

**Proof of Publication**

(2015.5 C.C.P.)

**Salinas Newspapers, Inc.**  
123 W. Alisal St.  
Salinas, CA 93901  
831-754-4138/Fax: 831-754-7156

**State Of California ss:**  
**County of Monterey**

**Advertiser:** EPYLON CORP.  
3675 MT DIABLO BLVD STE 110  
LAFAYETTE, CA 94549

*Racquel Landolf*

Our Order # 0000232740  
Net Order Cost \$ 676.50

**RE:** MONTEREY COUNTY OFFICE OF EDUCATION Invi  
AEPA-IFB-013

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I hereby certify that the attached advertisement appeared in said newspaper on the following dates:

**Newspaper: Salinas Californian**

**9/10/2012 9/17/2012**

I acknowledge that I am a principal clerk of the printer of said paper, which is published in the City of Salinas, County of Monterey, State of California. The Salinas Californian is printed and published daily, except Sunday and has been adjudged a newspaper of general circulation by the Superior Court of the County of Monterey, State of California. El Sol is printed and published weekly on Saturday and has been adjudged a newspaper of general circulation by the Superior Court of Monterey, State of California.

I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on this 17 day of Sept, 2012 at Salinas, California.

*C. Clark*

**Declarant**

**MONTEREY COUNTY  
OFFICE OF EDUCATION**

**Invitation to Bid #AEPA-IFB-013**

Notice is hereby given that the Superintendent of Schools of the Monterey County Office of Education, hereinafter referred to as MCOE, will receive up to, but no later than 10:30 a.m. PDT, or 1:30 p.m. EDT, Wednesday, October 17, 2012, sealed bids for the award of contracts for use by MCOE and other eligible education and public agencies throughout California.

Bids are sought for products and where specified, for services - related to: A. Digital MFD/Copiers; Printers and Managed Document Services; B. Roofing & Building Envelope Services; C. Medicaid Billing; D. Food Service Distribution; E. Food Manufacturers; F. Custodial Equipment; and G. Athletic Lighting.

Each bid package consists of three or more parts: Part A, Notice to Bidders, Bid Procedures 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 (varies by commodity).

MCOE is cooperating with the Association of Educational Purchasing Agencies (AEPA) and CalSave, cooperative purchasing programs, and intends that applicable purchases under this bid be piggybackable by other agencies throughout California as allowed by law and that, where eligible, items under contract be part of a Standard School Supply and Equipment List as described in request-for-bid documents.

All bids must be applicable to California, conform to MCOE terms and conditions as written in the bid documents and submitted to MCOE's agent at CSIU, 90 Lawton Lane, Milton, PA 17847-9756, in a sealed envelope marked "SEALED BID AEPA #013" on the front of the envelope.

Note that Bidders must be able to provide their proposed products and services in up to 26 states including California, Colorado, Connecticut, Florida, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Bid documents can be downloaded after registering from the web at [www.aepacoop.org](http://www.aepacoop.org). MCOE 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 MCOE and/or other AEPA Member Agencies and/or their Participating Entities. Bids will be opened and publicly read immediately following the deadline.

No bidder may withdraw his bid for a period of ninety (90) days after the date set for opening of bids.

Garry P. Bousum  
Associate Superintendent  
Administration and Business Services  
Monterey County Office of Education  
Sept. 10, 17, 2012 (232740)



**INVITATION FOR BID NUMBER AEPA IFB #013  
PART A – TERMS AND CONDITIONS**

**(SAME FOR ALL IFB #013 BID COMMODITIES)**

**Notice to Bidders**

Sealed Bids will be received by the Association of Educational Purchasing Agencies (AEPA) on behalf of [Educational Agency] and its other AEPA Member Agencies until:

**1:30 p.m. EDT, Wednesday, October 17, 2012**

**For: A. Digital MFD/Copiers, Printers and Managed Document Services, B. Roofing & Building Envelope Services, C. Medicaid Billing, D. Food Service Distribution, E. Food Manufacturers, F. Custodial Equipment, G. Athletic Lighting**

**Each bid package consists of three or more parts:**

- Part A – Notice to Bidders, Bid Procedures 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 (varies by commodity)**

All bids shall be submitted to CSIU, 90 Lawton Lane, Milton, PA 17847-9756, in a sealed envelope marked “SEALED BID AEPA #013” on the front of the envelope. Note that Bidders must be able to provide their proposed products and services in up to 26 states including California, Colorado, Connecticut, Florida, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Bid documents can be downloaded after registering from the web at [www.aepacoop.org](http://www.aepacoop.org). AEPA or [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] and/or other AEPA Member Agencies and/or their Participating Entities. 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:**

August 20, 2012	Publication of Bids and IFB available on the AEPA website <a href="http://www.aepacoop.org">www.aepacoop.org</a>
September 11, 2012	Voluntary Pre-Bid Conference call for vendors – <b>vendors must pre-register by September 6, 2012, 3 PM EDT</b>
October 3, 2012	Deadline for questions from Bidders.
October 17 2012, 1:30 pm EDT	Deadline for Bid Submittals and Public Opening of Bids
November 27, 2012	AEPA Approval of bids
December 7, 2012	Bidders are advised of the results of the bid
March 1, 2013 to February 28, 2014	First contract year
March 1, 2014 -2016	Annual contract renewal dates subject to approval by AEPA

**Questions regarding this IFB from the time the IFB is published until October 3, 2012, should be submitted via email to [Questions@aepacoop.org](mailto:Questions@aepacoop.org).**

**Questions or communications regarding this IFB after Bid Opening October 17, 2012 should be submitted via email to [Bids@aepacoop.org](mailto:Bids@aepacoop.org).**

**Questions or communications regarding this IFB after Notification of Approval should be directed to: AEPA President at [President@aepacoop.org](mailto:President@aepacoop.org).**

**AEPA Member Agency information**

State	Agency Name	Contact	Email	Students
California	Monterey County Office of Education d/b/a CalSAVE	Ted Witt	<a href="mailto:twitt@epylon.com">twitt@epylon.com</a>	6,500,000
Colorado	Colorado BOCES Association	John Tillman	<a href="mailto:jtillman@my.amigo.net">jtillman@my.amigo.net</a>	700,000
Connecticut	Capitol Region Education Council (CREC)	Cara Hart	<a href="mailto:chart@crec.org">chart@crec.org</a>	580,000
Florida	Panhandle Area Education Consortium	Rick Everitt	<a href="mailto:everitr@paec.org">everitr@paec.org</a>	2,500,000
Indiana	Wilson Education Center	Phil Partenheimer	<a href="mailto:philp@wesc.k12.in.us">philp@wesc.k12.in.us</a>	600,000
Iowa	Iowa Educators Consortium	Jamie Albertsen	<a href="mailto:jalbertsen@iec-ia.org">jalbertsen@iec-ia.org</a>	500,000
Kansas	Southeast Kansas Education Service Center	Brad Stefanoni	<a href="mailto:brad.stefanoni@greenbush.org">brad.stefanoni@greenbush.org</a>	465,000
Kentucky	Green River Regional Educational Cooperative	Ann Burden	<a href="mailto:ann.burden@grrec.ky.gov">ann.burden@grrec.ky.gov</a>	500,000
Massachusetts	The Education Cooperative	Joan Preble	<a href="mailto:jpreble@tec-coop.org">jpreble@tec-coop.org</a>	50,000
Michigan	Oakland Schools	Katrina Brunette	<a href="mailto:Katrina.Brunette@oakland.k12.mi.us">Katrina.Brunette@oakland.k12.mi.us</a>	1,600,000
Minnesota	Minnesota Service Cooperative	Jeremy Kovash	<a href="mailto:jkovash@lscs.org">jkovash@lscs.org</a>	825,600
Missouri	Cooperating School Districts	Tom Post	<a href="mailto:tpost@csd.org">tpost@csd.org</a>	500,000
Montana	Montana Cooperative Service	Dave Puyear	<a href="mailto:dpuyear@mrea-mt.org">dpuyear@mrea-mt.org</a>	150,000
Nebraska	Nebraska ESU Cooperative Purchasing	Kip Schnedier	<a href="mailto:kschneider@esu17.org">kschneider@esu17.org</a>	350,000
New Jersey	Middlesex Regional Educational Services Commission	Pat Moran	<a href="mailto:pmoran@mresc.k12.nj.us">pmoran@mresc.k12.nj.us</a>	1,300,000
New Mexico	Cooperative Educational Services	Steve Hollman	<a href="mailto:steven@ces.org">steven@ces.org</a>	350,000
North Dakota	North Dakota Educators Service Cooperative	John Jankowski	<a href="mailto:jjankows@sendit.nodak.edu">jjankows@sendit.nodak.edu</a>	80,500
Ohio	Ohio Council of Educational Purchasing Consortium	Elmo Kallner	<a href="mailto:kallner@mail.mecdc.org">kallner@mail.mecdc.org</a>	1,500,000
Oregon	Intermountain ESD	Caryn Appler	<a href="mailto:caryn.appler@imesd.k12.or.us">caryn.appler@imesd.k12.or.us</a>	600,000
Pennsylvania	Central Susquehanna Intermediate Unit d/b/a Keystone Purchasing Network	Jeff Kimball	<a href="mailto:jkimball@csiu.org">jkimball@csiu.org</a>	3,500,000
Texas	Region 16 Education Service Center d/b/a TexBuy	Andrew Pickens	<a href="mailto:andrew.pickens@esc16.net">andrew.pickens@esc16.net</a>	80,000
Virginia	Fairfax County Public Schools	Ron Hull	<a href="mailto:rahull@fcps.edu">rahull@fcps.edu</a>	1,200,000
Washington	King County Directors Association	Jim Borrow	<a href="mailto:jborrow@kcda.org">jborrow@kcda.org</a>	975,500
West Virginia	WV Regional Education Service Agencies Cooperative Purchasing	Ralph Board	<a href="mailto:rsboard@access.k12.wv.us">rsboard@access.k12.wv.us</a>	282,000
Wisconsin	Cooperative Educational Service Agency (CESA) #2	Lisa Stahl	<a href="mailto:lstahl@cesa2.k12.wi.us">lstahl@cesa2.k12.wi.us</a>	872,500
Wyoming	Northeast Wyoming Board of Cooperative Educational Services	Julie Cudmore	<a href="mailto:jcudmore@newboces.com">jcudmore@newboces.com</a>	89,500
			<b>Total Students:</b>	<b>26,650,600</b>

# PART A - TABLE OF CONTENTS

<b>I.</b>	<b>ABOUT AEPA .....</b>	<b>5</b>
<b>II.</b>	<b>BID PROCEDURES.....</b>	<b>5</b>
A.	ISSUING AGENCY .....	5
B.	PRE-BID VOLUNTARY CONFERENCE	
	<i>Pre-registration required by September 6, 2012 .....</i>	<i>6</i>
C.	QUESTIONS .....	6
D.	BID SECURITY .....	6
E.	BID SUBMISSION .....	7
	1. <i>Preparation of the Bid Response .....</i>	<i>7</i>
	2. <i>Format of a Bid Submission .....</i>	<i>7</i>
	3. <i>Bid Transmittal .....</i>	<i>9</i>
F.	BID EVALUATION.....	9
G.	CONTRACT AWARD AND IMPLEMENTATION .....	9
<b>III.</b>	<b>GENERAL TERMS AND CONDITIONS FOR ALL AGENCIES .....</b>	<b>10</b>
<b>IV.</b>	<b>MEMBER AGENCY SPECIFIC TERMS AND CONDITIONS .....</b>	<b>28</b>
	1. <i>California: Monterey County Office of Education dba CalSAVE .....</i>	<i>31</i>
	2. <i>Colorado: CO BOCES Association (CBA).....</i>	<i>36</i>
	3. <i>Connecticut: Capitol Region Education Council (CREC) .....</i>	<i>37</i>
	4. <i>Florida: Panhandle Area Education Consortium .....</i>	<i>42</i>
	5. <i>Indiana: Wilson Education Service Center (WESC) .....</i>	<i>44</i>
	6. <i>Iowa: IA Educators Consortium (IEC).....</i>	<i>45</i>
	7. <i>Kansas: Southeast KS Education Center, Greenbush (SEKESC) .....</i>	<i>47</i>
	8. <i>Kentucky: Green River Regional Educational Cooperative (GRREC).....</i>	<i>49</i>
	9. <i>Massachusetts: The Education Cooperative .....</i>	<i>51</i>
	10. <i>Michigan: Oakland Schools (OS).....</i>	<i>52</i>
	11. <i>Minnesota: MN Service Cooperative (MSC).....</i>	<i>56</i>
	12. <i>Missouri: Cooperating School Districts of the Greater St. Louis Area (CSD) .....</i>	<i>58</i>
	13. <i>Montana: MT Cooperative Services (MCS) .....</i>	<i>60</i>
	14. <i>Nebraska: NE Educational Services United Cooperative Purchasing (NESUCP).....</i>	<i>61</i>
	15. <i>New Jersey: Middlesex Regional Educational Services Commission (MRESC).....</i>	<i>63</i>
	16. <i>New Mexico: Cooperative Education Services (CES).....</i>	<i>68</i>
	17. <i>North Dakota: ND Educators Service Cooperative (NDESC).....</i>	<i>78</i>
	18. <i>Ohio: OH Council of Educational Purchasing Consortia (OCEPC).....</i>	<i>80</i>
	19. <i>Oregon: Intermountain Educational Service District (IMESD).....</i>	<i>84</i>
	20. <i>Pennsylvania: Central Susquehanna Intermediate Unit dba Keystone Purchasing Network (KPN).....</i>	<i>91</i>
	21. <i>Texas: Region 16 Education Service Center dba TexBuy .....</i>	<i>97</i>
	22. <i>Virginia: Fairfax County Public Schools .....</i>	<i>100</i>
	23. <i>Washington: King County Directors' Association (KCDA).....</i>	<i>107</i>
	24. <i>West Virginia: WV Regional Education Service Agencies Cooperative Purchasing.....</i>	<i>113</i>
	25. <i>Wisconsin: Cooperative Educational Service Agency #2.....</i>	<i>117</i>
	26. <i>Wyoming: Northeast WY Board of Cooperative Educational Services (NEW BOCES) .....</i>	<i>118</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, 26 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 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.

## I. BID PROCEDURES

### A. Issuing Agency

The great benefit to the Bidder is that one response may be prepared for approval by AEPA and award by multiple AEPA Member Agencies and utilized by their Participating Entities located throughout many states. These 24 AEPA Member Agencies have Participating Entities in various other states that are identified 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 25,000,000 students.

Each AEPA Member Agency will individually publish notice of the IFB. Bidders will send responses to a single receiving point for all AEPA Member Agencies. Responses will be evaluated by all AEPA 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 AEPA Approved contractors 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 AEPA 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 each AEPA Member Agency. 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 it saves the participants both time and money. Time is saved by having access to volume discounted contracts publicly solicited and being able to purchase what is needed without having to wade through the solicitation process (write solicitation, advertise the IFB, open each response, evaluate and make a selection). Money is saved in procurement cost and lower prices will be the result of volume purchasing. *Therefore, 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 or state contract can get through its own bid, a cooperatively bid contract makes no sense.* **AEPA requires 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 contracts or multistate contracts of equal or lesser volume. Anyone who downloads the bid documents and fails to submit a bid shall be deemed as a No-Bid Response.**

AEPA policy for membership permits new Agencies to become AEPA 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 contractors and in accordance with their state laws.

**B. Voluntary Pre-Bid Conference Call – Pre-Registration Required by September 6, 2012,  
3:00 PM EDT. (No exceptions)**

AEPA will host a voluntary pre-bid conference call on Tuesday, September 11, 2012, 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 Thursday, September 6, 2012, 3 PM EDT, by faxing the Pre-bid Conference Call Registration Form (found on AEPA Bid website) to Jill Gemberling to 888-490-3184. No registration will be accepted after this date. 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 at least 24 hours prior to the conference call. 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. Recording of the conference call will be posted on the AEPA Website.

**Voluntary Pre-Bid Conference Call Schedule – Tuesday, September 11, 2012**

	<b>Eastern</b>	<b>Central</b>	<b>Mountain</b>	<b>Pacific</b>
<b>A. Digital MFD/Copiers</b>	11:30 AM	10:30 AM	9:30 AM	8:30 AM
<b>B. Roofing &amp; Building Envelope</b>	12:00 PM	11:00 AM	10:00 AM	9:00 AM
<b>C. Medicaid Billing</b>	12:30 PM	11:30 AM	10:30 AM	9:30 AM
<b>D. Food Service Distribution</b>	1:30 PM	12:30 AM	11:30 AM	10:30 AM
<b>E. Food Manufacturers</b>	2:00 PM	1:00 PM	12:00 PM	11:00 AM
<b>F. Custodial Equipment</b>	2:30 PM	1:30 PM	12:30 PM	11:30 AM
<b>G. Athletic Lighting</b>	3:00 PM	2:00 PM	1:00 PM	12:00 PM

**C. Questions**

All questions regarding this IFB shall be submitted via email to Questions@aepacoop.org, referencing AEPA Bid #013 and the respective bid category. All questions and responses will be available on the AEPA website ([www.aepacoop.org](http://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 fourteen (14) days prior to bid due date will not 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, within their response, must demonstrate their ability, capacity and available resources to provide the proposed products and services to all of the AEPA Member Agencies 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**

AEPA Member agencies’ that require a bid security are identified in Part A, Section IV Member Agency Specific Terms and Conditions, of this solicitation. Part B identifies the bid security amount. Bid security shall be submitted with the bid response at the time bids are due. As part of the evaluation process any Bidder who fails to submit the proper form of bid security may be considered non-responsive.

Acceptable bid security, which must be provided with the submission of the initial offer, will be an amount equal to the amount specified herein, with the principal being the Bidder and the Association of Educational

Purchasing Agencies being the Agency of Record. Bid Security may be a one-time bid bond underwritten by a surety company licensed to issue bid bonds in the state of Nevada and said surety to be approved in federal circular 570 as published by the United States treasury department or the equivalent in cash or irrevocable letter of credit from a FDIC financial institution. The bid security shall remain in force for One Hundred Twenty (120) days of bid opening.

## **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 bid categories may contain additional Parts or Forms.
- b. All bid responses shall be on the forms provided in Part C – Bid Forms.
- c. Bid Forms requiring signatures 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.
- d. 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.
- e. In case of an error in extension of prices in the bid, unit prices shall govern.
- f. Periods of time, stated as a number of days, shall be in calendar days, not business days.
- g. 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.
- h. 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 AEPA 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 copies of the bid response shall be submitted on separate but identical electronic media, either CDs or flash drives. CDs or flash drives must be properly labeled with the Bidders name and bid category.
- b. Bid Form A, Bid Form B and Bid Security, if applicable, shall be submitted in hard copy and a copy of these forms and the remaining response shall be submitted in electronic format with original signatures.
- c. 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](http://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 flash drive, with hard copies bearing original signatures, for each participating AEPA 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 flash drive, with hard copies bearing original signatures, for each participating AEPA Member Agency.*
- e. **Service Questionnaire for Bidder (FORM C):** The Questionnaire seeks information about the Bidder's pricing structure, service areas, past performance 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 AEPA Member Agencies and their Participating Entities. 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.1):** Explanations of deviations noted in response to stated product and service specifications on the **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.
- j. **Bid Bond** if required for various commodities. Hard copy sent with bid and a PDF of Bid Bond in folder A.

#### **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 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 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 Price lists:** For catalog bids, PDFs of the Bidder's most recent published catalog(s) or price lists must be included for catalog bids. Each PDF document must be titled as per the instructions in **Document Development** above.

- e. **Core List (Form G.2):** If required, 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.

#### **FOLDERS C and ETC., CONTENTS:**

Folder C and additional folders are reserved for any additional documents or files other than those listed above that may be requested and/or related to this 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 and, if required, a copy of the bid security to each participating AEPA Member Agency as indicated for that bid category.

### **3. Bid Transmittal – Due by October 17, 2012, at 1:30 PM EDT**

It is the responsibility of the Bidder to be certain that the bid submittal is in the actual possession of AEPA at the CSIU, 90 Lawton Lane, Milton, PA 17847-9756, on or prior to the exact due date and time of October 17, 2012 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. **Bids received late will not be opened and will be deemed non-responsive. Anyone who downloads the bid documents and fails to submit a bid shall be deemed as a No-Bid Response.**

If the designated location for receiving bids is closed due to an unforeseen circumstance on the day bid responses are due, responses will be due at the same time on the next day the building is open.

Responsive bids will be opened and the name of each Bidder and other appropriate information will be publicly read.

#### **G. Bid Evaluation**

Bid responses will be reviewed, analyzed and evaluated based on the evaluation criteria stipulated within this bid document (Refer to the *Evaluation, Approval and Award* section located in III. General Terms and Conditions for All Agencies).

#### **H. Contract Award and Implementation**

An AEPA oversight committee will perform initial bid response review and evaluation and will prepare and make a recommendation to AEPA for its considerations and approval. Those selected Bidders who were approved by AEPA will then be considered by the AEPA Member Agencies for contract award.

Once the approved Bidders have been notified by AEPA, it is their responsibility to contact those AEPA Member Agencies who had indicated an interest in participating in the category solicited (up to 26) and provide a complete bid package as submitted to AEPA. Each AEPA Member Agency will review, evaluate and determine which, if any, it will award contracts to.

The approved Bidder and the AEPA Member Agency will hold final contract negotiations if necessary to work out state specific details of contract implementation including:

1. Acquiring additional information and having discussions on how the awarded contract will be executed.
2. Signing the contract with the AEPA Member Agency.  
Note: Once the contract is signed, the approved Bidder becomes a Contractor for the AEPA Member Agency.
3. Jointly develop marketing strategies and a plan for contract roll-out activities to the AEPA Member Agency's participating entities. (Advertising, flyers, website access, etc.).
4. Establish how orders will be processed, handled and reported.
5. Contract management: Establish how and by whom the day-to-day contract management will be handled and who will be the AEPA Member Agency's representative.

It is not guaranteed that each AEPA 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 AEPA Member Agency.

## II. GENERAL TERMS AND CONDITIONS FOR ALL AGENCIES

For the purposes of this INVITATION FOR BID, the following terms shall be defined as indicated below.

The terms Bidder, Contractor and Offeror are interchangeable and are used to identify the person(s) or firm(s) submitting a response to an Invitation for Bid.

The term Participating Entity is used to identify those Federal Agencies, State Agencies, Local Public Bodies and Non-Profit Non-Public Corporations, Organizations, etc. that have authorizations to utilize the AEPA Member Agencies' Awarded Contracts.

The term Buyer is used to identify the AEPA Member Agencies and their Entities that acquire and purchase commodities, supplies, materials, equipment and services under AEPA Member Agencies' Awarded contracts.

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

**AEPA Bi-Annual Meetings:** AEPA holds two general meetings each year: one in the Fall (currently the week after Thanksgiving) and other in the Spring (usually in the month of April or May). AEPA requires that all successful contract holders attend both meetings and participate in the vendor round tables at the spring meeting. AEPA request that all vendors register in advance and stay at the AEPA official hotel if rooms are available. All registrations for the meeting are required by the official registration due date as announced by AEPA.

**AEPA Member Agency:** Refers to the entities identified in the table on page two of this document and are listed on the table presented in Part B, item 2: Anticipated Member Agency Participation on this bid, that has chosen to participate in this bid/category. "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 procurement contract. Not every listed entity may elect to participate in this bid once the responses are reviewed and approved.

**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.

**Applicable Law:** The laws of the state of the respective AEPA Member Agency shall govern any resulting contract of this bid. Suits pertaining to this contract may be brought only in courts in the County and State as prescribed by the AEPA Member Agency. Both parties agree that the Uniform Commercial Code, as adopted by the State of the AEPA 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 resulting contract. It shall be Contractor's responsibility to identify, make themselves aware of and determine the applicability and requirements of any such laws and to abide by them.

**Approval and Awarding of Contract:** AEPA and its AEPA 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 the AEPA Member Agencies and their Participating Entities. A response to this solicitation is an offer to contract with the AEPA 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 AEPA Member Agency. A contract is formed when an AEPA Member Agency administrator and, if required, AEPA 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 AEPA and its AEPA Member Agencies, and no delegation of any duty of the Contractor shall be made without prior written permission by the AEPA Member Agency. AEPA and its AEPA Member Agencies 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 AEPA Member Agency, the Contractor's books and pertinent records related to this contract may be audited at a reasonable time and place.

**Authority:** This solicitation, as well as any resulting contract/agreement, is issued under the general authority of the State laws of the AEPA Member Agency and those identified within the AEPA Member Agencies' Specific Terms

and Conditions, Part A, Section IV (see also Procurement Code below). Internal or external Cooperative Purchasing Agreements between the AEPA Member Agency and Participating Entities may exist.

**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.

**Bid Security:** There are AEPA Member Agencies that require that respondents to a bid submit a form of bid security executed by a surety company authorized to do business in the state of Nevada and said surety to be approved in federal circular 570 as published by the United States treasury department or the equivalent in cash or an irrevocable letter of credit from a FDIC or nationally recognized financial institution. The bid security shall remain in force for a period of One Hundred Twenty (120) days of bid opening. Bid Security must accompany the Contractor's bid response when submitted and be placed in Folder A. If the Bidder fails to submit the bid security, its response will be deemed non-responsive.

**Bidder/Contractor Definitions:**

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

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

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

“Contractor” has entered into a contract with a participating AEPA Member Agency or subsequently a Participating Entity.

**Bidder Acceptance Period:** In order to allow AEPA Member Agencies the opportunity to evaluate the bids, AEPA requires that a bid in response to this solicitation be valid and irrevocable for one hundred Twenty-days (120) after opening time and date.

**Bonding:** The Contractor agrees to provide all performance and payment bonds executed by a surety company authorized to do business in the individual AEPA Member's state and said surety to be approved in federal circular 570 as published by the United States treasury department, the state or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; when required by an AEPA Member Agency or Participating Entity at the time a contract is executed. If the Contractor fails to deliver any required performance or payment bonds, the AEPA Member Agency or Participating Entity shall not execute the contract with the Contractor and the appropriate AEPA Oversight Committee shall be notified of such failure and shall take the appropriate action.

**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 AEPA reserves the right to decide whether alternatives to the identified manufacturer and brand are in fact equal to the product, equipment and/or service described in the invitation. AEPA's decision shall be final.

**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:** (See Types of Bids)

**Certificate of Insurance:** (See Insurance)

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

The submission of the bid did not involve collusion or other anti-competitive practices;

The Bidder shall not discriminate against any employee, or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246);

The Bidder 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

The Bidder agrees to promote and offer to AEPA Member Agencies and Participating Entities only those materials and/or services as stated in and allowed under resultant contract(s) awarded.

**Christian Doctrine:** Any federal, state and local governing authority's/jurisdiction's statutes, codes, rules and regulations referenced and/or govern the products, services and activities relating to and are part of this solicitation, whether or not physically noted or included, shall be complied with and adhered to as required. It is sole responsibility of the Bidder to perform and complete any necessary research and investigation required to make themselves aware of and comply with this item.

**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 AEPA Member Agency or as initiated by the Bidder. Clarification does not give the Bidder an opportunity to revise or modify its bid.

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

**Contract Documents:** AEPA Member Agency will review proposed contract documents. Contractor's contract document shall not become part of AEPA Member Agency's contract with Contractor unless and until an authorized representative of an AEPA Member Agency reviews and accepts it.

**Contract Type** - This is an indefinite quantity contract and the contract types are as follows:

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); or
3. Fixed multipliers/factors bid to be applied to an established pricing methodology/system to allow for individual local requirements and conditions.

A cost-plus-a-percentage-of-cost contract is prohibited.

**Contractor:** Bidder who has been awarded a contract for the delivery of construction, tangible personal property, services or professional services in response to this IFB.

**Contractor Contact:** Contractor will designate one individual who will represent them to the AEPA, its AEPA Member Agencies during the contract period. This contact person will correspond with each AEPA Member Agency for technical assistance, problems, or questions that may arise. If other staff, distributors and/or independent Contractors will be performing the sales or support functions for different geographical areas (states), Contractor shall include instructions and contact information that can be distributed to AEPA Member Agencies upon approval of this bid.

**Construction:** Each AEPA Member Agency within their state statutes defines what constitutes construction, identifies the policies, rules, regulations and codes that govern construction projects. 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 Procurement:** Some individual state procurement codes may contain cooperative purchasing statutes that state any state agency or local public body may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to each state's procurement code shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located in different states.

**Cooperative Purchasing Contracts:** The Bidder agrees that all the prices, terms, warranties and benefits granted by the Bidder to AEPA Member Agencies or Participating Entities through this contract **will be equal to or better than** those offered for equivalent terms, conditions and requirements offered to any present or future customer or cooperative. If the Bidder shall, during the term of this Contract, enter into arrangements with any customer or cooperative providing greater benefits or terms that are more favorable, the Bidder shall notify the AEPA oversight committee chairman and offer said prices, terms, warranties and benefits to all AEPA Member Agencies.

**Cost of Bid Preparation:** Neither AEPA nor any AEPA 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 AEPA Member Agency and/or its Participating Entity on "credit hold" without 10-days advanced notice in writing, either by letter, facsimile or email to the AEPA Member Agency and the Participating Entity. [The AEPA Member Agencies believes it is better for the Contractor if the AEPA Member Agency places the slow-paying Agency Member on "credit hold;" if a Contractor places the Participating Entity on credit hold, agencies that pay promptly are penalized. If, on the other hand, the Member

Agency places the offending Participating Entity on “credit hold”, payment is more likely to result and only the offender is disciplined.]

**Delivery Terms, Conditions and Requirements:**

1. **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 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.
2. **The title and risk of loss of material or service:** shall not pass to the Buyer purchasing the material or services until it actually receives the material or service at the point of delivery and they have been accepted, unless otherwise provided within this document or individual project’s contract.
3. **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.
4. **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.
5. **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. AEPA Member Agency, or the receiving Buyer, 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.
  - A. **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.
  - B. **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.
  - C. **Shipping Errors:** Contractor agrees that shipping errors will be at the expense of the Contractor. For example, if a Contractor ships a product that was not ordered, it is the responsibility of the Contractor to pay for return mail or shipment.
6. **Stored Materials:** Upon prior written agreement between Contractor and Buyer, 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 Buyer 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 Buyer as an additional insured upon Buyer’s request. Additionally, if stored offsite, the materials must also be clearly identified as property of Buyer and be separated from other materials. Buyer must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary. Until final acceptance by Buyer, 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 Buyer upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.
7. **Improper delivery:** Unless contrary to other parts of this solicitation, if the goods, services or tender of delivery fail in any respect to conform and adhere to the terms, conditions, specifications of the resulting contract based on this solicitation and/or the individual Buyer’s contract/order. The Buyer may reject the whole, accept the whole, or accept any commercial unit or units and reject the rest.
8. **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.
9. **Liquidated Damages:** The Buyer may suffer financial loss if the project is not substantially complete or products or services are not delivered on the established date. The Contractor (if applicable Surety) shall be liable for and shall pay to the Buyer, not as a penalty, the sums that may be hereinafter agreed upon as liquidated damages per calendar day of delay until the work and/or delivery is determined by Buyer to be complete and/or delivered. Liquidated damages will be determined on a project-by-project basis.
10. **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.
11. **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 AEPA Member Agency

reserves the right to declare a breach of contract if the Contractor delivers nonconforming materials or services to any Buyer under this contract.

**12. Restocking Fees:** A restocking fee may only be charged on products ordered and that have been delivered to the Buyer's site in accordance with the order/contract. Restocking fees in excess of 15% will not be allowed. Restocking fees may be waived, at the option of the Contractor.

**13.** The Contractor must identify, specify and justify any exceptions or deviations taken.

**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 AEPA 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, its AEPA Member Agencies or Participating Entities.

**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.

**Eligible Entities:** The individual AEPA Member Agency's state procurement code and statutes provides for cooperative procurement and identifies those types of agencies, entities and organizations that are allowed to participate in and take advantage of cooperative procurement contracts solicited and approved by AEPA and awarded by AEPA Member Agencies. Therefore, depending on the individual state procurement codes and statutes federal agencies, state agencies, local public bodies and Non-Profit/Non-Public entities may be allowed to participate in and utilize AEPA solicited, approved and AEPA Member Agency awarded contracts.

**Estimated Quantities:** In Part B: Bid Specifications of this solicitation AEPA and AEPA Member Agencies' have indicated their anticipated volume for the products and services being solicited in this solicitation. It is anticipated that a considerable amount of activity will result from this solicitation; however, there is no guarantee of future order quantities due to the fact that this is an indefinite quantity contract. Usage depends on the actual needs of the AEPA Member Agencies, their Participating Entities and the marketing by the Contractor.

**Experience, Proven Track Record and Past Performance Information:** has been determined by AEPA and its AEPA Member Agencies to be a major factor in considering if a Bidder possesses the ability, capacity and resources to acquire, manufacturer, deliver, construct, install, services and support all of the procurement functions and activities involved in a national contract of this nature. AEPA and its AEPA Member Agencies reserves the right to accept or reject an offer, if in its judgment, the Bidder failed to demonstrate the following.

1. Has a proven track record in the products and services offered (qualifications, knowledge and background)
2. Has the experience in delivering the proposed products and/or services to ninety (90%) percent of those AEPA Member Agencies identified in Part B: Specifications.
3. Has provided relevant information regarding its 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.

**Evaluation, Approval and Award:** Bid responses received will be evaluated in accordance with acceptable standards of cooperative purchasing, set forth in and governed by the Procurement Codes of AEPA Member Agency's states; AEPA by-laws, policies and procedures; AEPA Member Agencies' policies and procedures. Approval of prospective Contractors and award of contracts will be made to the lowest responsive and responsible Bidder utilizing the criteria listed below and elsewhere in this bid.

1. **Responsive Bidder:** A responsive bid reasonably and substantially conforms to all material requirements of the solicitation. Bids must be responsive and approved by AEPA to receive award consideration by AEPA Member Agencies. To be determined responsive, the response must meet all of the requirements below:
  - A. Submitted on time.
  - B. Materially satisfy all mandatory requirements identified throughout the IFB.
  - C. Must substantially conform to all of the specified requirements in the IFB in the judgment of AEPA and its AEPA Member Agency representatives.
  - D. 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.
  - E. 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 response 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.

F. 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 to be deemed non-responsive.

2. **Non-responsive 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 and/or provided in the format required, such as proper and/or signed forms, pricing, catalogs, electronic files; bids that do not contain the proper bid bond where required; failure to meet the specified qualifications, product specifications, stipulated documentation or pricing equal to or better than individual customers and/or cooperatives. Non-responsive bids will not be considered for approval and award.

3. **Responsible Bidder:** A responsible Bidder is a firm or person with the qualifications, capability and capacity to perform the contract requirements with integrity and reliability, which will assure a good faith performance. AEPA's approval of a Bidder's response will make the Bidder available for consideration to the AEPA Member Agencies for contract award. Prior to this recommendation the Contract Oversight committee will determine whether a Bidder is responsible. If a Bidder is approved by AEPA, the AEPA Member Agency reserves the right to determine if said Contractor is responsible in their respective state.

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:

- A. Submitted a responsive bid;
- B. The qualifications stipulated herein that may include but are not limited to adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the products, services, or construction, described in the invitation for bids to those AEPA member states who have indicated their participation;
- C. A demonstrated and documented satisfactory track record of performance in the national market place;
- D. A satisfactory record of integrity and a reputation of responding to and meeting educational institutions' needs, adherence of and compliance with federal, state, local and industry standards, rules, regulations and codes;
- E. Quality and suitability of products and services offered to meet and perform to the specifications, expectations and requirements identified in this bid;
- F. Supplied all necessary information and data in connection with determining whether a Bidder meets the standard of responsibility.

4. **Cost Evaluation:**

- A. Cost and price schedules conform to and provide the information required in Part B and C of this bid;
- B. Pricing offered that is equal to or better than those offered to individual entities or cooperatives with same or equal volume;
- C. Methodology used by AEPA and its AEPA Member Agencies to approve prospective Contractors and award contracts. The methodology to be used will be identified and described within Part B and Part C of this solicitation.
  - 1) Line Item and Open Item Bid: Lowest responsive, responsible Bidder(s) is/are determined based on the evaluation and pricing criteria identified with this solicitation; or
  - 2) Catalog Bid: Lowest responsive, responsible Bidder(s) is/are determined based on the price evaluation criteria; and by a "Core List" and by creating a "Market Basket Study" to compare overall pricing between Bidders. A "Market Basket" is a list of items typically purchased by AEPA Member Agencies and their Participating Entities 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
  - 3) Respondents will be ranked lowest pricing to highest based on the cost evaluation criteria.
- D. Based on the cost evaluation, a recommendation will be made to approve a single respondent or make a multiple bidder award.

**External Procurement Unit** means any procurement organization not located in a current AEPA Member Agency 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 AEPA Member Agency for their files. In addition, to comply with the Copeland Act, the Contractor must submit weekly payroll records to the AEPA Member Agency. 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 AEPA Member Agency 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

**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 Bidder response and properly issued purchase orders and/or contracts in accordance with this Invitation for Bid. If a firm submitting a bid requires AEPA Member Agency and/or Participating Entities to sign an additional contract, a copy of the proposed contract must be included with the bid.

**Gratuities:** AEPA 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 AEPA 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 AEPA Member Agency for demonstration, evaluation, or loan purposes are not considered gratuities.

**Indemnification:** Contractor will indemnify, defend and save harmless AEPA, **its Members, Participating Entities, its employees** from any and all claims, demands, suits, proceedings, loss, cost and damages of every kind and description, including any attorney's fees and/or litigation expenses, which might be brought or made against or incurred by, AEPA, **its Members, Participating Entities, its employees** on account of loss or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Contractor, its employees, agents, representatives, or Subcontractors, their employees, agents, or representatives in connection with or incident to the

performance of this agreement, or arising out of worker's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Contractor, and/or its Subcontractors or claims under similar such laws or obligations. Contractor's obligation under this section will not extend to any liability caused by the sole negligence of AEPA, **its Members, participating Entities, its employees. The liability of AEPA, its Members, Participating Entities or its employees will be subject in all cases to the immunities and limitations of Nevada or the AEPA Member Agency's state laws.**

**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 until the deadline for questions as stated on Page 1 of Part A, inquires and questions should be submitted via email to [Questions@aepacoop.org](mailto:Questions@aepacoop.org) referencing AEPA bid number and category.
2. From the time bids are received and opened until the time AEPA has approved and made its recommendations, inquiries and questions should be submitted via email to [bids@aepacoop.org](mailto:bids@aepacoop.org).
3. From the time AEPA has made its approval and recommendations until individual contracts have been awarded by the individual AEPA Member Agencies, questions related to contract implementation, pricing, extension/renewal and/or termination should be addressed to bid oversight committee chair by submitting an email to [secretary@aepacoop.org](mailto:secretary@aepacoop.org) for correct contact information for committee chair.
4. Once a contract has been awarded by an individual AEPA Member 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 AEPA Member Agency.

All other inquiries and questions should be addressed and submitted to the AEPA President by email at [president@aepacoop.org](mailto:president@aepacoop.org).

**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 AEPA Member Agency and/or Participating Entity.

**Insurance:** Prior to executing a contract with the AEPA Member Agency or a Participating Entity under this solicitation, if required, the Contractor shall procure, maintain and provide certification from insurer(s) for minimal coverage during the life of any resulting contract/agreement, to include but not limited to comprehensive public and/or commercial liability, errors and omissions, workman's compensation, unemployment and other insurance coverage required by and applicable to each AEPA Member Agency state's statutes and federal laws in which proposed products and services will be offered and provided.

1. Evidence of the required insurance for each of those AEPA Member Agencies' state, who indicated an interest to participate in this solicitation, identified in Part B: Specifications by providing written evidence and/or documentation from your insurer(s) indicating your firm has in place the type and amount of coverage required by each of the states. The Bidder has the sole responsibility to conduct and perform the necessary research to make themselves aware of and to understand each states requirements.
2. Certificate of Insurance: The Contractor shall provide, as required, a certificate of insurance for commercial liability insurance naming the AEPA Member Agency and or its Participating Entity as the certificate holder (co-insurer).
3. All insurance policies are to be executed by an insurance company authorized to do business in those AEPA Member Agency's states participating in this solicitation.
4. Subcontractor's Insurance: 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 shall hold the appropriate type and amount of insurance coverage required by the AEPA Member Agency state in which the work is being done and will provide insurance, which waives all subrogation rights against the prime Contractor, AEPA Member Agency and its Participating Entities.

**Invalid Term or Condition:** If any term or condition of this solicitation and any resulting contract shall be held invalid or unenforceable, the remainder of this solicitation and any resulting contract shall not be affected and shall be valid and enforceable.

**Late Bids:** Late bids shall not be opened and will be deemed non-responsive and within twenty-four hours such determination will be posted to AEPA's website [www.aepacoop.org](http://www.aepacoop.org). Bidders with rejected bids must make a written request within thirty (30) days to AEPA by sending an email to [secretary@aepacoop.org](mailto:secretary@aepacoop.org) requesting to have their rejected bid returned at Bidder's expense. Late bids will be destroyed after forty-five (45) days.

**Leases and Rentals:** Contractor may allow AEPA Member Agency or Participating Entity to rent, lease or lease purchase. Buyer must receive a copy of the executed leasing documents prior to processing a purchase order. Contractor agrees that leases will be in compliance with the Uniform Commercial Code and the Buyer's individual

state laws. 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 and in any leasing/rental agreement, all costs (must be itemized) associated with early termination and/or the returning of leased or rented equipment that are the responsibility of the Buyer. No sale of a contract to a third party will be made without informing the Buyer 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 AEPA Member Agency or Participating Entity resides.

**Licenses and Registration:** Each state and local jurisdictions in which a transaction may occur 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.

**Manufacturer's Representative:** Dealers, distributors and installers of specialized facility technology, electrical, mechanical systems and equipment, who, if permitted by the Scope of Work, submit an offer as a manufacturer's representative, must be able to provide documented evidence from and/or between it and the manufacturer certifying that the Bidder is a bona fide manufacturer's agent for the specific products/services proposed, the Bidder is authorized to submit an offer on such products/services, and a guarantee that, should the Bidder fail to satisfactorily fulfill any obligations established as a result of the award of contract, the manufacturer will either assume and discharge such obligations covered by warranties or provide for their competent assumption by one or more bona fide representatives for the term of the contract/warranty period. Bidders of software, mechanical devices, electrical products/systems and other commodities that make up systems/networks must be able to provide the same information from a manufacturer.

**Modification by Buyer:** Contractor shall have no obligation with respect to any patent and copyright infringement claim based upon Buyer's modification of the equipment and/or software, or its operation or use with apparatus, data or programs not furnished by Contractor. However, one Buyer'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:** AEPA and its AEPA Member Agencies expects Bidders/Contractors to offer AEPA equal or better prices, terms, warranties and benefits than they offer for equivalent terms, conditions and requirements offered to any present or future customers or cooperatives with equal or lesser volume. Please note the following:

1. AEPA and its AEPA Member Agencies reserves the right to accept or reject the Bidder's response if it is determined it does not comply with the above based on their knowledge, investigation, review and findings of Bidders' submitted fees and prices.
2. In the event the Contractor offers lower fees or prices to another customer or cooperative, AEPA and its AEPA Member Agencies shall notify the Contractor of the deviation and request written justification. Based on AEPA and its AEPA Member Agencies' investigation, review and findings, AEPA reserves the right to take following actions:
  - A. To request the Contractor to immediately adjust its AEPA's offered fees or prices to match the lower fees or prices offered;
  - B. To work with the Contractor to mediate and resolve the situation; or
  - C. To notify the Contractor that it intends to suspend and/or terminate their contract.

**Multiple Approvals and Awards:** Throughout the United States, AEPA Member Agencies have a large number of Participating Entities who take advantage of and utilize awarded contracts. In order to assure that any issued contract will allow these entities to fulfill current and future needs and requirements, AEPA and its AEPA Member Agencies reserve the right at its discretion to approve and/or award one contract, multiple contracts or no contracts. The actual use of any contract will be at the sole discretion of the AEPA Member Agency or the Participating Entity.

**Nonexclusive Contract:** Any contract resulting from this solicitation shall be approved and awarded with the understanding and agreement that it is for the sole convenience of the AEPA, its AEPA Member Agencies, their Participating Entities and they reserve the right to obtain like goods and services from another source.

**Non-Profit, Non-Public Educational Institutions and other Non-Profit Organizations (Section 501(c)(3) of the Internal Revenue Code, Federal Tax Code)** is defined as charitable, religious, educational, public service, support and scientific organizations, entities, corporations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of the Federal Tax Code.

**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, email with appropriate verification, 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 and its AEPA Member Agencies reserves the right to recommend approval, acceptance or rejection of the new party. A simple change of name agreement will not change the contractual obligations of the Contractor.

**Ordering Procedures:** AEPA has established the three ordering processes stated below and Bidders shall review each AEPA Member Agency's specific terms and conditions within Section IV herein and confirm the process to be utilized for each AEPA Member Agency.

#### **1. Standard Ordering Process:**

- A. Buyer will select items for purchased from provided published catalog/price list or Contractor will issue a quote upon request;
- B. Buyer will prepare and issue a purchase order to the Contractor based on the product catalog, pricelist or Contractor's quote;
- C. Contractor will deliver and invoice the Buyer;
- D. Buyer will acknowledge delivery and acceptance by issuing the Contractor payment;
- E. Contractor, based on the agreed to process, will report and submit payment for the AEPA Member Agency's fee to the AEPA Member Agency (quarterly).
- F. Contractor shall provide the transaction and volume reporting in the AEPA format.

#### **2. Electronic Ordering**

- A. Web-based electronic ordering systems are preferred.
- B. 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.
- C. When the Buyer requires purchase orders, electronic ordering system shall require entry of a purchase order number, credit card or purchasing card prior to accepting an order.
- D. Electronic ordering systems shall block excluded items not covered by the AEPA contract from any order.
- E. Electronic ordering systems shall automatically assign correct contract prices to applicable orders.
- F. Electronic ordering systems that list catalog price and AEPA discounted price are preferred.
- G. Electronic ordering systems shall track orders and purchases covered by the AEPA contract for reporting and audit purposes. Contractor shall provide the transaction and volume reporting in the AEPA format.
- H. Electronic ordering systems' pricing shall include the AEPA Member Agencies administrative fee required by the AEPA Member Agencies.
- I. Electronic ordering systems that allow AEPA Member Agencies to print an archived (historical) copy of a Buyer's order are preferred.

**Order of precedence:** In the event that an AEPA Member Agency does not stipulate an ordering process or a conflict occurs the following order of precedence shall prevail:

- A. Member Agency Specific terms and conditions
- B. Specifications and scope of work

- C. General terms and conditions
- D. Attachments and exhibits
- E. 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 Buyer. 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.

**Patent and copyright indemnification:** To the extent permitted by law, Contractor shall indemnify and hold harmless Member Agency and its Participating Entities 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 Participating Entities of materials furnished or work performed under this contract. Member Agency and its Participating Entities shall reasonably notify Contractor of any claim for which it may be liable under this paragraph.

**Price:** Within Part B: Bid Specifications and Part C: Bid Forms of this solicitation AEPA has identified and stipulated the type of bid and the pricing methodologies that are to be utilized to price and submit the Bidder's bid prices. The Contractor agrees that the cost for any item bid or offered on this contract will be uniform for all states, and that any differences in pricing are due to actual freight (shipping/delivery) costs; state specific installation and labor costs, AEPA Member Agency's Administrative Fee, etc. The Bidder, within their response must describe and provide their pricing as requested utilizing the various pricing methodologies specified. Due to the various type and kinds of products and services that may be solicited by AEPA; the nature, characteristics, attributes and make of the products and services solicited; and the different methods utilized to price the products and services solicited. Please note the following item that relate to pricing.

1. **Pricing Methodologies.** The following pricing methodologies have been established.

- A. Fixed or Catalog Pricing:** Is utilized when the products and/or services solicited are clearly identified with set and specific characteristics, attributes and configurations that are identifiable as a stand-alone single unit and can be listed and priced as a single unit with options that can be added to enhance and/or improve its operation and functionality. The Bidder offers a fixed discount(s) off retail price, catalog price, published price or list price. The discounts may be for the entire catalog, for specific products, product lines, manufacturer or category of products. Prices may change based on manufacturer's price changes, new published pricing or price lists. New products may be added at the established percentage discounts at any time and discontinued products may be dropped at any time during the contract term. The Bidder may offer tiered and/or additional volume discount(s) based on amount purchased at one time.
- B. Line-Item price list:** Products and/or services that are broken down in detail by element, component, product categories, product type and each product and/or service is presented as an individual item which needs to be combined with other items to make up a final project or solution. The information provided on each item includes.
  - 1. Product Vendor/Manufacturer
  - 2. Product Number
  - 3. Product Name
  - 4. Product Description
  - 5. Unit of Measure
  - 6. Item Price
  - 7. Category
  - 8. Brand
  - 9. Manufacturer's number
- C. Automate System for Pricing (ASP):** The method consisting of an ASP and/or software application (RS Means, Gordian) that is self contained and consist of a turn-key solution that includes a complete line-item listing of all of the products, supplies, materials, equipment, services, accessories and options with their description, specifications, terms, conditions and associated pricing for each item, sub-assemblies and/or assemblies. The Bidder provides a percent of discount or fixed multiplier/factor to be applied to total project cost to allow for individual state conditions and requirements and to arrive at the AEPA price.
- D. Alternative Method of Costing:** This method covers any product and/or service not covered by catalog pricing, published price list, line-item price list, automated system for pricing, or is a product and/or service due to the projects or applications specifications, conditions and/or requirements that need to be custom designed, developed, manufactured and/or produced to meet the requirements of an individual project or sole source. The alternative pricing is calculated as follows:

- a. The Bidder 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.
- b. The Bidder 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.
- c. The Bidder must indicate the percent of discount offered to AEPA and its Participating Entities on the normal and customary retail price.
- d. The AEPA price is calculated by taking the product and services cost to the Contractor plus the indicated percent of profit/overhead to equal the normal and customary retail price. The Contractor will then subtract the approved AEPA discount to obtain the AEPA price. Example: item cost \$1,000; percent of profit/overhead of 20% equals retail price of \$1,200; less the AEPA discount of 10% or \$120 equals the AEPA price of \$1,080.

**E. Open-Item or Combined pricing:** Is when the product and/or services consist of a number of different variables or configurations that must be identified before a price can be established or the pricing is based on an established pricing methodology (custom manufactured items) or price book such as RS Means/Gordian, in which the scope of work or design is specific to an individual project or application. The Contractor provides the individual project cost in a specially prepared quote based on the project's terms, conditions and requirements.

**F. Pricing based on a Cost-plus-a-percentage-of-cost:** This type of pricing is prohibited.

## 2. Product Catalogs, Retail Price List, Price List and Electronic Catalog Process:

**A. 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.

**B. Line item price list or catalog/core price lists:** New or adjustments to price lists shall be submitted to the designated AEPA Bid Oversight Committee Chair for review and consideration throughout the term of the contract. After being reviewed and approved, a recommendation would be submitted to AEPA Member Agencies for their acceptance or rejection.

The AEPA Oversight Committee will review new price lists or catalogs to determine if the new prices or an alternative option is in the AEPA Agency Members' best interests. New price lists or catalogs shall apply to the contract recommended by AEPA only upon approval by AEPA 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.

**C. Catalogs/price list copies:** Contractor shall furnish AEPA Member Agency and their Participating Entities with copies of approved price list(s).

## 3. Pricing terms, conditions and stipulations:

**A. 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.

**B. 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 in the bid. If economic 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 the cause and/or reason for the requested price increase and demonstrate that it was unpredictable at the time of bid submittal and/or contract renewal and out of the Contractor's control. Pricing will take effect thirty (30) days after approval and acceptance.

**C. Discounts:** Discount offers must clearly identify percent of discount to apply to catalog, manufacturer, MSRP, retail or published price lists. Bidders shall identify and stipulate if the discounts apply to the entire catalog, price list, specific product lines, manufacturers and categories of products. If multiple discounts apply, Bidder shall clearly indicate the discounts (pricing points, tiered pricing/quantity levels, etc.) to the respective applicable products or services. Bidder shall agree that there will be no reduction in discount(s) during the term of the contract.

**D. Shipping, installation, and returns:** 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. Change in discount rate will be considered at the time of a contract extension and will be a factor in renewal.

- E. Combination Pricing:** Offers with combination pricing shall clearly identify items covered by discount(s) and those with fixed prices. Prices for such products and/or services shall be adjusted as identified for the appropriate contract type noted above.
- F. New catalogs/price lists:** New price lists or catalogs may be submitted throughout the term of the contract and the AEPA Oversight Committee has the option to review the new price lists or catalogs to determine if the new prices or an alternative option is in AEPA's best interest. New price lists or catalogs shall apply to the original contract category approved by AEPA and awarded by its Member Agencies. New price lists or catalogs found to be non-compliant or non-competitive at any time during the contract would be grounds for terminating the contract.
- G. Price Reduction:** A price reduction can be offered at any time and will become effective upon notice. Special, time-limited reductions are permissible under the following conditions:
- The price reduction is available to all AEPA Member Agencies equally.
  - The price reduction is for a specific time period, no less than thirty (30) days.
  - The original price is not exceeded after the time limit.
  - The AEPA Oversight Committee and all AEPA Member Agencies shall be notified of any special or time limited price reduction. New prices must be on record fifteen (15) days prior to any offer of the new prices being proposed or offered to AEPA Member Agencies and Participating Entities.
- H. Volume Purchases:** If the cost of an item(s) is lowered for any AEPA Member Agency or its Participating Entities for any reason, the cost will be lowered at the same time for all agencies for the same reason and under the same terms and conditions. (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 AEPA Member Agencies participating in this contract.)
- I. Most Advantageous Pricing:** The Bidder/Contractor must agree that they will not offer or provide an equal or lower cost to any state or multi-state contract for a volume equal to or lesser than that through AEPA.
- J. Pricing Variations by State:** It is understood that based on the geographical location of AEPA Member Agency and the distribution point and the location in which providers are dispatched the freight, shipping, delivery, transportation and personnel per diem costs may vary Buyer to Buyer. Federal, state and local fees (permits, licensing, registrations, etc.), may vary by state and location. Additionally, Section IV: AEPA Member Agencies' Specifications, Terms and Conditions, identifies the various Administrative Fees charged by each AEPA Member Agency. Therefore, within the Bidder's response, each of these items must be acknowledged and addressed on how they will be disclosed and handled within the pricing methodology utilized to provide pricing in response to this bid.
- K. Taxes:** Different jurisdictions taxing authorities have different tax laws, rules, regulations and processes, therefore, prices offered will not include applicable federal, state and local taxes. All applicable taxes must be listed as a separate item on all cost proposals, invoices.

**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 AEPA Member Agency or Participating Entity is a prime Contractor; a Contractor pays a Subcontractor. Prime Contractors using Subcontractors are responsible for all actions of its Subcontractors.

**Procurement Code:** All Bidder/Contractor's must make themselves aware of and comply with all federal, state, and local statutes and regulations.

**Products and Services:**

- Product Line:** If applicable, contracts will be awarded to Bidders able to provide their complete product line(s) of commodities, supplies, equipment, software and services that meets the scope of work and specifications of this solicitation. Bidders with a published, priced catalog may submit their entire catalog; AEPA reserves the right to select or reject products within the catalog for recommendation without having to award all the contents.
- Serial Numbers:** Bids must be for equipment on which the original manufacturer's serial number has not been altered in any way.
- Current Products:** All bids shall be for commodities, supplies, equipment, supplies and software in current production; meet or exceed commercial and industry standards; and marketed and provided nationally to the general public and/or educational/governmental agencies.
- Construction Products and/or Services:** are associated with building, erecting, altering, repairing, installing or demolishing in the ordinary course of business any: (1) road, highway, bridge, parking area or related project; (2) building, stadium or other structure; (3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility; (5) dam, reservoir, canal, ditch or similar facility; (6) sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; (7) radio, television or other tower; (8) shaft, tunnel or other mining appurtenance; (9) electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners; (10) air conditioning conduit, heating or other similar mechanical work; or similar work, structures or installations; (11) leveling or clearing land; (12) excavating earth; (13) drilling, wells of any type, including seismographic shot holes or core drilling; and similar work, structures or installations.

- **Services:** are defined as the furnishing of labor, time or effort by a Contractor not involving the delivery of a specific tangible product other than reports and other materials which are merely incidental to the required performance.
- **Professional Services:** Services relating to architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, educational specialist, construction managers and other persons or businesses providing similar professional services, which may be designated as part of this solicitation.
- 7. **Peripheral & Optional Items:** Bidder can include various peripheral products, equipment, accessories, services, deliverables and related items that are associated with and function with the primary offering. Optional equipment or products may be added to the contract during the term of the contract. AEPA reserves the right to accept or reject such offerings under the following conditions:
  - A. The enhancement is recommended by AEPA and approved by the Member Agency;
  - B. The option is priced at a discount similar to other options;
  - C. The option is an enhancement to the unit.
- 8. **Descriptive Literature and Brand Names:** All bids are to include a complete set of the manufacturer's descriptive literature regarding the commodities, supplies, materials, equipment and software offered. Brand names, trade names and/or catalog numbers used in the solicitation will be intended to describe and identify the type, level and quality of products, equipment and software being requested.
- 9. **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.
- 10. **Product Specifications:** This solicitation is designed to enable a Bidder to satisfy a requirement for a commodity, supply, material, equipment, software, process, or service. A specification may be expressed as a standard, a part of a standard, or independent of a standard; by specifying a manufacturer's brand and model. No specification is intended to unnecessarily limit competition by eliminating items capable of satisfactorily and/or meeting the actual needs of the procurement. When a brand name product is specified and is only available for a single source, Bidders are encouraged to offer alternative products which they believe to adhere to and comply materially, functionally and operationally equal to or better than the brand name product specified. Any Bidder believing a specification is unnecessarily restrictive, shall indicate such in the form of a question during the solicitation process and prior to bid due date. The fact that a manufacturer or supplier chooses not to produce or supply the commodity, supply, material, equipment, software or services to meet these specifications will not be considered sufficient cause to adjudge these specifications as restrictive. If the Bidder deviates from these specifications, reasons must be stated for such deviation and state why, in their opinion, the commodity, supply, material, equipment, software 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.
- 11. **Quality:** Unless otherwise modified elsewhere in this solicitation, Contractor warrants the commodities, supplies, materials, equipment, and services delivered as stipulated in the Buyer's purchase order/contract, shall be:
  - A. Of a quality to pass without objection in the industry and professional standards normally associated with them;
  - B. Fit for the intended purpose(s) for which they are used;
  - C. Of even kind, quantity and quality within each unit and among all units, within the variations permitted by the contract;
  - D. Adequately offered, presented, delivered, accomplished and complete as the contract may require; and
  - E. Conform to the written promises and/or oral affirmations of fact made by Contractor.

**Progress Payments:** Progress payments are allowed on purchases for goods and services under the following conditions:

1. The Buyer 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. The Buyer 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 Buyer’s local board rules and any and all other applicable state rules and regulations.

**Protests:** Under this public procurement and AEPA’s Solicitation, any Bidder who is aggrieved in connection with this procurement, can file a protest in accordance with (1) AEPA’s Solicitation Document; (2) AEPA’s Policies and Procedures; and (3) AEPA Member Agency’s State Procurement Code and Board Policies. Venue for any and all legal actions regarding or arising out of the transactions covered herein shall be solely in the court of jurisdiction located in the state and county of the AEPA Member Agency and will govern any resulting transactions.

1. **Procurement Phases:** AEPA’s procurement/solicitation process is broken down into three (3) phases. Any Bidder who is aggrieved in connection with any of the three (3) procurement/solicitation phases listed below and/or any functions or activities associated with each shall file their protest with the AEPA representative indicated below.
  - A. **Bid Due Date:** 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).
  - B. **AEPA Approval:** The receiving, opening, recording, evaluating, recommending and approving Bidders to be considered for AEPA approval and/or actions relating to contract renewal and extension. (Date received and opened through date of individual contract award and future renewals).
  - C. **Contract Award:** The awarding, implementing and administering of resulting contracts and the disclosure of confidential data. (Date individual contracts awarded by AEPA Member Agencies or 120 days from AEPA approval).
2. **Protest contents:** Protests shall be in writing and must be filed with the appropriate AEPA represented below. A protest must include:
  - A. The name, address and telephone number of the protester;
  - B. The original signature of the protester or its representative;
  - C. Identification of the procurement function and/or contract activity with the solicitation or the contract number;
  - D. A detailed statement of the factual grounds or legal basis for the protest;
  - E. 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; and
  - F. The form of relief requested.
3. **Protest Submittal:** Protester shall submit the bid protest in accordance with the requirements of the above three (3) procurement functions immediately or within ten days of the date the protester knows or should have known the basis of the protest per the following:
  - A. **Bid Due Date:** Knows or should have known the basis of the protest upon the bid due date or 10 days after the bid due date.
  - B. **AEPA Approval:** Knows or should have known the basis of the protest upon notification from AEPA of the bid category approval.
  - C. **Contract Award:** Knows or should have known the basis of the protest or ten days after the notification from the AEPA Member Agency award.

Procurement Phase	Who to Contact	Email Address
Bid Due Date	Bid Question Coordinator	Questions@aepacoop.org
AEPA Approval	Bid Coordinator	Bids@aepacoop.org
Contract Award	Individual AEPA Member Agency with a copy to the AEPA President	See AEPA Member Agency Information sheet

4. **Protest Resolution:** Protest shall be resolved, in accordance with AEPA's Board Policies, Procedures and/or the appropriate state statutes where the AEPA Member resides. It is the intent of AEPA that all bid protest decisions from the point a bid has been published through contract approval or rejection, will be resolved by AEPA. Bid protests concerning contract award by AEPA Member Agencies will be resolved by the respective AEPA Member Agency.
5. **Protest Costs:** The losing party to the protest shall be responsible for the reasonable and justifiable costs of the protest. The protest costs shall be based on the costs and expenses incurred by the AEPA and its Member Agencies, including but not limited to staff salaries, attorneys' fees, hearing, reproduction, transcription and travel costs.

**Provisions Required By Law:** By submitting a response to this solicitation, bidders are acknowledging they have conducted and performed the required research to make themselves aware and knowledgeable of all federal, state and local laws/statutes that are referenced herein, may pertain to and/or govern the procurement activities and transactions covered by this bid. These provisions of law and any clause required by law that is associated with and relates to this bid and any resulting contract will be read and enforced as though it were included herein.

**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 bid due date. Bids may be viewed, by appointment only, at the CSIU, 90 Lawton Lane, Milton, PA 17847, under the supervision of the Executive Director or its designee, from 8:30 a.m. to 3:30 p.m., Monday through Friday. Within fifteen days, the Bid Receipt Summary Report will be posted to the AEPA website ([www.aepacoop.org](http://www.aepacoop.org)).

**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.

**Substance Use & Conduct:** All Contractors and Subcontractors must adhere to local substance (alcohol, drug, smoking, etc.) and conduct (dress code, language, parking, etc.) policies while on AEPA Member Agencies and Participating Entities premises.

**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.

**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 resulting 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 in accordance with the dates stipulated in the Bid and Timeline schedule located in Part A of this bid 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 Non-Approval of AEPA:** AEPA Member Agencies on annual basis assess, evaluate and review existing AEPA vendors to determine if the organization as a whole desires to extend its approval of those vendors. If

an existing AEPA vendor's approval is not extended for an additional term, the AEPA Member Agencies can not extend the dis-approved vendor's contract. (See term of Contract and Extensions)

**Termination by AEPA Member Agency:** An AEPA 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 AEPA 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 AEPA Member Agency unless the notice specifies a later time. Cancellation by one AEPA Member Agency does not require other Agencies to cancel their contracts.

**Termination for Convenience:** AEPA Member Agency reserves the right to immediately terminate this contract, without penalty or recourse, in whole or in part, if the AEPA Member Agency determines that termination is in the best interest of Participating Entities. 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 AEPA 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 AEPA 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 AEPA 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 AEPA 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 AEPA 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 AEPA 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 AEPA Member Agency, upon request, with adequate assurances of future performance. In the event of termination for cause, the AEPA 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 AEPA Member Agency or any Participating Entity for any and all rights and remedies provided by law. If it is determined that the AEPA Member Agency improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

The AEPA 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 AEPA 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 AEPA Member Agency.

**Termination for Non-Appropriation:** Any individual Buyer's procurement/contract covered by this bid and executed in accordance with resulting contract may be terminated if insufficient appropriations and/or authorizations do not exist due to changes in state or federal law, or because of court order, or because of insufficient appropriations made available to the Buyer's governing board and/or its State Legislature. Such termination will be effected by sending fifteen (15) days written notice to the Contractor. The Buyer's decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Contractor and shall be final.

**Title and Risk of Loss:** The title and risk of loss of material or service shall not pass to the Buyer 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 Contractor 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 Buyer purchasing the new unit and the Contractor.

**Type of Bids** Due to the various types, kinds and levels of products and services solicited by AEPA in its IFBs; the various pricing methodologies/methods utilized and offered to price the various products and services offered; and the type of contracts that results from any one of AEPA's/bids, AEPA has established the following two types of bids.

- 1. Catalog Bid:** A catalog bid is utilized when the products and/or services solicited are clearly identified with set and specific characteristics, attributes and configurations that are identifiable as a stand-alone single unit and can be listed and priced as a single unit with options that can be added to enhance and/or improve its operation and functionality. The items are offered through a published catalog, price list and/or on-line catalog. Bidders offering such products and/or service establish the AEPA price by applying percentage discount(s) on the catalog price, published prices or price list. The discounts may be for the entire catalog, for specific products, product lines, manufacturer or category of products. Prices may change based on manufacturer's price changes, new published pricing or price lists. New products may be added at the established percentage discounts at any time and discontinued products may be dropped at any time during the contract term.
- 2. Line Item and Open Item Bid:** Is utilized when the products and services solicited cannot be identified or listed as a single unit; consists of a number of different variables and configurations, it is necessary to identify the specific project or application; the end product or solution is made of individually priced elements or components and the end product's or solution's cost is derived by the Contractor specially prepared and providing a quote based on the project's terms, conditions and requirements.

**Warranty:** Contractor warrants that all commodities, supplies, materials, equipment, software and service delivered under this contract shall conform to the specifications of this contract. All items should carry a warranty equal to the intended life cycle or a minimum 12-month manufacturer's warranty that includes parts and labor unless otherwise specified and agreed to. 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 Buyer. 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 manufacturer and the Contractor. All extended warranties must be passed on, without exception. If, upon discovery, the Contractor charges a Buyer for a replacement part that the Contractor actually received at no cost under a warranty, the Contractor will rebate the amount billed and the Buyer reserves the right to cancel the contract.

### III. 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 **AEPA Member Agency** to all of the Agencies' qualified Participating Entities.

**Sales to Participating Entities:** AEPA Member Agencies require that all awarded Contractors offer the **Member Agency** contract opportunity to all qualified Participating Entities 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.

A summary of each State's Administrative Fee, any special terms and conditions, and special ordering process requirements is listed here for the convenience of the Bidders.

# Association of Educational Purchasing Agencies (AEPA)

## Bid 013 - Summary of State General Overview

### Part A Table

AEPA Member Agency State	General			Ordering Process			Construction Products and Services									Potential Customers						
	Administrative Fee	Bid Security Required on bid due date	Special Reporting Requirements	Standard Ordering Process	Electronic Ordering	Special Ordering Process	Davis Bacon and State Wage Rates	Payment & Performance Bonds Required	Contractor's Licensing Required	Permits and/or Registration Required	Construction Project Cost Limitations	Participate in Construction Services	Participate in Construction Products Only	Products are taxable	Service is Taxable	K-12 Education	Higher Ed.	Private Schools	Non-Profits	Federal Agencies	State Agencies	Cities & Counties
CA	2%	No	No	Yes	Yes	No	N/A	N/A	N/A	N/A	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CO	2%	No	No	Yes	No	No	No	No	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes
CT	2%	Opt	No	Yes	Yes	No	Yes	Opt	Yes	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
FL	2%	No	No	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
IN	Various	No	No	No	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
IA	2%	No	Yes	Yes	Yes	No		**			Yes	Limited	Limited	**		Yes	Yes	Yes	No	Yes	Yes	Yes
KS	2%	No	n	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
KY	2%	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MA	2%	No	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MI	2%	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	TBD	Yes	Yes
MN	2%	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes/No*	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MO	2%	No	Yes	Yes	Yes	No	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MT	2%	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NE	2%	No	No	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	No
NJ	2%	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes
NM	2%	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ND	2%	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes/No*	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
OH	2%	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
OR	2%	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
PA	2%	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
TX	2%	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
VA	2%	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WA	2%	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
WV	2%	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WI	2%	No	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WY	1%	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes	Yes

\* Depending upon the type of agency making the purchase products may or may not be taxable

\*\* Iowa Code Chpt. 26 & 273

## **Agency Specific Terms and Conditions:**

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 General Terms and Conditions that apply for all categories*** identify items that apply to the procurement process in addition to the previously listed *General Terms and Conditions*.

**B. *Additional Member Agency Terms and Conditions for Non-Construction Products and Services*** identify items that specifically apply to the procurement process for non-construction products and services in addition to the previously listed *General Terms and Conditions*.

**C. *Additional Member Agency Terms and Conditions for Construction Products and Services*** identify items that specifically apply to the procurement process for construction products and services in addition to the previously listed *General Terms and Conditions*.

**D. *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 Buyers send them the purchase orders; others will have the individual Buyers 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.

**E. *Agencies Allowed to Purchase 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 types of agencies that are allowed to purchase, 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 and prevail in the interpretation and administration of the Contract. California-specific Terms and Conditions prevail over any General Terms and Conditions. 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.

The 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) **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 (MCOE), located at 901 Blanco Circle, Salinas California, 93912. In this document, MCOE may be referred to as Agency, being distinct from other parties who may use this contract who are hereinafter referred to as Local Education Agencies (LEAs), regardless of their hierarchy or their political and organizational status as schools or municipalities.

### 3) **CalSAVE, Administration, and Agent**

Contracts awarded and Awarded Contractors/Vendors will automatically be part of the CalSAVE program. CalSAVE is the cooperative purchasing program founded by the Monterey County Office of Education and administered by the Epylon Corporation under a contract with MCOE, in cooperation with the California County Superintendents Educational Services Association (CCSESA). MCOE is the lead agency for all Contracts, and the Monterey County Superintendent of Schools is the authority for the solicitation, evaluation and award of all contracts. Epylon serves as MCOE's agent, but only the Monterey County Superintendent of Schools has the authority to award contracts. 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.

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

### 4) **Transaction Fees**

Transaction Fees are the funding source for the operation of the self-supporting CalSAVE cooperative purchasing program. Awarded Contractors/Vendors shall be required to pay a Transaction Fee for all purchases by LEAs made through the awarded Contract. For the purpose of this bid through Monterey County Office of Education and all Contracts awarded using this document, the Transaction Fee shall be 2 percent of Net Sales, which means gross sales less returns and cancelled orders within 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. Neither Awarded Contractor/Vendor nor its designated authorized reseller(s) shall include any additional amount corresponding to the Transaction Fees in the awarded Contract prices. This Transaction Fee applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.

Epylon will collect the Transaction Fee on behalf of the CalSAVE program. The Contractor/Vendor will make all participation fee payments within two weeks after sending the quarterly report. Checks are to be made payable to the Epylon Corporation and sent to 3675 Mt. Diablo Blvd., Suite 110, Lafayette, CA 94549. ATTN: CalSAVE.

### 5) **Non-Conforming Jurisdictions**

Notwithstanding Section A.4 (immediately above) no Transaction Fee is authorized to be charged to Awarded Contractors/Vendors for sales within any jurisdiction where prohibited by law or local-government policy. Instead,

the cost of products, services, licenses and goods sold under this contract in such jurisdictions shall be the same as all for school districts in all other counties of California. However, any LEA using this contract where Section 4 fees are not permitted shall be required to pay a 2 percent fee for use of the contract, imposed by MCOE on the authority of Public Contract Code Section 20118 and 20652, which allows MCOE to charge reasonable costs to the public corporation or agency for furnishing the services incidental to the purchase of items under contract.

## **6) Reports**

The Contractor/Vendor will compile a quarterly report listing each purchase made by participating Agencies under this contract, and send them by the 15th of April, July, October, and January to Racquel Landolf with the e-mail address of rlandolf@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. The file at a minimum shall include the fields listed below and shall allow for sorting on any of these fields:

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

## **7) Length of Term**

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 LEAs have not used the contract in any 12-month period, or if orders from participating LEAs do not total \$10,000 in any 12-month period.

## **8) Marketing and Advertising under this Agreement**

Vendor will actively promote use of this contract by LEAs in California. Vendor must comply with the marketing plan offered as part of its bid submission. Unless other arrangements are made with the CalSAVE administrator, vendor is also required to perform the following:

- 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 or a specific CalSAVE landing page 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.

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

### **1) Conformance to Public Contract Code 20111**

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 and 20650. Awards shall include allowance for installation and assembly services incidental and necessary to the use of the equipment, materials, supplies and repairs purchased or leased.

## **2) Conformance to Public Contract Code 20118 and 20652**

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

## **3) Additional Piggyback and Standard School Supply and Equipment Authority**

The Monterey County Office of Education declares that items, materials, personal property, equipment and licenses under Contract as a result of this Invitation to Bid will qualify as items to be included within its Standard School Supply and Equipment List. Because many County Offices of Education have banded together to 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 Contract Code 20118 and 20652, but also in accordance with Education Code 38110 and 38112 dealing with cooperatives and Standard School Supplies & Equipment.

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

#### **1) Intended for Personal Property**

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 and 20650. Awards shall include allowance for installation and assembly services incidental and necessary for use of the equipment, materials, supplies and repairs purchased or leased. When any services or repairs fall into a category of Public Works as defined in Public Contract Code 22002, an LEA may use this California contract only up to \$14,999 for labor and services, but for an unlimited dollar amount for any supplies, materials, equipment or personal property to be staged and ready for use in a local Public Works project.

#### **2) Public Works Limitations**

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

### ***D. Procedure for Processing Orders***

#### **1) Start date**

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

#### **2) Prices and Requests for Quotes**

The Awarded Contractor/Vendor, in cooperation with MCOE's agent, must make provision for LEAs to quickly ascertain bid prices by posting prices, posting a link or contact for prices, distributing catalogs and price lists, responding to requests for quotations, or participating in eCommerce.

The 2 percent Transaction Fee on all sales is a cost of doing business to the vendor and the requirement for the fee is publicly disclosed in these bid documents for the edification of all buying agencies and LEAs. Transaction fees

should not appear as a line item on a quotation or on listed bid pricing. The final price quoted or displayed must be inclusive of the participation fee on all pricing and quotations.

### **3) Submission of Orders and Delivery**

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

LEAs will fax or mail purchase orders directly to the CalSAVE office (fax (866) 488-3729), unless other arrangements have been made and agreed to by the CalSAVE Administrator. LEAs may also use Epylon eCommerce software for transmission of purchase orders. Standard business practice is for all purchase orders received by 3:00 p.m. Pacific Time to be logged and forwarded to the appropriate vendor on the same day received, unless unusual circumstances occur.

Awarded Contractor/Vendor will deliver goods, services and corresponding invoices directly to the participating LEAs and receive payments directly from the participating LEAs as per bid specifications.

### ***E. Agencies Allowed to Purchase under the Member Agency***

#### **1) Other Agencies’ Right to Purchase.**

CalSAVE is a self-supporting contracting program led by the Monterey County Office of Education. Contracts are made available to all California public school districts, private and non-public schools registered with a county office of education or state Department of Education, charter schools, community college districts, eligible state agencies, non-profits (particularly those such as PTAs buying on behalf of schools or government), and any other agency allowed by law – all referred to as LEAs.

Subject to the following terms and conditions, the Monterey County Office of Education (MCOE) consents to LEAs purchasing items at the same unit price(s) or pricing formula under the terms and conditions of this Contract, as may be authorized by Sections 20118 and 20652 of the Public Contract Code or other legal authority:

- a) Any other agency (LEA) authorized by law to use this Contract for its own purchase(s) from the Awarded Contractor/Vendor or their authorized resellers shall by default enter into a standard agreement with MCOE, which *inter alia* will include the terms, conditions, and information set forth in this paragraph *a* and paragraphs *b* through *i* below.
- b) After entering into a standard agreement with MCOE, 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 is subject to and includes and/or incorporates all applicable terms of this Contract and the specific requirement that the Awarded Contractor/Vendor comply with the provisions set forth in paragraph below regarding payment of the 2 percent Transaction Fee (or the non-conforming jurisdiction fee) to be collected by the Epylon Corporation. MCOE will not be a party to any Separate Contract, but will be considered a third party beneficiary of such Separate Contract.
- c) The Awarded Contractor/Vendor understands and agrees that failure or refusal to comply with the provisions set forth in this agreement regarding payment of the 2 percent Transaction Fee in 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 LEAs of that cancellation.
- d) The MCOE waives any right it may have to require any LEA using this Contract to draw its warrants for the purchase(s) in its favor and consents to each agency making such payment(s) directly to the 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 LEA and are outside the scope of this Contract, unless specifically addressed elsewhere in Part A or Part B of the Terms and Conditions.

f) This Contract and any Separate Contract are for the purchase of the items covered by Contract. An LEA 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 LEA 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 LEA using this Contract agree that the MCOE makes no representation that use of this Contract by any Other Agency is, in fact, authorized by law. In this regard, the MCOE suggests that, at a minimum, Contractor/Vendor and any LEA considering such use consult with their own legal counsels before doing so.

h) Both the contractor/vendor and any LEA 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 Transaction Fees
- e. The contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the MCOE. MCOE shall follow the following procedure if the contract is to be terminated:
  - Step 1 - Issue a warning letter of concern outlining the violations and length of time to correct the problem(s).
  - Step 2 - Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.
  - 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.

## **2) Other Agencies, Constitutionally Independent Agencies, and Out-of-State Agencies**

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

## 2. Colorado, Colorado BOCES Association (CBA)

### A. *Additional Agency Terms and Conditions*

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

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

#### A. *Procedure for Processing Orders:* Once the award is made to the vendor.

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

### 3. Connecticut, Capitol Region Education Council (CREC)

#### A. *Additional Member 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

#### 1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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."

10. 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.

11. 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.

12. 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.

13. 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 tradeshow, 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. *Additional Member Agency Terms and Conditions for Non-construction Products and Services***

None

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

None

**D. *Procedures for Processing Orders – applicable to Member Agency (CREC) contract only***

1. 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.
2. 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.
3. 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.
4. The total cost of CREC's program is funded through a 2.0% 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.
5. 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.
6. 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.
7. 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.

**E. *Agencies Allowed to Purchase under the Member Agency***

There are 169 school districts in Connecticut and all are eligible for membership. No district is obligated to use these services. Additional members may include other public educational institutions, 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, ME, NH, RI, and VT. Sales made in any of these states using the AEPA contract are to be reported to CREC, with the 2.0% administrative fee made payable to CREC. The Contractor must advise CREC its intent to use the contract in any of these states so that we may inform the AEPA board.

\* Our contract is also available in MA for vendors who TEC has been unable to sign with.

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

## **4. Florida, Panhandle Area Education Consortium**

### ***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. Vendors may use this contract to sell products or services in addition to school districts to any government agency, non-profit organizations or institutions.

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

### ***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](http://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
4. Advertising promotional information over the Florida Education Channel

Any members, contact names, addresses and phone numbers will be available at the PAEC Web site [www.paec.org](http://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.

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 15<sup>th</sup> 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. All other school districts in Florida are participating members in the

programs of the Panhandle Area Educational Consortium (PAEC), including participation in the statewide cooperative purchasing program. Agencies that use this contract will be in compliance with FS 1001.42. PAEC was established to provide easily accessible information for our member and participating public school districts and the communities we serve. Since the creation of PAEC in 1967, our school districts have benefitted from shared services made available through leading edge technology. While school districts access our teaching and learning, training and technology, and business operations services in varying degrees of need, all come for the mutually beneficial purpose of reaching their goals...together.

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

## **5. Indiana, Wilson Education Service Center (WESC)**

### ***A. B. C. 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.

### ***D. Procedure for Processing Orders***

Wilson Education Service 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. After contracts are awarded and product information is available on our e-procurement sites vendors are free to contact eligible buyers and vice versa.

The Wilson Education Service Center utilizes an e-procurement facilitation system as the only mechanism for ordering and the primary method of marketing. Bidders are required to use the IAESC Procurement System and GovPro systems upon award. A 2.75% 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.

### ***E. 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.

## **6. Iowa, Iowa Educators Consortium (IEC)**

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

#### **Reporting**

The Contractors price will include a (2%) administrative fee that the Contractor will collect from the member and remit to the IEC on a quarterly basis. The Contractor 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 format and be available in electronic form, shall identify the Contractor 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 15<sup>th</sup> 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 Contractor for e-commerce transactions.

#### **No Quantity Guarantees**

The IEC facilitates a voluntary purchasing program. IEC eligible clients may obtain products and related services from other sources during the term of the contract. The IEC makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the contract.

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

None.

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

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

### ***D. Procedure for Processing Orders***

Once the award is made to the Contractor, they will designate to the Iowa Educators Consortium (IEC) one individual who will represent the Contractor to the IEC eligible clients during the agreement period. This contact person will correspond with each ordering eligible client for technical assistance, problems or questions that may arise. Include instructions if different contacts for different geographical areas are needed.

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

***E. Agencies Allowed to Purchase under the Member Agency***

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.

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

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

SEKESC has no additional general terms and conditions that apply for all categories.

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

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

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

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 vendor.
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.

### ***D. 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, e-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.

***E. Agencies Allowed to Purchase under the Member 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 Member Agency General Terms and Conditions that apply for all categories***

The Green River Regional Educational Cooperative, Inc. (GRREC) is one of eight educational cooperatives in Kentucky, all of which are participants in the AEPA bids. 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. Additional Member Agency Terms and Conditions for Non-Construction Products and Services***

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

The Contractor and subcontractors shall pay all laborers, workmen and mechanics performing work under this contract not less than the rate of wages set forth in the prevailing wage schedule incorporated in the contract conditions as determined by the Kentucky Department of Labor in accordance with the provisions of KRS 337.505 through KRS 337.550.

Bidders are informed that construction contracts of the Commonwealth of Kentucky and political subdivisions are not exempt from the provisions of the Kentucky Sales and/or Use Tax. Current sales and/or Use Tax shall be provided for and included in the bid amount as no adjustments will be permitted nor made after receipt of bids.

1. It should be noted that where performance bonds are required, it should include both performance and payment bonds.
2. State Prevailing Wages shall apply for projects of \$250,000.00 or more, or Davis Bacon wages (when federal funds are utilized) if higher than State Prevailing Wages.
3. All work shall be in accordance with necessary approvals from the Kentucky Department of Housing, Buildings and Construction and the Kentucky Building Code.
4. All processes of the project comply with 702 KAR 4:160, the Capital Construction Process, including necessary approvals from the Kentucky Department of Education.
5. Performance and payment bond on AIA document 312 must be provided for all projects that exceed \$25,000. (Also provide that the Surety shall comply with state requirements.)
6. In accordance with 702 KAR 4:160, AIA and KDE documents be utilized on all projects including but limited to:
  - a. A 101 Standard form of Agreement between Owner and Contractor (including KDE amendments)
  - b. A 201 General Conditions of the Standard Form of Agreement between Owner and Contractor (including KDE amendments)
  - c. AIA A701 Instructions to bidders, with KDE amendment and KDE Form of proposal (may require editing AEPA instructions to bidders to eliminate conflicts).
  - d. KDE purchase Order (for direct purchase of materials with tax number, to exempt materials from state sales tax)
  - e. If applicable, where architectural services are provided by the Owner, Form B141, Standard Form of Agreement between Owner and Architect
7. Architectural services shall be provided in accordance with KRS 322.360 and other relevant Kentucky Revised Statutes by the vendor or the Owner at the Owner's preference.

#### ***D. 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 transaction. GRREC will share information from the quarterly and annual reports and distribute the administrative fee among the other KY Educational Cooperatives according to membership.

#### ***E. 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. Massachusetts, The Education Cooperative**

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

All Contractors and Vendors shall comply with MGL Chapter 30B including:

- Signing a non collusion statement as required by MGL 30B s. 10;
- Signing a tax compliance certificate as provided in MGL Ch. 62C s 49A.

All Contractors and Vendors will produce and provide to TEC at PO Box 186, Dedham, MA quarterly reports of all sales to Massachusetts Participants. The quarterly reports together with the administrative fee shall be sent to TEC with 15 days after the close of each quarter.

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

All Contractors and Vendors shall comply with MGL Chapter 30B.

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

All construction contracts shall be subject to the provisions of M.G.L. Ch. 149A.

### ***D. Procedure for Processing Orders***

1. Once an award is made to a Contractor/Vendor, TEC will inform the Participants of the contract. At this point, the Contractor/Vendor may directly contact any Participant and any Participant may directly contact the Vendor.
2. Purchase orders will not be accepted or processed by TEC. All business will be contracted directly by Participant, which will issue a purchase order and provide payment for the applicable good or service directly to the Contractor /Vendor.
3. To the extent not otherwise described in this document, once a purchase order is issued by a Participant to a Vendor, all of the provisions of the contract shall benefit and be enforceable by such Participant, unless specifically identified as applying to TEC only.
4. The total cost of TEC's program is funded through the administrative fee paid to TEC quarterly by the participating Contractors/Vendors. The administrative fee 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. Agencies Allowed to Purchase under the Member Agency***

Any school district, municipality or non-profit tax exempt entity with a principal place of business in Massachusetts which sign the Participation Agreement attached hereto shall be entitled to participate.

## 10. Michigan, Oakland Schools, (OS)

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

#### 1. Advertising

OS will require a marketing flier, brochure, or other similar marketing vehicle, in electronic format, from each Contractor promoting the available contract with the Contractor, and/or a web page or link. OS may assist in the development of the marketing flier and material (if requested by Contractor), 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.

#### 2. Pricing

OS requires that Contractors 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.

#### 3. Conflict of Interest

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

#### 4. Termination of Buyer's Purchase Order

Default is defined as the failure of a Contractor 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 a Participating Entity. Should the Contractor fail to satisfactory resolve the default, the contract/purchase order may be terminated with thirty (30) days written notice. In that event, the Contractor shall be held liable to the Participating Entity for all costs and expenses incurred by the Participating Entity arising out of said default. Notwithstanding the foregoing, each Participating Entity may terminate their contract/purchase order, with or without cause, or discontinue purchasing from the Contractor at any time.

#### 5. 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.

#### 6. 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 Participating Entity 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.

#### 7. Taxes

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

8. Shipping Costs

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

9. Delivery

Delivery must be made as instructed on the contract/purchase order with the Participating Entity. All services must be delivered as specified by the Participating Entity.

10. Hazardous Materials

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

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 Participating Entity, 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 Participating Entity 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 Participating Entity.

12. Modifications to Contracts

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

13. Indemnification

Contractor agrees to indemnify, defend and hold harmless the OS, each Participating Entity 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 Contractor, its officers, directors, employees, successors, assignees, Contractors and agents; (ii) any breach of the terms of the contract between the Participating Entity and the Contractor; or (iii) any breach of any representation or warranty by Contractor under the contract with a Participating Entity or this solicitation.

14. Anti-discrimination

The Contractor hereby agrees to comply with all federal, state and municipal equal opportunity and antidiscrimination guidelines and regulations, and covenants that the Contractor 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 Contractor to comply with said guidelines and regulations shall, upon reasonable notice, constitute grounds for a Participating Entity to revoke and otherwise terminate the contract and all obligations of the Participating Entity hereunder.

#### 15. 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 Contractor that any clause, term, or condition not addressed in this solicitation, but required by a Participating Entity, shall be adhered to by said Contractor.

#### 16. Governing Law

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

#### 17. School Safety Initiative Legislation – K-12 Education Only

Depending on the type of service provided, the Contractor 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). Contractors subject to this legislation shall be required to submit all required individuals for said fingerprinting and criminal background investigations as directed by the Participating Entity, at the sole cost and expense of the Contractor, have the results sent to the respective Participating Entity 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 Participating Entity concerning their respective local procedures.

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

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

Participating Entities, other than from K-12, choosing to purchase from awarded AEPA contracts are subject to their own respective laws, and/or local policy, procedures, and/or Charters.

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

Special Bid Requirements for Construction, Renovation and Remodeling: All Contractors understand and agree that the use of AEPA contracts is not intended for use by Michigan intermediate school districts or public K-12 school districts for construction, renovation or remodeling projects under MCL 380.1267 and agree to comply with all applicable standards and statutes for said construction projects.

Participating Entities, other than from K-12, choosing to purchase from awarded AEPA contracts are subject to their own respective laws, and/or local policy, procedures, and/or Charters.

#### ***D. Procedure for Processing Orders***

1. Once the award is made to a Contractor, OS will inform the Participating Entities and Other Agencies of the award by announcing the award through its general and usual methods of disseminating information.
2. OS requires the awarded Contractor to take ownership and actively promote the contract in cooperation with OS to all qualified Participating Entities and Other Agencies.
3. Oakland Schools follows the AEPA Standard Ordering Process (see Part A, III. General Terms and Conditions for All Agencies, “Ordering Procedures”).

#### 4. Administrative Fee:

Contractors shall be required to pay a one and one half percent (2%) administrative fee (the "Fee") based on the total cost of goods or services purchased, including installation and freight, if applicable. In the event of a lease arrangement, the total Fee for the value of goods leased shall be paid to OS by the Contractor at the front end of the lease. Contractor or its designated authorized reseller(s) shall not include any additional amount corresponding to the Fee in the bid responses or awarded prices. **Administrative fee payments and sales reports are to be submitted to Oakland Schools on a quarterly basis.**

#### *E. Agencies Allowed to Purchase under the Member Agency :*

OS serves all local school districts located in Oakland County, Michigan. In addition to, and in accordance with the terms and conditions set forth in this solicitation, all **public school districts, private schools, public school academies and intermediate school districts** in the State of Michigan shall be permitted to use AEPA solicitations approved by OS.. 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. It should be clearly understood that OS is assisting these Participating Entities as a service to procure selected supplies, materials and equipment and services desired by the Participating Entity. Both the Contractor and any Participating Entity using this solicitation agree that the OS makes no representation that use of this solicitation by any Participating Entity is, in fact, in compliance with rules, regulations, policy or procedures of the Participating Entity. In this regard, the OS strongly suggests that, at a minimum, the Contractor and any Participating Entity considering such use consult with their own legal counsels before doing so. All Participating Entities using AEPA solicitations shall be responsible for adhering to their own applicable rules, regulations, policies, procedures and state statutes, etc., which may govern the use of cooperative purchasing contracts within their respective jurisdictions.

## 11. Minnesota, Minnesota Service Cooperative (MSC)

### A. *General Terms and Conditions that apply for all categories*

- (1.) Hazardous Substances: All hazardous products purchased by members shall include a Material Safety Data Sheet (MSDS) with the delivery.
- (2.) Lease and Rental Agreements: Vendor may allow MSC members to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with Minnesota Statutes and guidelines. MSC must receive a report annually summarizing the executed lease purchases along with a summary of the member 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 member. 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.
- (3.) MSC Training Seminar: Contracted vendors and their participating sub-contractors are required to participate in an on-line MSC training session (MSC 101) that is designed to educate the vendor (and sub-contractors) on the purpose and nature of MSC. A contracted vendor will not be marketed to the MSC membership until they have completed the MSC 101 training.

**B. *Additional Member Agency Terms and Conditions for Non-Construction Products and Services***: If requested by MSC, the contracted vendor will work with MSC to develop an order form, or order forms, containing the most commonly purchased items, that MSC can utilize to market the contracted vendor to its membership.

**C. *Additional Member Agency Terms and Conditions for Construction Products and Services***: If any work supplied pursuant to the Contract requires licensing with the State of Minnesota and any other states MSC may market, a contractor must be so licensed in order to submit a bid for the contract. The 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. In addition, acquisition of all permits as well as any drawings needed to obtain those permits is the responsibility of the successful contractor/bidder.

**D. *Procedure for 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 E. 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. MSC will require a marketing flier, brochure, or other similar marketing piece, in an editable, electronic format, from each vendor promoting the available contract with the vendor, and/or a web page or link. MSC 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 MSC web page. Any web page or link, or other marketing tool shall be dedicated to AEPA information only.
- (4.) 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 services including installation costs. The administrative fee shall not be listed as a separate line item on the quote. When a member decides to purchase through the MSC-AEPA contract, the member issues the purchase order directly to the vendor.

- (5.) MSC members purchasing construction related products and/or services may, as required by statute, or at their discretion, require the vendor to post a performance bond.
- (6.) The purchase order must include the total invoiced cost, based on the total cost of goods, service, and installation, including the 2% administrative fee.
- (7.) This administrative fee is to be paid by the vendor to MSC quarterly within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to MSC a sales report, in Excel format, listing the following information:
  - (a.) Name of purchasing member
  - (b.) Address of purchasing member
  - (c.) Date of sale
  - (d.) Standard sale price
  - (e.) Sale price with AEPA discount
  - (f.) Administrative fee generated by sale

This report shall include all sales made and payments received by the vendor in said quarter. The sales report shall be e-mailed to Melissa Mattson at [mmattson@lsc.org](mailto:mmattson@lsc.org) and copied to Jan Eklund at [jeklund@lsc.org](mailto:jeklund@lsc.org). The administrative fee payment shall be delivered to Melissa Mattson, MSC, 1001 E. Mt. Faith, Fergus Falls, MN 56537. The check shall be made out to MSC.

- (8.) 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.
- (9.) MSC reserves the right to review all purchase orders, lease documents and invoices to insure contract compliance.
- (10.) Vendor makes all deliveries and installations of products and services. MSC does not warehouse items or provide installation services.
- (11.) MSC requires that all participating vendors offer the contract opportunity to all MSC qualified members. Qualified membership is defined under Section E (below).

***E. Agencies Allowed to Purchase under the Member 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.

## 12. 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.

***D. Governing Law***

Any municipality or political subdivision of this state, as hereinafter defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common services; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides.

### 13. 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.

**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.

#### *D. 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.

#### *E. Agencies allowed to Purchasing under the Member Agency*

MCS is a Montana based, legislatively created, cooperative organization formed under Montana state statute section 20-9-204 Senate Bill # 329 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.

## 14. 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 school district 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:** 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. 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 contemplated expenditure for the complete project does not exceed \$40,000.00. The granting of a bid to a vendor does not absolve the bidder from also complying with Section 73-101 and Section 73-106 of the Nebraska statutes. 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. Kip Schneider at Nebraska ESU Cooperative Purchasing.

**Debarment and Suspension:** Contractors shall comply with Executive Orders 12549 and 12689 as applicable. Contractors may be debarred for a period of two (2) years, unless earlier modified by the Special Awards Committee of 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.) Conviction of a crime of dishonesty. (i.) Debarment or suspension by any agency or Federal Agency by the contractor or any of its key employees. (j.) Other conducts which materially and adversely affects the services of 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***

Nebraska ESU Cooperative Purchasing provides service to 16 Educational Service Units state wide, which in turn serve approximately 254 school districts.

***D. Procedure for Processing Orders***

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

***E. Agencies Allowed to Purchase under the Member Agency***

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

## 15. New Jersey, Middlesex Regional Educational Services Commission (MRESC)

### A. Additional Agency Terms and Conditions

#### Applicability of Contract Provisions to New Jersey Participants

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

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

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

#### 2. Event of default and termination of Contract:

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

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

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

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

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

The remedy to terminate and withhold payments is in addition to any other remedies MRESC and the New Jersey Participants may have. In the event of Contract termination by a New Jersey Participant, such New Jersey Participant's payment obligation shall cease as of the final date on which services in accordance with this Contract are last performed by the Contractor. Upon termination of this Contract under this section, the

Contractor (and its surety) will be responsible for all of such New Jersey Participant's expenses, losses and damages incurred in replacing Contractor for the remainder of the term of the Contract.

3. **Assignment:**

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

4. **Indemnification:**

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

5. **New Jersey Participant Policies:**

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

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

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

1. New Jersey Business Registration Certificate
2. New Jersey Contractors Registration Certificate (All construction or time and material bids.)
3. New Jersey Pay-to-Play Documentation
4. New Jersey Affirmative Language
5. Acknowledgement of the Contractor's/Vendor's responsibility to pay prevailing wage.
6. New Jersey Affirmative Action documentation
7. Years of experience is not a criteria for the evaluation of bids to be awarded for the State of New Jersey.

For additional information visit [www.nj.gov/dca/lgs/lpcl/yellowbook/index.shtml](http://www.nj.gov/dca/lgs/lpcl/yellowbook/index.shtml)

6. **Performance Bonds:**

Each New Jersey Participant may require a performance bond in the case of services to be performed under the Contract if required. The Contractor shall furnish to the New Jersey Participant a Surety Performance Bond ("Performance Bond") with an option to renew each succeeding year of the Contract in a form satisfactory to the New Jersey Participant assuring the faithful performance of the Contract. The Bond shall be equal to one

hundred percent (100%) of each year's estimated Contract price as reviewed and agreed upon by the New Jersey Participant, and shall be continued for the life of the Contract in amounts equal to one hundred percent (100%) of each year's estimated Contract price as reviewed and agreed upon by the New Jersey Participant. The Contractor must send such Performance Bond to the New Jersey Participant prior to the commencement of any services under the Contract. Each such Performance Bond shall be furnished by a surety company acceptable to the New Jersey Participant and licensed or authorized to do business in New Jersey. Failure to deliver the bond shall be considered a default under the Contract, at the discretion of and upon notice by the New Jersey Participant.

**7. Governing Law:**

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

**8. Financing Arrangements:**

Any financing arrangements (including lease purchasing arrangements) will be made directly between the Contractor and a New Jersey 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 New Jersey Participant that is interested in such an arrangement. Each New Jersey Participant should seek its own legal advice prior to entering into a financing arrangement. MRESC must receive a report annually summarizing the executed lease purchases along with the summary of the customer purchases. MRESC 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 New Jersey Participant only.

**9. Affirmative Action:**

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

**10. Independent Contractor:**

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

**11. Incorporation of Bid Documents:**

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

**12. New Jersey Public Records Act:**

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

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

1. Contractor agrees to provide MRESC with a copy or proof sheet of all advertisements, customer communications or promotional material for approval. Contractor will provide MRESC with date of release and name of publication, journal, etc. if applicable.
2. Contractor will include the approved MRESC logo, web address, and contact information in all print,

electronic mail and other advertising and promotion intended for release in New Jersey.

3. The MRESC logo and information shall be of a clearly readable size and in appropriate proportion to other elements in the print material.
4. Contractor agrees to make available MRESC supplied brochures or other promotional materials on booths, tables, etc. of any or all exhibits for which the Contractor displays/participates at tradeshow, conventions and the like. Contractor will supply scheduled exhibit dates in advance.
5. Contractor agrees to insert the approved MRESC logo, web address, and contact information on the Contractor's website promoting and providing a link to the MRESC website. Contractor will also provide MRESC with text, links and logos to be posted on the MRESC website.

#### ***B. Procedures for Processing Orders***

1. Once the award is made to the Contractor, MRESC will inform the potential New Jersey Participants of the Contract, including a webpage dedicated to the contract on the MRESC website. At this point, the Contractor may directly contact any potential New Jersey Participant and any potential New Jersey Participant may directly contact the Contractor.
2. Purchase orders will not be accepted or processed by MRESC. All business will be contracted directly with the New Jersey Participant, which will issue a purchase order and provide payment for the applicable good or service directly to the Contractor.
3. The total cost of MRESC's program is funded through a 2.2% participation fee paid to MRESC quarterly by the participating Contractors. The administrative fee percentage is based upon the total sale or lease of goods and services, including installation, if included. This fee shall be included in all price quotations to New Jersey Participants and shall not be printed as a line item on the quotation.
4. Along with the participation fee, the Contractor will produce and provide to MRESC quarterly reports ending March 31, June 30, September 30 and December 31 throughout the contract period. The reports shall be in Microsoft Excel and be available in electronic form, shall identify the Contractor and the quarter being reported, shall include a minimum of the fields listed below and shall allow for sorting on any of these fields:
  1. Date of order.
  2. The name of the New Jersey Participant.
  3. MRESC Bid Number
  4. MRESC Co-op Number (New Jersey State Approved Cooperative Pricing System #65MCECCPS)
  5. List (or academic) price sales totals.
  6. New Jersey Participant price sales totals.
  7. Member savings totals to be sent to the MRESC in summary and to each individual New Jersey Participant.
5. Quarterly reports and administrative fee payments are to be made payable to MRESC and sent to MRESC, 1660 Stelton Road, Piscataway, NJ 08854, Attn: Patrick M. Moran, or such other address that MRESC will provide from time to time.
6. If no purchases are made in any given quarter, the Contractor shall remit a "No Activities" statement to MRESC for that quarter. The Contractor will also produce and provide to MRESC an annual summary report for all purchases made under each contract awarded by MRESC pursuant to this document for a period beginning with the award of the contract and ending December 31<sup>st</sup> and all consecutive annual periods, if

the contract is extended.

7. New Jersey School Districts and other eligible New Jersey Participants are normally exempt from sales tax. The Contractor/Vendor should confirm this exemption and collect a tax-exempt letter from each New Jersey Participant.

### ***C. Members Purchasing Under the Agency***

There are 593 operating school districts in New Jersey 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. The MRESC Cooperative Pricing System currently has 582 members located in all 21 Counties of the State of New Jersey.

### **CONFLICT OF INTEREST**

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

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

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

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

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

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

## 16. New Mexico, Cooperative Educational Services (CES)

### A. *Additional Member Agency's Terms and Conditions - That apply to all categories.*

**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; colleges 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 (LEAs). CES offers numerous programs and services in the following areas: administrative support, special education services, and cooperative purchasing.

**Arbitration:** This contract is subject to arbitration to the extent required by the New Mexico Procurement Code, 13-1-1 to 13-1-199. NMSA 1978  
**Assignment of CES Payments:** If the offeror requests that its payment from CES/CES Members be issued to a third party or that a joint check be issued to the offeror and a third party, this request must be submitted and approved by the agency prior to the Contractor accepting a purchase order. The agency reserves the right to assess a special handling charge of thirty-five dollars (\$35) per check. The special handling charge will be deducted from the amount of the invoice being paid. If the offeror wishes to have all payments under this contract made to a third party, offeror must state this in his response.

**Assignment of CES Payments:** If the offeror requests that its payment from CES/CES Members be issued to a third party or that a joint check be issued to the offeror and a third party, this request must be submitted and approved by the agency prior to the Contractor accepting a purchase order. The agency reserves the right to assess a special handling charge of thirty-five dollars (\$35) per check. The special handling charge will be deducted from the amount of the invoice being paid. If the offeror wishes to have all payments under this contract made to a third party, offeror must state this in his response.

**Campaign Contribution Disclosure Form:** Documents used to disclose whether they, a family member, or a representative of the prospective Contractor has made a campaign contribution to an applicable public official of the State or a local public body during the two years prior to the date on which the Contractor submits a proposal (Chapter 81, Laws of 2006). Prior to the offeror entering into a contract with an individual CES Member, the offeror must provide the CES Member with a Campaign Contribution Disclosure Form.

**Cancellation for Non-Performance or Contractor Deficiency:** CES can terminate any contract if CES Members have not used the contract in any 12-month period, or if purchase orders total less than \$1,000 per year. CES reserves the right to cancel the whole or any part of this contract due to failure by Contractor to carry out any obligation, term or condition of the contract. CES may issue a written deficiency notice to said Contractor for acting or failing to act in any of the following:

1. Providing material that does not meet the specifications of the contract;
2. Failing to adequately perform the services set forth in the scope of work and specifications;
3. Failing to complete required work or furnish required materials within a reasonable amount of time;
4. Failing to make progress in performance of the contract and/or giving CES reason to believe that Contractor will not or cannot perform the requirements of the contract;
5. Performing work or providing services under the contract prior to receiving a purchase order from CES for such work;
6. Accepting purchase orders based on this contract from CES Members and/or invoicing CES Members directly.

Upon receipt of a written deficiency notice, Contractor will have ten (10) days to provide a satisfactory response to CES. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data, and reports prepared by the Contractor under the contract will become the property of the Member on demand.

**CES Supplemental Packet:** Upon acceptance and approval of the Vendor's offer by AEPA, CES will independently consider the offer and 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](http://www.gpoaccess.gov/cfr/index.html)

**Civil and Criminal Penalties:** The New Mexico 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.

**Contractor Invoice:** The Contractor will send an invoice to CES or a CES Member after the delivery of goods and/or services. Goods and services will be invoiced at applicable contract prices, depending on the purchasing process utilized for the procurement, and must not exceed the amount of the agency's purchase order. If it is a CES purchase, the invoice will be less the CES' two percent (2%) administration fee. If it is a CES Member's purchase, the invoice will be for the full amount.

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

**Eligible Agencies:** consist of any CES Member. Participating Entity or External Procurement Unit 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.

**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 as it relates to offering and providing their products and services within the state of New Mexico.

**Indemnification:** The Contractor shall indemnify and hold harmless CES/CES Member/Participating Entities (its officers and employees) against liability, claims, damages, losses, or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, Contractor's and/or its employees own negligent act(s) or omissions(s) while the Contractor, and/or its employees, perform(s) or fails to perform its obligations and duties under the terms and conditions of this agreement. This safe and harmless and indemnification clause is subject to the immunities, provisions, and limitations of the Tort Claims Act (41-4-1, et seq., N.M.S.A. 1978 comp.) and any amendments thereto. It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create the public or any Member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a lawsuit(s) for wrongful death(s) bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or any other claim(s) whatsoever pursuant to the provisions of this agreement. Vendor shall provide all insurance necessary to employees on the work site, including, but not limited to, workman's compensation.

**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 the 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.

1. Bidders will submit proof of coverage under the Workman's Compensation Insurance, as required by the Labor Laws and New Mexico Statutes.
2. 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 one million dollars (\$1,000,000) combined single limit for bodily injury and property damage, or seven hundred fifty thousand dollars (\$750,000) bodily injury and two hundred fifty thousand dollars (\$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.** Bidders will submit a certificate of errors and omissions insurance for damages caused by an error, omission, or any negligent acts caused by the Contractor and its Subcontractors in the performance under this agreement. Combined singled limit per occurrence is one million dollars (\$1,000,000) and the annual aggregate limit of not less than two million dollars (\$2,000,000). **The bidder will provide “tail” coverage at the completion of any contract entered into by CES or its Members** for a minimum of 12 months, or the maximum time period reasonably available in the marketplace. The Contractor shall furnish certification of “tail” coverage as described following contract completion. This will be a condition of the final acceptance of work or services.

3. In addition, Contractor must provide, upon request, identical certification of insurance to any CES Member/Participating Entity using this contract. Prior to commencing any work, all Subcontractors must procure and maintain at its own expense until final acceptance of the work, written insurance coverage, and insurer’s acceptance to the prime Contractor. All Subcontractors will provide workers’ compensation insurance, which waives all subrogation rights against the prime Contractor and CES/CES Member/Participating Entities.

**Lease and Rentals:** The offeror can allow CES Members to enter into rent, lease, or 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. The offeror must agree 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. The offeror must indicate 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 the 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 the Lessee. It is the decision of CES, its Members, or Participating Entities to determine the sufficiency of funds, which determination shall be accepted by the Lesser and is final. The Lessee shall give the Lesser 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.

**Local Representation:** Depending on the type and level of products and services offered, the Vendor must demonstrate their sales, support, and service staff are physically located where they can respond to and deliver services in a timely and cost effective manner.

**Manufacture Endorsement:** The bidder must demonstrate it is an authorized distributor of the products and services offered, has access to manufacturer’s technical support and warrantee services, and possesses the certifications required to install, configure, and maintain the products offered within the state of New Mexico.

**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 is a member of CES.

**Marketing:** Once the award is made to the Contractor, CES will, in conjunction with the Contractor, develop a marketing strategy on how the contract will be presented to its Members and Participating Entities. CES informs its Members and Participating Entities 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, 3) publishing the contract information in a catalog disseminated to all Members, and 4) attending a number of conferences and promoting its existing contracts. 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](http://www.nmedu.org)).

**Multiple Awards:** AEPA approved Vendors must service a required number of the AEPA Member States which does not allow New Mexico or regional Vendors to participate. CES has determined that it is in its Members and Participating Entities best interest, and in order to provide local Vendors the opportunity, CES conducts public solicitations for local and/or regional Vendors in some of the same product and service areas. Therefore, CES may have existing CES contracts in place with local or regional Vendors.

**New Mexico Procurement Code (13-1-28):** Sections 13-1-28 through 13-1-199 NMSA 1978 may be cited as the "Procurement Code".

**Participating Entities:** This is defined as local public body, state agency, non-public/non-profit educational entities, other non-profit organizations, or external procurement units within the State of New Mexico or outside the state that if within the state they would fall under one of these categories. 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.

**Offer Acceptance Period to Execute a Contract with CES:** In order to allow CES the opportunity to evaluate the bids offered and approved by AEPA, CES requires that the AEPA approved Vendor submit to CES a complete electronic copy of its response to AEPA's solicitation and a hard copy of all of the documents that required original signatures within sixty days (60) from the date of AEPA's approval. CES will issue its supplemental packet within thirty (30) days after AEPA's approval, and will require the supplemental packet be returned within forty-five (45) days of the date of its cover letter. CES will consider failure to comply with these requirements as a failure to comply with both AEPA's and CES' solicitation terms and conditions.

**Offeror's Support for CES Prices:**

Because the resulting CES awarded contracts are based on publically solicited sealed bids, Members are exempt from having to issue their own individual solicitation. The additional value CES brings to the transactions is its oversight, support services, and assurance that the procurement complies and adheres to the New Mexico Procurement Code. The service and convenience of processing orders through one agency (CES) simplifies the procurement process. Rather than having to issue a dozen purchase orders, for instance, a Member may issue only one to CES. If problems occur, the Member has the assistance of CES in reaching a satisfactory solution. A CES contracted Vendor receives many of the same benefits as a CES Member. Rather than having to respond to dozens of individual IFBs, a response to AEPA opens the door to forty-five thousand or more educational institutions, cities, counties, political subdivisions, and non-profit organizations. CES' current Members exceed 190 and Participating Entities exceed 100. The business office of the Vendor has the advantage of invoicing CES rather than each individual account. The awarded Vendor also receives the same type of additional services from CES: assistance in collections, joint marketing, and use of its facilities to hold events. If problems develop, the Vendor has the mediation services of CES to settle disputes and assistance in working with and interfacing with various state and local governing authorities.

Therefore, for CES to comply with the intent of New Mexico cooperative purchasing statute and to provide its Members and Participating Entities the best value, CES requires that Vendors offer prices lower than what they would offer on single school district contracts in New Mexico, other cooperative purchasing contracts available to New Mexico public institutions, and agencies or state purchasing contracts for equal or less volume. Vendors that awarded a CES contract under this solicitation must lead with and/or offer their CES contract. As the agencies' first option, however, it is understood that it has the option to use whatever procurement method they choose.

**New Mexico Preferences:**

- **Resident Business Preference:** Pursuant to NMSA 1978 13-1-21, a Request for Proposal shall include a provision for Residential Business preference for those businesses that submit a valid resident business certificate issued by the taxation and revenue department pursuant to Section 13-1-22.
- **Resident Veteran Business Preference:** Pursuant to NMSA 1978 13-1-21, a Request for Proposal shall include a provision for Residential Veteran Business preference for those businesses that submit a valid resident veteran business certificate issued by the taxation and revenue department pursuant to Section 13-1-22.

- **Residential Contractor Preference:** Pursuant to NMSA 1978 13-4-2, a Request for Proposal shall include a provision for Residential Contractor preference for those contractors that submit a valid contractor business certificate issued by the taxation and revenue department pursuant to Section 13-1-22.
- **Residential Veteran Contractor Preference:** Pursuant to NMSA 1978 13-4-2, a Request for Proposal shall include a provision for Residential Veteran Contractor preference for those contractors that submit a valid veteran contractor business certificate issued by the taxation and revenue department pursuant to Section 13-1-22.
- Pursuant to NMSA 1978 13-1-21, applicable preference will be awarded to responding Offerors that submit a copy of a valid resident business certificate or valid contractor certificate issued by the New Mexico Taxation and Revenue Department. For joint proposals submitted by both a resident and nonresident Offeror, preference will be applied to the percentage of work produced or performed by the resident firm.
- Any contract awarded using preference will not be applicable to purchasing utilizing federal funds. Therefore, CES reserves the right to issue a contract using preference and one without preference for use when federal funds are involved.

**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, approved, and awarded under this solicitation. Price lists submitted must be in accordance and comply with the AEPA's terms, conditions, and the requirements of the CES purchasing process utilized to facilitate eligible procurement agencies' staff to place and process orders. When utilizing any of the pricing methodologies identified and required within this solicitation, such discounts and pricing will include the CES two (2%) percent administrative fee, must be submitted in the format required, and can be audited by CES.

**Taxes:** Prices offered will not include applicable state gross receipts tax and local taxes. All applicable taxes must be listed as a separate item on all invoices and will be paid by CES, CES Member or Participating Entity issuing the purchase order to CES or the Contractor. No gross receipts taxes can be collected on delivery charges to the agency's location.

1. There is no NM State Gross Receipt Taxes applied to the price of non-construction supplies, materials and equipment.
2. There will be NM State Gross Receipt Taxes applied to any non-construction services and professional services based on the location of the provider.
3. There will be NM State Gross Receipt Taxes applied to any construction product and/or service based on the physical location of the construction site.
4. Indian Reservation or Tribal Tax: If goods or services are delivered to locations on a Indian reservation or purchased by tribal governments, they are subject to tribal taxes.

If a bidder is awarded a CES contract, prior to providing products and/or performing services that are subject to NM State Gross Receipt or Tribal Taxes they must hold a CRS number from the New Mexico Taxation and Revenue Department.

***B. Additional Member Agency's Terms and Conditions – For construction products and services.***

**Additional Contract:** For any contract entered into by CES, contractor and CES eligible agency based on this bid, the terms and conditions of the IFB will prevail. A contract between the CES Member/Participating Entity and the Contractor for construction will be an industry standard agreement. The parties may agree to use the American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201 as a guide.

**Additional NMPSFA Terms and Conditions:** Any construction project involving funds provided by NMPSFA will require the Contractor to adhere to NMPSFA's additional terms, conditions and requirements.

**Bid Security:** The New Mexico Procurement Code requires bid security for construction and construction related services. CES has determined that, for any such IFB, it will require security, bid bond, or other acceptable bid security in the amount of twenty-five thousand dollars (\$25,000). The bid security must be provided by bid due date, and therefore must accompany the bidder's response.

Acceptable bid security is a one-time bid bond underwritten by a surety company licensed to issue bid bonds in New Mexico and approved in federal circular 570 as published by the United States treasury department as a certified cashier's check, or an irrevocable letter of credit.

**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) 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.

Any Subcontractor providing and/or performing one hundred and twenty-five thousand 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. The 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. The 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 the Owner. The 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. The Contractor is a Vendor who has responded to a Request for Bid and has been awarded a contract in accordance with the New Mexico Procurement Code, Sections 13-1-108 or 13-1-117 NMSA 1978.
5. The Contractor will be responsible for providing CES with the information required to complete the Three Party Agreement..

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.

**Quotes and Cost Proposals:** All cost quotes and proposals submitted to a CES Member/Participating Entity under this solicitation will be based on or more of the pricing methodology described and stipulated and identified within each category/lot of this IFB. All pricing submitted must include adjustments for New Mexico Gross Receipts tax, New Mexico State wage rates, and performance or payment bonds if required.

**Licenses:** The prime Contractor shall possess the appropriate New Mexico Construction Industries Division (NMCID) Contractor's license required to provide the construction products and perform the construction services covered by this solicitation. Copies of the prime Contractor's licenses shall accompany their response to AEPA and be in good standing with NMCID as of the due date and time. The Contractor must maintain and keep current all licenses required for the performance and delivery of any and all products and services offered in its response to this RFB. In any offer using Subcontractors, the Subcontractor must hold and maintain the appropriate New Mexico Construction Industries Division licenses.

**NMCID:** New Mexico Construction Industries Division is a state agency that 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.

## **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.

**Ordering Process:** Once the Contractor is notified by a Member/Participating Entity that they are interested in having the contractor provide construction related products and services, the Contractor will schedule a site visit to familiarize itself with the site and project scope of work. This is done by conducting and performing its own site investigation, research, analysis and asking pertinent 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.

## **Payment Retention, Progress Payments:**

1. In order to comply with New Mexico Statutes Annotated 1978, Article 28 Retainage, 57-28-1 to 57-28-11, 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. Final payment of a contract, for which progress payments have been made, will not be made until the project is totally completed (including punch list items and close out document 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 retainage or a substitute security, the agreement must be in full compliance with New Mexico Procurement Code and applicable laws. If a substitute security or retainage is agreed upon, written notice must be provided to all parties prior to the issuing of a CES purchase order.

**NMPSFA:** New Mexico Public School Facilities Authority is the administrative unit created by the New Mexico legislature to carry out and act on behalf of the PSCOC to administer, coordinate and provide general oversight for "state-funded construction", which is defined as a building or appurtenance to a building that is built in whole or in part with state capital outlay monies. As part of their oversight function, NMPSFA will receive and review construction project documents and coordinate with other state agencies such as NMCID, Environment Department, Department of Energy, Minerals and Natural Resources, State Fire Marshal's Office, etc., to ensure compliance with all applicable adequacy standards, rules, regulations, building, plumbing, electrical, fire prevention, and mechanical codes adopted by the state, county, city, town or fire district in which the construction project is located.

**NM Workforce Solutions:** This is 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 Public Works Act:** Sections 13-4-1 through 13-4-43 NMSA 1978 may be cited as part of the "Procurement Code".

**New Mexico Workforce Solutions Contractor Registration Requirement:** In order to submit a bid or response to a request for proposal valued at more than sixty thousand dollars (\$60,000) or to be considered for an award of any portion of a public works project greater than sixty thousand dollars (\$60,000) and for a public

works project that is subject to the Public Works Minimum Wage Act (13-4-10 NMSA 1978), the contractor, serving as a prime contractor or subcontractor, shall be registered with the New Mexico Department of Workforce Solutions, Public Works.

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.

**Quality Control Issues:**

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

**PSOC:** Public School Capital Outlay Council was created by the New Mexico Legislature to govern and establish policies, regulations, standards, and procedures and to oversee the application, review, and evaluation and distribution processes relating to capital outlay funds appropriated and authorized by the New Mexico Legislature.

**Site Cleanup:** Contractor will clean up and remove all debris resulting from its work as required by the Member/Participating Entity. The contractor shall comply with all laws and regulations governing disposal of construction and hazardous materials. Upon completion of the work, the premises will be left in a neat, unobstructed condition with everything in good repair and order.

**Site Examination:** Contractor shall familiarize itself with the site, in order to anticipate unseen problems that may develop as the work progresses. Failure to have visited the site before submitting a job order proposal shall in no way relieve the contractor from furnishing any materials or performing any work required to complete the project in accordance with the contract documents, without additional cost to the CES Member/Participating Entity.

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

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

1. In awarding subcontracts, the contractor agrees that any subcontract competitively solicited by contractor will not be awarded solely upon membership, non-membership or affiliation in a union or professional association or other organized group or agency, but on a competitive bid and ability to meet the specifications and comply with the requirements of the individual project.
2. Subcontractor needs to be registered with New Mexico Department of Workforce Solutions, Public Works section.
3. CES, its' Members/Participating Entities reserves the right to approve or reject any subcontractor listed in the Offeror's project proposal.

4. Subcontractors will need to provide performance and payment bonds to prime contractor if the subcontract is greater than \$125,000.
5. The contractor will not enter into any subcontract subject to this solicitation without prior notification and approval from CES or its' Member/Participating Entity. Any such subcontract shall incorporate by reference the terms and conditions of this solicitation and each individual project contract.
6. No subcontracts will be entered into with any unlicensed party. Contractor must use subcontractors openly, include such arrangements in the proposal and certify upon request that such use complies with the rules of the NMCID and the New Mexico Public Works Act and New Mexico Procurement Code. No subcontracting costs can be hidden in a cost proposal to CES.
7. Subcontractor Payment: Contractor agrees to pay subcontractors in a timely manner and in accordance with the New Mexico Subcontractors Act. If contractor receives a progress payment from CES, the contractor will pay subcontractor(s) their correct proportion of the amount paid. CES will contract to provide release of liens from subcontractors within fifteen (15) days of date of payment. Failure to pay subcontractors for work faithfully performed and properly invoiced can result in the suspension or cancellation of this contract.
8. Subcontractor's labor used must be of a standing or affiliation that will permit the work to be carried on harmoniously, without delay and will not cause any disturbance, interference or delay to the progress of the project. Subcontractor and lower-tier subcontractors will not employ anyone whose employment might be objected to by prime contractor or Member.

### **C. Procedure for Processing Orders**

**Ordering Process:** CES currently offers two procurement/purchasing options: the *traditional* and *ecommerce* methods.

1. Traditional Method: Orders accepted will be processed by:
  - a. The Contractor provides a written quote/proposal to the customer. When a final quote/proposal is agreed upon, a copy is provided to CES. When preparing a quote/proposal under a CES awarded contract, the Contractor must clearly identify and separate 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.
  - b. The CES Member or Participating Entity issues a purchase order to CES based on the quote/proposal provided referencing the Contractor's specified CES contract number.
  - c. When CES receives the Member's or Participating Entity's purchase order, it verifies the quote/proposal with the Contractor's solicitation response/CES contract to ensure compliance. CES issues a purchase order to the Contractor for two percent (2%) less than the Contractor's quote and the Member's or Participating Entity's purchase order.
  - d. The Contractor provides the items or services and invoices CES for an amount not to exceed the amount of CES' purchase order to the Contractor. Invoices must only be issued to CES.
  - e. CES verifies the Contractor's invoice received and issues a CES invoice to its Member or Participating Entity.
  - f. The Member or Participating Entity pays CES, and CES pays the Contractor for items and services delivered and accepted by the Member or Participating Entity and retains its 2% percent administrative fee.
2. Ecommerce (online ordering) Method: This allows the CES Members/Participating Entities to log on to the Contractor's website which contains only those products and services covered under the Contractor's CES awarded contract. The Contractor delivers the product/services, sends an invoice to the Member/Participating Entity, the Member/Participating Entity pays the Contractor, and the Contractor rebates the CES administrative fee to CES.

**Billing:** All invoices will be from the Contractor to CES, its Members, or Participating Entities, and will list CES'/Member's/Participating Entity'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 above or agreed to by CES and the Contractor.

**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, with the exception of unsettled claims previously made in writing.

## 17. North Dakota, North Dakota Educators Service Cooperative (NDESC)

### ***A. Additional Member Agency Terms and Conditions – All Categories***

**Lease and Rentals:** Vendor may allow NDESC members to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with North Dakota Statutes and guidelines. NDESC must receive a report annually summarizing the executed lease purchases along with a summary of the member 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 member. 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. Additional Member Agency Terms and Conditions – Construction Products and Services Contractor***

**Licensure:** Contractors engaging in business in the State of North Dakota must hold a North Dakota State Contractor's 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 applicable North Dakota Contractor Licensure to the bid.

### ***C. Procedure for Contract Award, Notification and Processing Orders***

Once the award is recommended by the AEPA Review Committee, NDESC considers the recommendation based on the value of the potential contract for its qualified members. Member is defined in Section C. In the event of an award by the NDESC Board of Directors, NDESC 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 NDESC website.
- (2.) Announcing the award in NDESC newsletters.
- (3.) NDESC 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.) 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 NDESC-AEPA contract, the member issues the purchase order directly to the vendor.
- (5.) NDESC members purchasing construction related products and/or services may, at their discretion, require the vendor to post a performance bond.
- (6.) The purchase order must include the total invoiced cost, based on the total cost of goods, service, and installation, including the 2% administrative fee.
- (7.) Administrative fees are to be paid by the vendor to NDESC quarterly within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to NDESC a sales report, in Excel format, listing 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](mailto:jeastes@lcsc.org) and copied to Jan Eklund at [jeklund@lcsc.org](mailto:jeklund@lcsc.org). The administrative fee payment shall be delivered to Jane Eastes, NDESC, 1001 E. Mt. Faith, Fergus Falls, MN 56537. The check shall be made out to NDESC.
- (8.) In the event of a lease, the total administrative fee for the value of goods shall be paid to NDESC by the vendor at the front end of the lease.
- (9.) NDESC reserves the right to review all purchase orders, lease documents and invoices to insure contract compliance.
- (10.) Vendor makes all deliveries and installations of products and services. NDESC does not warehouse items or provide services.
- (11.) NDESC requires that all participating vendors offer the contract opportunity to all NDESC qualified members. Qualified membership is defined under section C (below).

NDESC has designated Lakes Country Service Cooperative (LCSC), 1001 E. Mt. Faith, Fergus Falls, MN as its purchasing agent. All vendors agree to work with LCSC on all purchasing issues related to NDESC.

### ***D. 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. NDESC currently has over 170 members. 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.

***E. Governing Law***

The laws of the State of North Dakota 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.

## 18. OHIO COUNCIL OF EDUCATIONAL PURCHASING CONSORTIA (OCEPC)

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

#### 1. Compliance with Laws/Forum Designation

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

#### 2. Delinquent Tax Affidavit

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

#### 3. Secretary of State Registration

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

#### 4. Findings for Recovery

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

#### 5. Ohio Workers Compensation Insurance

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

#### 6. Project Personnel, Student Safety and Background Checks

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

Contractor acknowledges that the safety of the Member Agency's students, employees, officials and guests is of the utmost importance. Contractor will endeavor to ensure that its officers, employees, agents, representatives, and consultants will take no action that would jeopardize the safety of the Member Agency's students, employees, officials, or guests. The Member Agency reserves the right to require Contractor's officers, employees, agents, representatives and consultants to wear identification and stay in designated

work areas at all times while on the Member Agency's property. The Member Agency shall have the right to effect the immediate removal of any person associated in any way with Contractor from Member Agency property for failure to wear identification, for being outside a designated work area, for fraternizing with or engaging in any improper behavior directed toward or in the vicinity of students, employees, officials, or guests of the Member Agency or for any other good cause.

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

#### **7. Independent Contractor**

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

#### **8. Ownership of Instruments of Service**

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

#### **9. Audit**

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

#### **10. Notices**

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

#### **11. Non-Appropriation**

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

#### **12. No Personal Liability**

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

### **13. Miscellaneous**

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

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

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

#### **B. Non-Construction Products and Services:**

##### **1. Bus Purchases**

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

#### **C. Construction Products and Services:**

For construction improvements, the following shall apply:

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

#### **D. Procedures for Processing Orders:**

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

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

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

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

**E. Agencies Allowed to Purchase under Member Agency:**

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

*Revised: December 2, 2009*

*Approved: December 14, 2009*

*Reviewed: May 12, 2010*

*Revised: May 27, 2011*

*Reviewed and Approved: September 14, 2011*

## 19. Oregon, Intermountain Educational Service District (IMESD)

### A. *Additional Agency Terms and Conditions*

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

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 WORK AND IMPROVEMENTS & 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.

##### 3. Licensure.

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

##### 4. Bonding.

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

##### 5. Subcontractor Disclosure.

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

(i) 5% of the project bid, or \$15,000, or

(ii ) \$350,000 regardless of the percentage, Bidders must disclose the following information about that Subcontractor:

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

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

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

FIRST TIER SUBCONTRACTOR DISCLOSURE FORM

Project name:

Bid #:

Bid Opening Date:

Name of Bidding Contractor:

Required Disclosure Deadline:

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

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

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

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

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

NAME OF 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](http://www.boli.state.or.us/BOLI/WHD/PWR) and [www.access.gpo.gov/davisbacon/or.html](http://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 this contract is a public improvement contract for demolition, Contractor shall salvage or recycle constructions and demolition debris if feasible and cost-effective.

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

(18) Any dispute arising out of any of the contract documents, or out of their performance, shall be decided by litigation in the Circuit Court of the State of Oregon in the county of Owner's residence, the parties consenting to jurisdiction in said court and permanently waiving jurisdiction in any other court, state or federal. In the event of

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

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

***C. Agency Members Purchasing under the UMESD***

IMESD is an educational service district organized under the laws of the State of Oregon. Pursuant to Oregon Law, IMESD is authorized to cooperate with other entities, including but not limited to Oregon schools, Oregon public agencies, and Oregon political subdivisions, 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 IMESD to take advantage of the goods and services made available pursuant to these contract documents, the terms and conditions of any such sales shall be in accordance with the contract documents.

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

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

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

**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.

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

None

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

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

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 state and local 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.

(14.) The current prevailing wage threshold for Pennsylvania is \$25,000. However the threshold may be increased during the term on the contract by legislated action. Vendor will then be required to adjust labor rate for job under the new threshold.

**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](mailto: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.

#### ***D. Procedure for Processing Orders***

Once the award is made to the Contractor/vendor, KPN will inform its members of the contract by: (1) including the contract in the agency database that is available on the KPN website, (2) announcing the award in its periodic newsletter, and (3) publishing the contract information in a catalog disseminated to all members. A list of members, institution names, contact names, addresses and phone number will be made available to the vendor in an electronic format. At this point the Contractor/vendor contacts the members and members may contact the Contractor/vendor. When the member identifies a product or service it issues a purchase order for that item to the vendor. The vendor's price to its members will include the following administrative fees: currently 2% (two percent) on all supplies, equipment and construction, rental or lease, annual subscription fee, etc.; and others administrative fees as approved by KPN and will be collected from the member or other qualifying purchaser. KPN reserves the right to adjust the administrative fee at any time during the duration of the contract and any renewal period or to modify the administrative fee based on volume of purchase. If the administrative fee is reduced do to the size of the project the vendor will show the adjustment on the quote as a 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 31<sup>st</sup> and all consecutive 12-month periods if contract is extended. The vendor will make all administrative fee payments

to KPN by the 15<sup>th</sup> 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.

***E. Agencies Allowed to Purchase under the Member Agency***

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

---

## 21. Texas, 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) **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.
- (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).

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

- (1) **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.
- (2) **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.

### C. *Additional Agency Terms and Conditions for Construction Products and Services as required by law in the State of Texas:*

- (1) **Certification of Residency (TexBuy Contractors will be required to sign a standard 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.”

(2) **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, 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).

- (3) **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)

***D. 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.

***E. 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.

## 22. Virginia, Fairfax County Public Schools

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

**AUTHORITY**-The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned Buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

NOTE: Fairfax County does not discriminate against faith-based organizations, in accordance with the *Code of Virginia*, § 2.2-4343.1, or against a Bidder or Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

### GENERAL

#### 1. DEFINITIONS-

**AGENCY:** Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

**BIDDER/BIDDER:** Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "Bidder" will be used throughout this document and shall be construed to mean "Bidder" where appropriate.

**CONTRACTOR:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

**COUNTY:** County of Fairfax.

**GOODS:** All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

**PURCHASING AGENT:** The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

**SERVICES:** Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

**STATE:** Commonwealth of Virginia.

2. **FUNDING**-A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.
3. **CONTRACT ALTERATIONS**-No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.
4. **SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS**-It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.
5. **NEW GOODS, FRESH STOCK**-All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.
6. **INSPECTION-ACCEPTANCE**-For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.
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 uncopied 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](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. Bidders are advised that the *resultant* contract(s) may be extended, with the authorization of the Bidder, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. It is the Contractor's responsibility to notify the public body(s) of the availability of the contract(s). Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contract's terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.

## 23. Washington, King County Directors' Association (KCDA)

### A. KCDA Additional General Terms and Conditions

**General Intent:** KCDA may participate in all or any part of the goods and services listed in this IFB, upon completion of contracts currently in effect, whichever is deemed in the best interest of KCDA members. KCDA cannot be restricted by the successful bidder from choosing which parts of these contracts to use.

Both the Contractor/Vendor and KCDA member using this Contract agree that it is the member's responsibility to perform due diligence as to the legality of their usage of this contract. In this regard, KCDA suggests that, at a minimum, Contractor/Vendor and member considering such usage consult with their legal counsel before doing so.

#### **Advertising/Marketing:**

KCDA requires all vendors to develop a marketing program to include printed, web-based, e-mail, telemarketing and other methods approved by KCDA.

All promotional marketing materials must have the prior approval of KCDA before distribution and must include the KCDA logo and other contract information.

KCDA staff will work jointly with all vendors and their representatives to market these bids/contracts to KCDA 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 provide KCDA with scheduled exhibit dates in advance.

Contractor/Vendor agrees to insert the approved KCDA logo, web address and contact information on the Contractor/Vendor'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.

#### **Assignment:**

Contractor/Vendor shall not subcontract, assign, transfer, convey, sublet or otherwise dispose of contractual duties to any other person, firm or corporation without the previous written consent of KCDA and any member that has an outstanding open purchase order or financing arrangement. In no case shall such assignment of Contract relieve the Contractor/Vendor from obligations or change the terms of the Contract.

#### **Cancellation/Default/Termination:**

KCDA reserves the right to cancel the whole or any part of this contract due to the failure by the contractor/vendor to carry out any obligation, term or condition of the contract. KCDA will issue written notice to the contractor for acting or failing to act in any of the following:

- The contractor/vendor fails to adequately perform the services set forth in the contract
- The contractor/vendor fails to make progress in the performance of the contract and/or gives KCDA reason to believe the contractor/vendor will not or cannot perform to the requirements of the contract
- The contractor/vendor fails to observe any of the terms and conditions of the contract
- The contractor/vendor fails to pay any applicable administrative fees.
- The contractor/vendor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by KCDA.

If the contract is to be terminated KCDA shall do the following:

Step 1 – Issue a warning Letter of Concern outlining the violations and length of time to correct the problem(s). Upon receipt of the letter, the contractor/vendor shall have ten (10) business days to provide a satisfactory response to KCDA. Failure on the part of the contractor/vendor to address adequately all issues of concern may result in contract cancellation.

Step 2 – Issue a letter of intent to cancel the contract if the problems(s) are not resolved by the date specified.

Step 3 – Issue a letter to terminate the contract.

**Compliance with Laws**

In addition to any requirements set forth herein, vendor shall comply with all applicable state, federal and local laws, rules, regulations and ordinances.

**Contract Amendments:**

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

**Employees who have been Convicted of Crimes Against Children:**

The Contractor/Vendor, or any subcontractors, shall not utilize any employee at a school site or allow any contact between school children and any employee when an employee has plead guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 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.

Contractors/Vendors who have regularly scheduled unsupervised access to children, and/or who hire employees who will have regularly scheduled unsupervised access to children, shall perform a record check through the Washington State Patrol criminal identification system under RCW 43.43.830-43.43.834, 10.97.0303 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 Contractor/Vendor shall provide a copy of the record to the person applying for employment to the school location. If the Contractor/Vendor or applicant has had a record check within the previous two years, the Contractor/Vendor may waive the requirement. The Contractor/Vendor shall determine whether the applicant or the Contractor/Vendor shall pay costs associated with the record check.

In addition, pursuant to RCW 9.96A.020 and 1993 Chapter Law 71, a person is disqualified from employment by school districts, and their Contractor/Vendor from hiring employees who will have regularly scheduled unsupervised access to children because of a prior guilty plea or conviction of a felony crime specified under RCW 28A.400.322, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

**Governing Law and Venue/Legal Litigation:**

All applicable local, state and federal laws and regulations will apply to any purchases of equipment, service or public works in any of the states KCDA currently services, as well as any other non-AEPA states where members may be added to KCDA membership throughout the term of these contracts.

The laws of the State of Washington govern the Contract. Each and every provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.

Venue for any litigation arising out of or related to the Contract shall take place in the State of Washington.

**Hazardous Materials:**

If any hazardous chemicals/materials are supplied under a contract/purchase order arising out of this solicitation, a Material Safety Data Sheet (MSDS) shall accompany the delivery of any hazardous chemicals/materials supplied by the vendor. All MSDA sheets shall be sent to KCDA and the KCDA member. Any products not appropriately labeled will be refused and the vendor will be responsible for additional freight charges.

**Indemnification/Hold Harmless:**

The Contractor/Vendor agrees to defend, indemnify and hold harmless KCDA and the member agency, and their respective officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits including attorney fees arising out of or resulting from the acts, errors or omissions in performance of this Agreement, except for injuries and damages caused by the sole negligence of KCDA or the member agency. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the

concurrent negligence of the Contractor/Vendor, KCDA or the member agency and their respective officers, officials, employees, and volunteers, the Contractor/Vendor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor/Vendor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor/Vendor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. Use of this contract certifies that the waiver of immunity specified by this provision was mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of the Agreement.

**Independent Contractor:**

The Contractor/Vendor shall not be held or deemed in any way to be the agent or employee of KCDA and /or a KCDA member. It is the intention of the parties that the Contractor/Vendor shall be and is to be considered an independent Contractor.

**Minority and Women Owned Businesses:**

KCDA encourages all minority and women owned businesses to participate in the bid process. Washington State law does not allow KCDA to provide any financial advantage for minority and women owned businesses who participate, however, KCDA believes that a diverse range of suppliers benefits all.

**Quality of Goods:**

Bidder shall bid and provide new (not used or refurbished) items only. Seller warrants all supplies, materials and equipment and services covered by a contract/purchase order with KCDA or with a KCDA member will: (a) conform to the specifications, drawings, written instructions, samples, or descriptions; (b) be of good quality and workmanship; (c) be free of defects in design, materials and workmanship; (d) be merchantable; (e) be fit for particular purposes applicable to the design, function or use of the supplies, materials and equipment.

**Taxes:**

The KCDA Members and Associate Members are to be taxed.

**Term of Contract:**

The term of the agreement shall commence on the date of the award and continue as stipulated in the General Terms and Conditions, unless terminated, canceled or extended.

**Use of Tobacco on School Districts/Public Agency Premises:**

RCW 28A.210.310 prohibits the use of tobacco in any form on school district property. Smoking or other use of tobacco will not be permitted at the job site.

***B. KCDA Additional Terms & Conditions for Non-Construction Products & Services***

No Additions under this Section.

***C. KCDA Additional Terms & Conditions for Construction Products and Services***

Contractor/Vendor agrees that, in performance of the services required under this agreement, Contractor/Vendor shall abide by all federal, state, local and Washington law and regulations that may apply to construction and public works. It is the responsibility of the Contractor/Vendor to determine applicability and requirements of any such laws and to abide by them.

• **Public Works:**

State of Washington statute requires workers be paid prevailing wages when employed on public works projects and on public building service maintenance contracts. (RCW 39.04.010, RCW 39.12.010 and 020) It is the contractor's responsibility to be acquainted with and comply with State regulations regarding payment of prevailing wages on public works projects. Prevailing Wages are established by the Washington State Department of Labor and Industries and can be obtained on the web at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp> or by contacting Labor and Industries at 360-902-5335. A copy may also be requested from KCDA.

Application: The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive administrative or professional in nature. It does not apply to work of a secretary, engineer or administrator, unless they are performing construction

work, alteration work, repair work, etc. Prevailing wage application depends on the work that is performed, regardless of the worker's job title. (RCW 39.12.020 and WAC 296-128-510 through 530)

Definition:

Public Works is all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction. (RCW 39.04.010)

Public Building Service Maintenance Contracts: Prevailing wages are also required on all public building service maintenance (janitorial) contracts. (RCW 39.12.020)

**Contractors bidding a Public works project exceeding \$1,000,000.00 must declare who their HVAC, Plumbing and Electrical subcontractors will be and submit this information with bid documents in order for the bid to be responsive (RCW 39.30.060).** Such projects also have special considerations pertaining to prefabricated materials (RCW 39.04.370) and use of apprentices (39.04.320).

Reciprocity: In accordance with RCW 39.04.380 any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280 or other procurement exempt from competitive bidding.

- **Prevailing Wage:**

Definition: Prevailing Wage is the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers and mechanics. The rate is established by the Department of Labor and Industries for each trade and occupation employed in the performance of public work. If Federal funds are used, bidders must comply with provisions of Davis-Bacon Act.

Basic procedures: A Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid must be filed and approved for the contractor and all subcontractors. No payments can be made until all Contractors/Vendors have submitted an approved intent form. KCDA cannot release retainage until all Contractors/Vendors have an approved Affidavit of Wages Paid form certified by the Industrial Statistician. (RCW 39.12.030, 040, 042) Once the work is successfully completed, KCDA will release 95% of the project cost and withhold 5% retainage for 45 days as dictated by law. The final 5% will be paid when the following is completed: Receipt of approved Affidavit of Wages Paid Forms, Releases from Washington State Department of Labor & Industries, Employment Security Department and the Department of Revenue, and acceptance of project completion to the satisfaction of the KCDA ordering member.

Federally Funded Projects: In addition to the Federal Requirements of Section III General Terms and Conditions, Davis-Bacon prevailing wage requirements apply to public works construction contracts of \$2000 or more when a project includes any federal funding of any amount. When there is a difference between applicable state and federal prevailing wages for a particular classification of labor, contractors and subcontractors are required to pay the higher of the two prevailing wages. Applicable federal prevailing wage determinations can be found at <http://www.wdol.gov/>. Contractors/Subcontractors must be knowledgeable and adhere to all federal prevailing wage requirements, including but not limited to paying workers weekly and providing certified weekly payrolls for the contractor and subcontractors of any tier as required in the Davis-Bacon Act and applicable U.S. Department of Labor regulations. Falsification of any prevailing wage payroll records may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code. Contractor shall inform all subcontractors of the Davis-Bacon requirements and the prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses. Contractor must coordinate all requirements related to federal funded projects with the KCDA member Agency.

- **Responsible Bidder**

Before award, the bidder must meet the following state responsibility criteria and, if applicable, supplemental responsibility criteria to be considered a responsible bidder. The bidder is required to submit documentation demonstrating compliance with the criteria.

### Low Responsible Bidder

A. State Responsibility Criteria. The Bidder must meet the following state responsibility criteria:

1. At the time of bid submittal, have a current certification of registration in compliance with chapter 18.27 RCW.
2. Have a current Washington State Unified Business Identifier (UBI) number.
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. If applicable:
  - a. Have Industrial Insurance (workers' compensation) coverage for the Bidder's employees working in Washington State, as required in Title 51 RCW;
  - b. Have a Washington State Employment Security Department number, as required in Title 50 RCW; and
  - c. Have a Washington State Department of Revenue state excise tax registration number, as required in Title 82 RCW.

B. Supplemental Bidder Responsibility Criteria. If supplemental criteria apply to this project, the criteria are included in "Attachment A." The Bidder may make a written request for the City to modify any or all of the supplemental criteria. Modification of supplemental criteria shall be the City's discretion. Any modifications to the supplemental criteria shall be made by addenda prior to bid opening as set forth in Section 4.

### Subcontractor Responsibility

The contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. At the time of bid submittal, have a current certification of registration in compliance with chapter 18.27 RCW.
2. Have a current Washington State Unified Business Identifier (UBI) number.
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. If applicable:
  - a. Have Industrial Insurance (workers' compensation) coverage for the Bidder's employees working in Washington State, as required in Title 51 RCW;
  - b. Have a Washington State Employment Security Department number, as required in Title 50 RCW; and
  - c. Have a Washington State Department of Revenue state excise tax registration number, as required in Title 82 RCW
5. Have an electrical contractor license, if required by Chapter 19.28 RCW;
6. Have an elevator contractor license, if required by Chapter 70.87 RCW;
7. Not be disqualified from bidder on any public works contract under RCW 39.06.010 or 39.12.065(3).

- **Bonds- Payment & Performance:**

The prime Contractor/Vendor shall provide a Performance and Payment Bond at 100% of the contract price to the KCDA member with a copy to KCDA before work begins. The only exception is for contracts of thirty-five thousand (\$35,000) dollars or less. In this instance, at the option of the Contractor/Vendor, the member 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) and as directed by the KCDA member.

Performance and Payment bonds for KCDA members outside Washington must be provided by companies licensed to provide bonds for public entities in the member's state.

- **Licenses:** The prime contractor shall possess and maintain in current status all federal, state, and local licenses, bonds, and permits required for the performance and delivery of any and all products and services offered in its response to the bid solicitation. Before submitting a bid, Bidders must hold a current, valid contractor's license as required in Washington. The contractor's license must be in the name of the legal

entity submitting and signing the bid. A Bidder may not substitute a contractor's license held by a subcontractor or joint venture. Bidders submitting bids in Washington State without a valid contractor's license in the name of the Bidder are in violation of RCW 18.27.020.

It is the responsibility of the prime contractor to ensure any subcontractors performing under this contract hold and maintain appropriate licenses.

The contractor shall submit copies of licenses with the response to this contract. Copies of licenses must be submitted to the member prior to performing the work. 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, as well as in states outside Washington in which contractor performs work under this contract. For work performed for any Washington State school district, public agency or municipality, the Contractor/Vendor must comply with the bidder responsibility requirements of RCW 39.04.350 prior to the KCDA member awarding a contract. The contractor must verify the responsibility of all subcontractors used in accordance with RCW 39.06.020.

- **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:** A certificate of insurance demonstrating current coverage of the types and amounts of insurance required by KCDA and the KCDA member must be provided to KCDA and the KCDA member prior to performance of any work. In addition, the Commercial General Liability policies must be endorsed to name KCDA and the KCDA member as additional insureds. Such policies must be further endorsed to provide that the insurance is primary as respects KCDA and the KCDA member, and that any other insurance maintained by KCDA and the KCDA member shall be excess and not contributing insurance with the Contractor/Vendor's insurance. These endorsements must be provided along with the certificate of insurance. KCDA and the KCDA member 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 Contractor/Vendor may mutually determine the Alternative Costing Method is acceptable. This will be the exception rather than the rule. RS Means or line item bid pricing is acceptable.
- **Progress Payments:**  
The Contractor shall be paid, upon submission of a proper Payment Request, the prices stipulated herein for work performed (less deductions, if any), in accordance with all payment and retainage instructions herein. Submitted Payment Requests must contain the following minimum information:
  - a. Contract Number
  - b. Bid item ID, bid quantity, unit, unit price and description as appropriate
  - c. Sales Tax as applicable

The Payment Request will be reviewed by the Member before payment is made. If the Member is in disagreement with the Payment Request, KCDA will issue a notice requesting a revised Payment Request.

In accordance with RCW 51.12.050, KCDA reserves the right to deduct from the payment any outstanding industrial insurance premiums owed by the Contractor or Subcontractors.

- **Payment Retainage:**  
In accordance with RCW 60.28 a contract retainage of not to exceed five percent of the moneys earned by the contractor toward completion of a public improvement contract shall be withheld and reserved as a trust fund for the protection and payment of 1) the claims of any person arising under the contract, and 2) the state with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from such contractor. Upon completion of a contract, the member agency shall notify the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries of the completion of contracts over thirty-five thousand dollars. KCDA will issue payment on the retainage amount forty-five days after notice from the KCDA Member Agency that the contract has been accepted as complete or upon receipt of all necessary releases, whichever is later.

#### ***D. Procedure for Processing Orders***

- After entering into an agreement with KCDA, KCDA will confirm the directions for placement of orders with the Vendor/Contractor, and will post directions on the KCDA website for both Contractor/Vendor and members. These directions will also be posted on each awarded Contractors/Vendors website.
- Once the award is made to the Contractor/Vendor, KCDA will inform members of the contract.
- At this point the Contractor/Vendor may directly contact members or the member may contact the Contractor/Vendor.
- A list of members, addresses and phone numbers is available to the Contractor/Vendor.
- Before a Contractor/Vendor may enter into business with a KCDA member, they need to verify membership through the KCDA website, which can be viewed under Membership.

#### ***Invoicing/Reporting***

- KCDA will contact Contractors/Vendors about invoicing procedures.
- KCDA is funded through a service fee paid to KCDA by the participating Contractors/Vendors. The service fee percentage is based upon the total sale of goods and services, including installation, if applicable. This fee shall be reflected in all price quotations under the KCDA agreement. The service fee will be 2%. Do not print the service fee as a separate line item on the quotation.
- The Contractor/Vendor will compile an electronic quarterly report listing each purchase made by participating members. Within 30 days after each quarterly period the report will be sent to the e-mail address of the KCDA Executive Director, Jim Borrow [jborrow@kcda.org](mailto:jborrow@kcda.org) and Director of Finance, Robert Payne [rpayne@kcda.org](mailto:rpayne@kcda.org)
- These reports shall be in Microsoft Excel format and shall have file names that identify the Contractor/Vendor and the quarterly period being reported. They shall include the following fields and allow for sorting on any of the fields: Date of order, name of member, item purchased, quantity, unit price, extended price, member PO #, Contractor/Vendor 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.

#### ***E. Agencies Allowed to Purchase under KCDA***

King County Director's Association (KCDA) is a member owned purchasing cooperative representing 294 Washington State school districts. In addition, KCDA provides purchasing and procurement services for 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](http://www.kcda.org).

## 24. West Virginia, West Virginia Regional Education Service Agencies Cooperative Purchasing

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

#### 1. Compliance with Laws/Forum Designation

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

#### 2. Delinquent Tax Affidavit

Contractor shall provide an affidavit relating to delinquent taxes as may be required by West Virginia State Code §11-12-10.

#### 3. Secretary of State Registration

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

#### 4. West Virginia Workers Compensation Insurance

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

#### 5. Project Personnel, Student Safety and Background Checks

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

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

Contractor shall perform or cause to be performed by the West Virginia State Police and Federal Bureau of Investigation criminal background check of any personnel that will be performing the services within the proximity of minors. Contractor shall notify the Member Agency of any proposed employee who has been convicted, pled guilty or pled "no contest" to a criminal offense, and the Member Agency reserves the right to reject the proposed employee with a criminal background. No person shall be employed by Contractor

who has been found guilty of any of the criminal offenses enumerated in West Virginia State Code without prior approval of the Member Agency.

#### **6. Independent Contractor**

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

#### **7. Ownership of Instruments of Service**

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

#### **8. Audit**

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

#### **9. Notices**

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

#### **10. Non-Appropriation**

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

#### **11. No Personal Liability**

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

#### **12. Miscellaneous**

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

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

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

### **B. Construction Products and Services:**

For construction improvements, the following shall apply:

1. The successful Contractor shall provide such bonds required by West Virginia State Code §38-2-39.
2. In the event that the agreement is subject to the prevailing wage requirements of either West Virginia State Code §7-20-22, then the contract between the Member Agency and the Contractor shall contain the applicable rates and such terms and provisions as may be required by law.
3. Contractor shall comply with all applicable licensing requirements, including those of the West Virginia Contractor Licensing Board pursuant to West Virginia State Code §21-11-3 .

**D. *Procedures for Processing Orders:***

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

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

The Contractor price shall include a two percent (2%) administrative fee that the Contractor will collect from the Member Agency or other qualified purchaser. Administrative fees are to be remitted to the WVRESA on April 15, July 15, October 15 and January 15 of every calendar year with checks payable to the RESA 1, 400 Neville Street, Beckley, WV 25801

The Contractor will compile a quarterly report showing all purchases made by the WVRESA Member Agencies and other qualified purchasers under this contract at the conclusion of each calendar quarter. These reports shall be attached to the administrative fee remittance.

**E. *Agencies Allowed to Purchase under Member Agency:***

All member cooperatives of the WVRESA and their individual Member Agencies are eligible to participate and purchase from the awarded AEPA contracts. All West Virginia PK-12 school districts, including Career and Technical Education Centers, Regional Education Services Agencies, West Virginia Department of Education (WVDE) and all Institutional Education Programs operated by WVDE are eligible to participate and purchase from the awarded AEPA contracts. In addition, all colleges and universities, state, municipalities, counties, other governmental agencies and non-profit agencies are eligible to participate if the AEPA contracts satisfy their individual procurement requirements.

## 24. Wisconsin, Cooperative Educational Service Agency (CESA) #2

### A. *Additional Terms and Conditions*

Vendor must comply with all applicable Federal, State (Wisconsin State Statutes [16.70](#) to 16.848) and Local Laws. Construction contracts are subject to Wisconsin State Statutes [16.855](#) or [66.0901](#).

### B. *Procedure for Processing Orders*

1. Once the award is made to the vendor, CESA Purchasing will inform its members of the contract by announcing the award online, other CESA Purchasing member presentations as well as regular electronic mail communications to members.
2. CESA Purchasing may require a marketing flier from each vendor promoting the contract and AEPA relationship.
  - a. CESA Purchasing will assist in the development of the marketing flier and material. This flier will be for distribution as well as posted on the CESA Purchasing online catalog and disseminated to all members. At this point the vendor must contact the members and members may contact the vendor. Note: CESA Purchasing requires the awarded vendor to take ownership and actively promote the contract in cooperation with CESA Purchasing 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 Vendor's price must include the 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 CESA Purchasing after the sale and payment is made to vendor. Payment shall be made to CESA Purchasing on a quarterly basis along with complete sales history during that period.
5. Vendor makes all deliveries and installations of products and services. CESA Purchasing does not warehouse items nor provide services.
6. All participating vendors agree to and are subject to audit proceedings of AEPA member sales.

### C. *Members Purchasing Under CESA*

Cooperative Educational Service Agencies are defined under Wisconsin State Statutes [Chapter 116](#). Members include: school districts, University of Wisconsin System institutions, and technical colleges. All public, private, and tribal schools, and all public and private agencies and organizations, that provide services to pupils.

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

### ***B. 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).

### ***D. 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 15<sup>th</sup> 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 )