualifying purchaser. This amount will be remitted to NEW BOCES on a quarterly basis. The vendor will compile an annual report showing all purchases made by NEW BOCES members and other qualifying purchasers under this contract at the conclusion of each calendar year.

Administrative fees will be payable to NEW BOCES on the 15th of the month succeeding each quarter and all checks are payable to NEW BOCES, 410 North Miller Avenue, Gillette, Wyoming 82716, Att: Business Manager.

C. Members Purchasing Under NEW BOCES

NEW BOCES is an educational cooperative authorized under the provisions of W.S. 21-20-101 to 21-20-111. Each of the K-12 school districts in the state is eligible to participate in NEW BOCES cooperative purchasing programs. No district is obligated to use these services but they find the benefits of economy and efficiency made possible by cooperative purchasing to be advantageous. Additional qualifying purchasers may include other public or non-profit educational institutions in the state.

(End of Part A)