Part C – AEPA Member Agency (State) Terms and Conditions AEPA Solicitation #027

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1. AEPA Member Agency Terms and Conditions

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

2. Common Terms and Conditions

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

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

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

Administrative Fees: AEPA Member Agencies charge Vendor Partners an administrative fee (a percentage of sales in their respective state or states that they extend the AEPA pricing to). Administrative Fees are generally 2% and are paid to each Member Agency quarterly. Additional details of how these fees are charged may be found under each state's Terms and Conditions.

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

1. ARKANSAS-Southwest Arkansas Education Cooperative

SWAEC Natural State Purchasing Cooperative

Terms and Conditions 2026

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 Southwest Arkansas Education Service Cooperative ("SWAESC")/Natural State Purchasing Cooperative (NSPC), its Member Agencies and other qualifying purchases that the Contractor is complying with all Federal, State and Local Laws, Codes and Regulations while fulfilling the contract and shall provide a copy of this contract and any addenda to each Member Agency when providing a price quotation. Moreover, this contract shall be governed by and constructed in accordance with the laws of the State of Arkansas without giving effect to its principles of conflict of law.

Nothing in this Contract shall be construed as a waiver of the sovereign immunity of the State of Arkansas or any of its agencies. Any claims against SWAESC or its Member Agencies shall be brought before the Arkansas State Claims Commission where applicable. Legal proceedings arising under this contract shall be brought in the State of Arkansas in the county where the Member Agency is located.

2. Secretary of State Registration

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

3. Arkansas 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 in the State of Arkansas

4. Project Personnel, Policies, Certifications and Background Checks

Member Agency shall have the right to reject the participation of any personnel of Contactor 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 the Member Agency promptly of any change in the project manager or other key personnel assigned to the performance of the services.

Contractor shall not assign or transfer any rights or obligations under this Contract without prior written approval of SWAESC.

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 always stay in designated work areas while on the Member Agency's property. The Member

Agency shall have the right to affect 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.

As a condition of award, Contractor shall submit its current Equal Opportunity Policy in accordance with Arkansas law. No contract shall be awarded until such policy is received and approved.

If any federal funds are involved, contractor will meet federal certification for debarment/suspension.

Contractor certifies that it does not employ or contract with illegal immigrants and agrees to comply with Arkansas Code Annotated § 19-11-105 throughout the term of this Contract.

Contractor shall: - Require all subcontractors to provide the same certification - Maintain certifications on file - Remedy any violation within sixty (60) days

Contractor shall comply with all Civil Rights, ADA and Section 504 staffing regulations.

Failure to comply shall result in termination for breach of contract.

Contractor certifies that it: - Does not boycott energy, fossil fuel, firearms, or ammunition industries - Is not engaged in prohibited business relationships under Arkansas law, including restrictions involving foreign adversaries

Failure to maintain compliance may result in contract termination. SWAESC reserves the right to: - Terminate for cause - Terminate for convenience with written notice.

Contractor shall perform or cause to be performed an Arkansas 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 as required by Arkansas law and applicable Department of Education regulations. 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 a Contractor who has been found guilty of any of the criminal offenses enumerated in Ark. Code Ann.§ 6-17-414 without prior approval of the Member Agency.

5. 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 all compensation taxes and benefits related to its employees and managers performing the services. Contractor shall remain liable and responsible to Member Agency for all its obligations under this contract, regardless of whether the services are performed by the Contractor or a subcontractor of any tier.

6. 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.

Upon termination or expiration of the Contract, Contractor shall: - Return all data in a usable format - Ensure secure transfer of data - Destroy any remaining data in timeline as subject to applicable Arkansas record retention laws and FOIA requirements. - Provide a certificate of destruction

Contractor shall not sell, disclose, or use such data for any unauthorized purpose. All protests and contract disputes shall be handled in accordance with Arkansas procurement laws, including Arkansas Code Annotated §§ 19-11-244 through 19-11-246.

7. 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 three (3) 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 three- (3) year period.

All records may be subject to disclosure under the Arkansas Freedom of Information Act.

8. 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.

9. 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 the Member Agency will give Contractor prompt notice of such non-appropriation. This contract shall thereupon terminate without penalty or expense to the Member Agency other than for goods and services already provided.

10. 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.

11. Price Quotation

Contractors must quote to a Member Agency the pricing listed in the current contract awarded by the Association of Educational Purchasing Agencies. Vendors will follow the procedures for price reductions to AEPA Member Agencies and Participating Entities set forth in the AEPA general terms area, and conditions. The price quotation must be submitted to a Member Agency and Participating Entity in writing, and any other expenses that the Contractors intend to charge a Member Agency or Participating Entity must be separately itemized on the quotation page in bold font with a good faith estimate of the dollar amount of each item, such as use tax if applicable. The failure to list an item or include a good faith estimate of the dollar amount on the quotation page will preclude a Contractor from charging the same. Unlisted charges shall not be permitted.

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.

13. Successor and Assigns

Nothing herein shall be construed as creating any personal liability on the part of any officers of SWAESC, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this Agreement.

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

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

14. General Liability & Auto Liability Insurance

Consistent with and supplementing the “insurance” clause in AEPA’s “General Terms and Conditions for All Agencies,” a Vendor Partner must procure before commencement of the work/contract, maintain until completion of the work/contract, and provide certificates of insurance for general liability insurance and auto liability insurance with limits of at least $3 million per occurrence or as otherwise approved by AR Risk Management. The Participating Entity must be named as an additional insured under the Vendor Partner’s general liability insurance and auto liability insurance. Any Subcontractor of the Vendor Partner must meet these same requirements.

No provision of this contract will be given effect that attempts to require the State of Arkansas or its agencies, or SWAESC., to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions.

The State of Arkansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Insurance must comply with applicable Arkansas Risk Management requirements. Member Agencies shall be named as additional insured where applicable.

15. Ethics and Gratuities

Contractor shall comply with all Arkansas ethics laws. Offering gifts, gratuities, or inducements to public officials is strictly prohibited.

Additional Member Agency General Terms and Conditions:

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

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

Acceptance Of Contract: This solicitation does not constitute a contract. A contract is formed only upon: - Approval and award by SWAESC board of directors, and - Execution of the appropriate award documentation. This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

If sufficient funds are not appropriated, this Contract shall terminate without penalty beyond payment for services already rendered.

Disclaimer of Liability: No provision of this contract will be given effect that attempts to require the State of Arkansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions**.** Any indemnification obligations shall be limited to the extent permitted under Arkansas law and shall not require the State or its agencies to indemnify any party.

Marketing

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

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

Southwest AR ESC has no additional terms and conditions for non-construction products and services.

D. Construction Products and Services

For construction improvements, the following shall apply:

1. The successful Contractor shall provide such bonds required by Ark. Code Ann. § 18-44-503 and § 18-44-507.

2. Progress payments and retainage shall be in accordance with the provisions of the Arkansas law, including Ark. Code Ann. § 22-9-604

3. In the event that the agreement is subject to the prevailing wage requirements of either applicable Arkansas law, Arkansas Department of Labor rules and regulations, 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 but not limited to

those of the Arkansas Contractors Licensing Board and the Arkansas Commission of Public-School Academic Facilities and Transportation.

5. For contracts resulting from this procurement, more than $1,000,000.00, Vendor certifies that Vendor will comply with all applicable standards, orders, regulations, and/or requirements issued pursuant to Arkansas Act 167 Section 18 Arkansas Code 19-11-206, Fiscal Session 2024.

6. For construction-related contracts, Contractor shall comply with: - Bonding requirements under Arkansas law - Prevailing wage requirements - Licensing requirements

E. Procedures for Processing Orders:

All purchase orders shall be issued by the Southwest AR ESC or its participating eligible entities desiring to acquire the products or services under the contract. Said purchase order shall include adequate reference to identify the contract to which it relates.

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

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

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

The Southwest AR ESC utilizes the following ordering/delivery procedures:

• Purchase orders will be issued by the individual eligible entity.
• Vendors must issue invoices directly to the ordering eligible entity as specified on each purchase order.
• Delivery of all items included in this solicitation will be made to the locations within each eligible entity as will be specified on the purchase order.
• Each order shall contain a packing slip of its contents to assist in prompt processing of payments to Vendor.

• The Southwest AR ESC reserves the right to implement a Vendor Quotation Number process for contract awards related to but not limited to project-based and construction related proposal activities.

Administrative Fee - The percentage of sales that each Vendor Partner pays Southwest AR ESC for sales under the contract.

Awarded Vendor will provide Southwest AR ESC an Administrative Fee which is equivalent to 2% of the net total invoice amounts, including installation, on all orders processed pursuant to this solicitation and

award. Administrative fees shall not appear as a line item on a quotation or on listed contract pricing. The vendor will provide a quarterly sales report. 6

Administrative fees shall be paid to the Southwest AR ESC by the vendor, on a quarterly basis, (Q1: Jan. 1 to March 31; Q2: Apr. 1 to June. 30; Q3: July 1 to Sep. 30; Q4: Oct. 1 to Dec. 31), for all items purchased during the preceding quarter from this solicitation. Vendors shall have 30 days after the end of each quarter to remit to Southwest AR ESC administrative fees from paid invoices received from eligible entities during that quarter. Administrative Fees not paid when due shall bear interest at a rate equal to the lesser of one- and one-half percent (1.5%) per month or the maximum rate permitted by law until paid in full. Failure to report sales utilizing the template provided, and make payments in the stated time period, may result in cancellation of agreement, award, and ineligibility for the following year(s) agreement.

Administrative Fee Payments will be mailed to:
Southwest Arkansas Education Service Center
Attn: Phoebe Bailey
2502 South Main Street
Hope, AR 71801

E. **Cooperative Purchasing Authority:**
SWAEC Natural State Purchasing Cooperative does not require a membership for entities to benefit from our cooperative purchasing contracts. This Contract is entered pursuant to Arkansas Code Annotated § 19-11-249, authorizing cooperative purchasing. This Contract may be utilized by eligible public entities, Entities eligible to purchase from Southwest Arkansas ESC cooperative purchasing contracts include but may not be limited to:

- K-12 Public Schools
- K-12 Private Schools
- Colleges & Universities
- City, County, and State Governments
- Parks and Recreation Departments
- Public Libraries
- Non-profit organizations holding form #501C3
- Other agencies are eligible to participate if the AEPA contracts satisfy their individual procurement requirement

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

1. Governing Law and Venue

The laws of the State of California govern and prevail in the interpretation and administration of the Contract. California-specific Terms and Conditions prevail over any General Terms and Conditions. Every provision of law and clause required to be included in the Contract shall be deemed inserted, and the Contract shall be read and enforced as though included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. If at any time during the term of the Contract, a change in applicable law, regulation, or legal authority occurs that permits actions or conduct that were previously prohibited under the Contract, then such actions or conduct shall be deemed authorized and permitted by the Contract as of the effective date of such legal change.

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

2. Authority

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

3. CalSave, Administration, and Agent

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

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

4. Transaction Fees

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

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

5. Non-Conforming Jurisdictions

No Transaction Fee shall be charged to Awarded Vendors for sales within any jurisdiction where prohibited by law or local-government policy. Instead, the cost of products, services, licenses, and goods sold under this Contract in such jurisdictions shall be the same as for all school districts in all other counties of California. However, any LEA using this Contract where Transaction Fees are not permitted will pay a 2 percent fee for use of the Contract, imposed by MCOE on the authority of Public Contract Code §20118 and §20652, which allow MCOE to charge reasonable costs to the public corporation or agency for furnishing the services incidental to the purchase of items under Contract.

6. Reports

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

- Date of Order
- Name of Participating Agency or other (LEA)
- Description of Item and Services Purchased
- Manufacturer's SKU Number

- Quantity or Job Order Units
- Contract Unit Price
- Extended Price
- List Price Before AEPA Discount

7. Length of Term

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

8. Marketing and Advertising Under This Agreement

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

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

9. Conformance to Public Contract Code §20111

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

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

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

11. Piggyback and Standard School Supply & Equipment Authority

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

12. Intended for Personal Property

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

13. Public Works Limitations

When Public Works services cost $15,000 or more, an LEA, under most situations, must bid independently for the services and labor related to the public work, but may use this Contract for the contracted supplies, material or equipment related to the project. If circumstances allow, LEAs may also combine this competitively bid Contract with other alternative authorities for Public Works projects

as may be allowed by law, such as Public Contract Code §22030, Education Code §17406 or Government Code §1466. LEAs may consult with their own legal counsel to see if such statutes apply to their Public Works projects.

14. Job Order and Unit Price Contracting

Notwithstanding, Sections I.9 through I.13, the Awarded Vendors and any authorized resellers or subcontractors, may extend bid pricing from AEPA IFB 2026 to other agencies in California, including school districts, community colleges, state colleges, cities, and counties to the extent allowed by law under job-order-contracting or task-order-contracting statutes, including but not limited to Public Contracts Codes §20919.20 through §20919.33, §20665.20 through §20665.35 and §10710. Agency allows any school district, community college, college, or public agency to use this Contract and its competitively bid unit pricing as an alternative to other contracting procedures that the school district or agency is otherwise authorized or required by law to use. In using this Contract and pursuing a job-order-contracting project, a participating agency is obliged to conform to contracting steps spelled out in their respective code sections, college trustee policies, or local board policies.

15. Start Date

Once the award is made and the Contract has been signed by both parties, the Awarded Vendor is authorized to begin selling to eligible LEAs. MCOE will begin informing LEAs of the Contract after the Contract has been signed.

16. Prices and Requests for Quotes

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

17. Submission of Orders and Delivery

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

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

18. Other Agencies' Right to Purchase

CalSave is a self-supporting contracting program led by MCOE. Contracts are made available to all California public school districts, private and nonpublic schools registered with a county office of education or state Department of Education, charter schools, community college districts, eligible state agencies, special districts, Joint Powers Authorities, counties, municipalities, and non-profits (e.g. PTAs buying on behalf of schools or government), and any Other Agency allowed by Public Contracts Code §20118. all referred to as LEAs.

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

a) Any Other Agency (LEA) authorized by law to use this Contract for its own purchase(s) from the Awarded Vendor or their authorized resellers shall by default enter into a standard agreement with MCOE, which *inter alia* will include the terms, conditions, and information set forth in this paragraph a) and paragraphs b through i) below.

b) After entering into a standard agreement with MCOE, any Other Agency electing to use this Contract will enter into a Separate Contract or purchase order ("Separate Contract") with the Awarded Vendor. The Separate Contract is subject to and includes and/or incorporates all applicable terms of this Contract and the specific requirement that the Awarded Vendor comply with the provisions set forth in the paragraph regarding payment of the 2 percent Transaction Fee (or the non-conforming jurisdiction fee) to be collected by Epylon. MCOE will not be a party to any Separate Contract but will be considered a third-party beneficiary of such Separate Contract.

c) The Awarded Vendor understands and agrees that failure or refusal to comply with the provisions set forth in this agreement regarding payment of the 2 percent Transaction Fee in connection with any Separate Contract or any other use of this Contract by an "Other Agency" is grounds for cancelation of the Contract. The Awarded Vendor also understands and agrees that if the Contract is canceled for this or any other reason, MCOE may give notice of such cancelation by any other means appropriate to inform LEAs of that cancelation.

d) MCOE waives any right it may have to require any LEA using this Contract to draw its warrants for the purchase(s) in its favor and consents to each agency making such payment(s) directly to the Awarded Vendor.

e) Sales tax and freight/shipping charges included in the Contract apply to MCOE only. Additional sales tax and freight/shipping charges may be required on purchases by any LEA and are outside the scope of this Contract unless specifically addressed elsewhere in Part A or Part B of the Terms and Conditions.

f) This Contract and any Separate Contract are for the purchase of the items covered by the Contract. An LEA may, however, exercise its

authority under Education Code §17597 or 81645 or other legal authority to sell and lease back any item owned, or to be owned, by it pursuant to any Separate Contract. The Awarded Vendor agrees to take any and all actions requested by any LEA that are necessary to affect any such transfer, by way of example only, accepting payment under the Separate Contract from any third party to whom any such transfer is made.

g) The Awarded Vendor and any LEA using this Contract agree that the MCOE makes no representation that use of this Contract by any Other Agency is, in fact, authorized by law. In this regard, the MCOE suggests that, at a minimum, Awarded Vendor and any LEA considering such use consult with their own legal counsels before doing so.

h) The Awarded Vendor and any LEA using this Contract agree to defend, indemnify and hold MCOE, the Monterey County Superintendent of Schools, and the Monterey County Board of Education and its members, as well as all of their respective officers, employees, and agents, free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any such use.

i) MCOE reserves the right to cancel this Contract, in whole or iny part, due to failure by the Awarded Vendor to carry out any obligation, term or condition of the Contract. MCOE will issue written notice of cancellation 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 they will not or cannot perform to the requirements of the Contract

c) The Vendor fails to observe any of the Terms and Conditions of the Contract

d) The Vendor fails to pay Transaction Fees

e) The Vendor fails to follow the established procedure for purchase orders, invoices and receipt of funds as required by the . MCOE shall follow the following procedure if the Contract is to be terminated:

- Step 1 - Issue a letter of concern outlining the violations and the length of time to correct the problem(s).
- Step 2 - Issue a letter of intent to cancel the Contract, if the problem(s) is not resolved by a given date.
- Step 3 - Issue a letter to cancel the Contract.
- Upon receipt of the written letter of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to MCOE. Failure on the part of the Vendor to address adequately all issues of concern may result in Contract cancelation.

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

Because of its multiple-award provisions, this Contract may qualify for adoption as a California Multiple-Award Schedule contract. If the Awarded Vendor uses this Contract for the purpose of obtaining a separate CMAS contract from the State of California, the Awarded Vendor is responsible for paying and agrees to pay both the CMAS fee and the 2 percent Transaction Fee described in Section I.4 for all orders submitted under the authority of the CMAS program based on this contract. If an Authorized Reseller uses this Contract to apply for a CMAS contract, the Authorized Reseller must enter into a written agreement with Awarded Vendor and MCOE agreeing to be responsible for paying the CMAS Fee and the 2 percent Transaction Fee, unless in that same written agreement Awarded Vendor agrees to pay such fees. In exchange for this fee, the Vendor (or if applicable, the Designated Reseller) is given a license to use and duplicate MCOE/AEPA Terms and Conditions for the purpose of applying for a CMAS contract. Also, CalSave or CalBuy will post pricing allowing prospective buyers to check for pricing that is compliant with the MCOE Contract and CMAS requirements. Awarded Vendor (or Authorized Reseller) must comply with MCOE's quarterly reporting requirements. Any report to the Department of General Services for CMAS-authorized purchases must simultaneously be reported to CalSave.

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

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

Colorado BOCES Association (CBA)

A. Additional Agency Terms and Conditions

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

Sales to Qualified Customers: Boards of Cooperative Educational Services (BOCES) in Colorado are legislatively created cooperative organizations directed by Colorado State Statute 22-105 to serve all qualified agencies in a cooperative manner. BOCES are governed by publicly elected officials and by state and federal laws. No agency is obligated to use these services and contracts, but they find the benefits of low prices 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 state, county or local governmental agencies. CBA requires that all participating vendors offer the Agency contract opportunities to all qualified agencies.

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

- CBA will inform all qualified agencies 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. 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 CBA/AEPA contract and agrees on price as presented to the customer by the awarded CBA/AEPA 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.

A. ADDITIONAL MEMBER AGENCY GENERAL TERMS AND CONDITIONS

Affirmative Action - The Contractor must have an employment policy that there shall be no discrimination against anyone on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, 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."

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."

Conflict of Interest

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

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

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

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

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

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

Financing Arrangements - Any financing arrangements (including lease purchasing arrangements) will be made directly between the Contractor and a Participant. Financing arrangements may be subject to additional laws, rules and regulations, terms and conditions not described in this document and are subject to separate

negotiation with each Participant that is interested in such an arrangement. Each Participant should seek its own legal advice prior to entering into a financing arrangement. CREC must receive a report annually summarizing the executed lease purchases along with the summary of the customer purchases. CREC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Contractor and the Participant only.

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

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.

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.

Marketing and Advertising - Contractor agrees to provide CREC with a copy or proof sheet of all advertisements, customer communications or promotional material for prior approval.

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.

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

CT Commission on Human Rights and Opportunities

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

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

State law requires a minimum of twenty-five (25%) percent of the state-funded portion of the contract for award to subcontractors holding current certification from the Connecticut Department of Administrative Services ("DAS") under the provisions

of CONN. GEN. STAT. § 4a-60g. (25% of the work with DAS certified Small and Minority owned businesses and 25% of that work with DAS certified Minority, Women and/or Disabled owned businesses.) The contractor must demonstrate good faith effort to meet the 25% set-aside goals.

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

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

D. PROCEDURES FOR PROCESSING ORDERS

A. 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.

B. 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.

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 New England states – CT, ME, NH, RI, VT – and New York, and any other state without AEPA member representation. Our contract is also available in MA for vendors who do not hold an AEPA contract with The Education Cooperative (TEC).

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.

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.

5. FLORIDA-Panhandle Area Education Consortium

A. Additional Agency Terms and Conditions

Vendor will designate to the Panhandle Area Educational Consortium Florida Buy, one individual who will represent them during the agreement period. This contact person will correspond with each ordering member for technical assistance, problems, or questions that may arise, including instructions if different contacts for different geographical areas are needed. This information will be distributed to all school districts upon award of this bid. Vendors may use this contract to sell products or services in addition to school districts to any government agency, non-profit organizations or institutions. Vendor agrees to abide by all federal, state and local laws and regulations. It is the responsibility of the Vendor to determine applicability and requirements of any such laws and to abide by them. All terms and conditions may be modified and revised by PAEC Florida Buy with the written consent of both PAEC Florida Buy and the Awardee. PAEC Florida Buy, at its discretion, may offer the use of the awarded agreement to governmental entities such as state agency purchasing programs, to extend the use of the contract to eligible users. This option will be referred to as an Interlocal Agreement. Under such conditions, the participating agency may, with written consent from the Awardee, modify and revise the terms and conditions of the master agreement. Other state and public agency purchasing program agreements may require additional administrative fees, associated with sales, to be paid by the Awardee for the management of the contract. The Awardee will be notified in writing and will have the option of accepting or rejecting the Interlocal Agreement program fees. No right or interest in the Contract shall be assigned or transferred by the Contractor without the prior written consent of the PAEC Florida Buy program. No delegation of any duty of the Contractor shall be assigned without prior written permission of PAEC Florida Buy. If the original Vendor/Contractor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. PAEC Florida Buy reserves the right to reject the acquiring person or entity as a Vendor/Contractor. A change of name agreement will not change the contractual obligations of the Vendor/Contractor. The Awardee, may, upon entering negotiations with qualified buyers, amend their prices to offer volume discounts below the lowest unit rates established in the pricing portion of this agreement. The Awardee(s) agrees to sign a contract acknowledgement form with the Florida Buy State Cooperative Purchasing and pay an administrative fee for sales and services generated from this contract. This fee is not to be added to the invoice of any entity choosing to use this agreement and will be equal to 2% of the invoice and be paid to Florida Buy State Cooperative Purchasing on a quarterly basis. The Awardee will be provided with a template for reporting sales, and it will include the entity using the contract, the date of service, and the savings to the school district and other eligible users. Florida Buy State Cooperative Purchasing extends the authority for the Awardee to use the contract for eligible entities outside of Florida provided 2% administrative fee is paid.

B. Procedures For Processing Orders

Once the award is made to the Vendor, PAEC Florida Buy will inform all school districts of the contract by:
1. Including the award information on the PAEC Web site at www.floridabuy.org
2. Announcing the award in its PAEC Florida Buy website
3. Announcing the award via electronic mail to all members Any members, contact names, addresses and phone numbers will be available at the PAEC Web site www.floridabuy.org.
At this point, the Vendor may contact the members and the members may contact the Vendor. The member will identify a desired product or service available through the AEPA contract and agrees on the price and conditions as presented to the member by the awarded AEPA Vendor. A final copy of the customer purchase order or sales summary must be sent to PAEC Florida Buy by the Vendor after completion of the service or installation. The Vendor has (30) thirty days to forward this purchase order. This will ensure compliance of the contract. Vendor makes all deliveries and installations of products and services. PAEC Florida Buy does not warehouse items. All participating Vendors agree to and are subject to audit proceedings of the AEPA sales to members. 11 The Vendor will produce and provide to PAEC Florida Buy quarterly reports ending March 31, June 30, September 30 and December 31 throughout the contract period. The reports shall identify the Vendor and the quarter being reported, shall include a minimum of the fields listed below:

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

6. Quarterly reports and administrative fee payments to PAEC Florida Buy are due the 15 of the succeeding month, and all checks are to be made payable to the Panhandle Area Educational Consortium and sent to:

PAEC
Attn: Florida Buy
753 West Blvd
Chipley, Florida 32428
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 fifteen-member consortium that includes a voluntary purchasing program developed for schools in Florida. All other school districts in Florida are participating members in the programs of the Panhandle Area Educational Consortium (PAEC), including participation in the statewide cooperative purchasing program. Agencies that use this contract will be in compliance with FS1001.42. PAEC was established to provide easily accessible information for our member and participating public school districts and the communities we serve. Since the creation of PAEC in 1967, our school districts have benefitted from shared services made available through leading edge technology. While school districts access our teaching and learning, training and technology, and business operations services in varying degrees of need, all come for the mutually beneficial purpose of reaching their goals together.

5. Georgia, Cooperative Purchasing Agency (CPA)

1. **General Overview**
   a. Cooperative Purchasing Agency is the AEPA representative for the state of Georgia. In Georgia we advertise our bids on the state procurement registry website:http://doas.ga.gov/state-purchasing/georgia-procurement-registry-for-local- governments and follow the Georgia Procurement Manual https://pur.doas.ga.gov/gpm/MyWebHelp/content/cover_page.htm
   b. In 1971 several small school systems in North Georgia decided to work together & form **Cooperative Purchasing Agency (CPA)**, a non-profit organization built by & for the school systems to combine their purchasing power. As a division of North Georgia, Northeast Georgia, & Pioneer RESA; Pioneer RESA serves as our fiscal agent and as such we currently show up on the Georgia Procurement Registry as Pioneer RESA. CPA serves as a purchasing agent for classroom & office supplies for its 35-member school systems plus neighboring ones who choose to take advantage of cooperative buying. CPA also serves as a recipient agency for USDA commodities that member systems receive through the USDA school lunch program. In addition to items included in our catalog & website, CPA has access to brands, custom items, & entire product categories that meet systems' office & classroom needs – including furniture options (indoor & outdoor), playground equipment, shelving installations, print supplies, & more.
2. **Additional Participating Agency Terms and Conditions for Construction Related Products and Services O.C.G.A. §§ 20-2-500 and 20-2-520**
   a. The cooperative procurement process does not apply to any purchases from any contract resulting from a competitive solicitation conducted in accordance with the provisions of the Georgia Procurement manual even if only one responsive and responsible bid/proposal was received and all AEPA bids are put through this process.
   b. Georgia requires all local school boards to post any bids requiring all public school contracts / capital improvements / public works construction over $250,000.00 to be posted on the Georgia procurement website, regardless of who they are purchasing through.
3. **Local Government Provisions - Provisions Applicable to Counties, Municipal Corporations, And Other Governmental Entities**

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

(a) All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.

(b)

(1) Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or an Internet website identified by the governmental entity which may include the Georgia Procurement Registry as provided by Code Section 50-5-69.

(2) Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.

(3) Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed. (

4) Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:

(A) A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and

(B) A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.

(5) Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.

(6) The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.

(7) All required notices of advertisement shall also advise of any mandatory prequalification requirements

or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides notice of a mandatory prebid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.

(c) Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:

(1) Place the bidder or offeror at risk for construction; and

(2) Require labor or building materials in the execution of the contract shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.

(d) No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.

(e) Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.

(f) Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:

(1) Criteria for prequalification must be reasonably related to the project or the quality of work;

(2) Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;

(3) Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and

(4) Any prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror can not be later disqualified without cause.

History Code 1981, § 36-91-20, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, § 2/SB 146.

The following provisions are applicable to State offices, agencies, departments boards, bureaus, commissions, institutions, agencies, boards, commissions, and other entities of the state procuring goods and/or services pursuant to O.C.G.A. § 50- 5-50 et seq. ("State Entities").

Please be advised that State Entities are unable to agree to certain revisions to the standard state contract. Revisions that would provide an unfair competitive advantage, including but not limited to those that materially change the terms or the requirements of the solicitation, will be rejected by the State. Please note that this guidance is not all-inclusive, and State Entities reserve the right to negotiate all terms and conditions. If a supplier and a State Entity are unable to come to mutually agreeable terms, the supplier will not be awarded a contract.

1. Indemnification and/or hold harmless.

As provided under O.C.G.A § 50-5-64.1(a)(1)(A), contracts shall not contain a term that requires State Entities to defend, indemnify, or hold harmless another person (the term "person" also includes "corporations," see O.C.G.A. § 1-3-3 and O.C.G.A. § 1-2-1). Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term. Moreover, State Entities are prohibited by the Georgia Constitution from agreeing to any such provision as they have been determined to violate the prohibition against gratuities, , pledges of the State's credit, and an unauthorized waiver of sovereign immunity. (Ga. Const. Art. VII, § IV, ¶ VIII; Ga. Const. Art. III. Sec. VI, Par. VI; 1980 Op. Att'y Gen. 80-67; 1974 Op. Att'y Gen. 74-115; 1980 Op. Att'y Gen. 80-67.)

2. The Georgia Attorney General Represents the State of Georgia.

Pursuant to Ga. Const Art. V, § III, ¶ IV and O.C.G.A. § 45-15-3, the Attorney General represents the state of Georgia. Additionally, O.C.G.A § 50-5-64.1(a)(2)(A) provides that contracts shall not contain a term that provides for a person other

than the Attorney General to serve as legal counsel for the state or for any agency, authority, board, bureau, commission, department, institution, or any entity thereof. Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term.

3. Warranty/Guarantee.

Any provision that requires a State Entity to unconditionally assure or promise a certain result or outcome. The Attorney General has advised that warranty provisions requiring State Entities to provide a warranty violate the prohibition against pledges of the State's credit and the prohibition against gratuities by the State. The reason is that resources may have to be expended to satisfy such warranty or guarantee.

4. Venue.

As provided under O.C.G.A § 50-5-64.1(a)(2)(B), contracts shall not contain a term that provides for a venue for any action or dispute other than the Superior Court of Fulton County, Georgia. Any such provision in a contract shall be deemed void and the contract shall otherwise enforceable as if it did not contain such term. See also O.C.G.A. § 50- 21-1.

5. Governing Law.

As provided under O.C.G.A § 50-5-64.1(a)(2)(C), contracts shall not contain a term that provides for the contract to be construed in accordance with the laws of another state. Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term.

6. Requirements that the Department pay taxes, interest, penalty fees or cancellation charges, litigation costs, or attorney's fees.

• ATTORNEY'S FEES/COSTS. State Entities will not agree to pay attorney's fees or costs. The rationale is that such a payment would pledge the credit of the state in violation of Ga. Const. Art. VII, § IV, ¶ VIII and would be a violation of the gratuities clause of the Georgia Constitution. See Ga. Const. Art. III, § VI, ¶ VI.

• DAMAGES. The inclusion of indirect, consequential, or incidental damages payable by a State Entity are generally not acceptable.

• INTEREST. Except as otherwise explicitly permitted by law, the Department and State Entities will not agree to pay interest. The Attorney General has advised the Department that payment of interest would pledge the credit of the state, be prohibited by the gratuities clause of the constitution, and that the Department lacks statutory authority to agree to the payment of interest.

• LATE PAYMENT/CANCELLATION CHARGES. State Entities do not agree to pay late payment charges. This policy stems from an opinion of the Attorney General that late payment charges are in the nature of penalty/gratuity which the State is constitutionally prohibited from paying. Agreeing to pay such charges would also pledge the credit of the state in violation of the constitution. 1974 Op. Att'y Gen. 74-115.

• TAXES. The State is exempt from most taxes and generally will not agree to contract language which requires the payment of taxes. State Entities will not agree to reimburse the supplier for the payment of taxes. However, State Entities will agree to language that states "the State Entity will pay taxes lawfully imposed upon it."

7. Binding arbitration or waiver of jury trial.

As provided under O.C.G.A § 50-5-64.1(a)(2)(D), contracts shall not contain a term that provides for binding arbitration. Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term. Further, State Entities do not maintain the authority to agree to waiver of a jury trial, as State law provides that the Attorney General has exclusive authority and control over all matters of litigation or potential litigation involving State agencies. Pre-litigation contractual waivers of jury trial are not enforceable in Georgia. Bank South, N.A. v. Howard, 264 Ga. 339 (1994).

8. Any provision requiring a State Entity to be bound by terms and conditions that are unknown at the time of signing the agreement.

As provided under O.C.G.A § 50-5-64.1(a)(1)(B), contracts shall not contain a term that requires State Entities to be bound by terms and conditions that are unknown at the time of signing such contract or which may be unilaterally changed. Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term.

State Entities will not agree to contract provisions that incorporate additional obligations by references to terms and conditions located at a specific web address, as those provisions may be unilaterally changed.

9. Best efforts provisions that require the expenditure of any funds or efforts necessary to meet the obligations of a contract, even if such efforts exceed the dollar amount of the contract.

State Entities will not agree to best efforts provisions that require the expenditure of any funds or efforts necessary to meet the obligations of a contract which exceed the dollar amount of the contract. Similar to warranties and/or guarantees, such provisions violate the prohibition against pledging the State's credit. (Refer to discussion of warranties above for more information).

10. Contractual provisions which require a State Entity to accept the risk of loss of items or goods during delivery.

As a general rule, State Entities do not accept risk of loss until receipt of the items or goods.

11. Contractual clauses that require a State Entity to purchase insurance policies.

State law provides for the Department of Administrative Services to procure insurance for State entities. State Entities are covered by the Tort Claims Act and the State of Georgia Broad Form Insurance that is administered by the Department of Administrative Services. O.C.G.A. § 50-21-34(a) provides that tort claims against the state may only be paid from insurance provided under the Tort Claims Act. DOAS will not name an additional insured under these policies.

12. No Automatic renewals for agreements obligating state appropriated funds.

As provided under O.C.G.A § 50-5-64.1(a)(2)(E), contracts shall not contain a term that provides for an automatic renewal such that state funds are or would be obligated in subsequent fiscal years. Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term. Automatic renewals also pledge the credit of the state in violation of the constitution. 1974 Op. Att'y Gen. 74-115.

13. Multiyear Lease, Lease Purchase, and Purchase Contracts.

Pursuant to O.C.G.A. § 50-5-64, Multiyear agreements must meet the following requirements:

(1) unless (a) all funds required for the contract are maintained by the State Entity in hand at the time of contract execution (meaning that the State Entity has all funds necessary to pay the multiyear obligations and no additional appropriation or revenue are necessary for the State Entity to meet its contractual payment obligations) and (b) all such funds are obligated via State Entity accounting up front, typically via Purchase Order Incumbrance: See 1980 Att'y Gen Op. 80-163

(2) Standard form – O.C.G.A. § 50-5-64(a) requires that leases and lease purchase agreements shall only be executed on a standard form developed by DOAS.

(3) Termination of Contract – Contract terminates absolutely at the close of the fiscal year in which it is executed and the fiscal year for any renewals. O.C.G.A. § 50-5-64(a)(1).

(4) No Automatic Renewals - Contract terminates at the end of each fiscal year and can only be renewed by positive action taken by the agency. O.C.G.A. § 50-5-64(a)(2).

(5) Funding – Contract terminates immediately when funding is no longer available. Agency makes determination as to whether funds are unavailable at its sole discretion. O.C.G.A. § 50-5-64(a)(3).

(6) Listing of Obligation – Contract must list total obligation for the fiscal year and any obligations for renewals. O.C.G.A. § 50-5-64(a)(4).

(7) Title - Title to any goods or equipment remain with the supplier until fully paid by the agency. O.C.G.A. § 50-5-64(a)(5). However, for lease purchases agreements, O.C.G.A. § 50-5-65(b) allows agencies to accept title upon execution of the DOAS standard form. Agencies can also transfer title back to the vendor if the agreement is not fully consummated.

(8) Interest – Lease Agreement can provide for the payment of interest. O.C.G.A. § 50-5-64(d).

14. No liens, security interest, or UCC Filings.

The execution or levy against state funds or property is not permitted as there is no waiver of sovereign immunity for such actions in the Constitution or by the General Assembly, security interests, or UCC filings. Agencies only have powers conferred by the legislature. State agencies do not have the authority to grant security interests in public property. Dekalb County v. J&A Pipeline Co., 263 Ga. 645 (1993).

15. Unconditional contract payments.

Agencies generally cannot agree to unconditional payments. Any assignment of the Supplier's right to receive payment must be subject to all of the Agency's defenses. As a practical matter, if a dispute arises, the agency needs to be able to resolve the dispute. This is particularly problematic in financing agreements, as a dispute may arise between the vendor providing the equipment and the agency and yet the Agreement requires the agency to continue paying the financing company. This may constitute as a gratuity, which is prohibited under the State Constitution. See Ga. Const. Art. III. § VI, ¶ VI). Additionally, State Entities are prohibited from incurring debt except as provided by law. Ga. Const. Art. VII, Sec. IV, Par. I; Ga. Const. Art. VII, Sec. IV, Par. VIII; O.C.G.A. § 50-17-24.

16. No upfront payments for goods/services.

State Entities are generally not authorized to make payment prior to receipt of goods/services. (Pursuant to the State of Georgia Accounting Procedures Manual, payables for normal operating expenditures should be recognized when the goods and services have been received. Accounting Manual Reference: Section: Vendor Management; Subsection: Payment Method).

17. Drug Free Workplace.

Pursuant to O.C.G.A. § 50-24-3 and § 50-24-4, the State Entities must include in contracts with contractors as defined in O.C.G.A. § 50-24-2 specific certifications regarding the provision of a drug free workplace and prohibition against engaging in certain activities relating to unlawful drug-related activities.

18. Confidentiality.

As provided under O.C.G.A § 50-5-64.1(a)(3), contracts shall not contain a term that is inconsistent with the provisions of Article 4 of Chapter 18 of Title 50, relating to open records. Any such provision in a contract shall be deemed void and the contract shall be otherwise enforceable as if it did not contain such term.

Any confidentiality provisions in a contract must be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., as State Entities are public agencies of the State of Georgia and subject to other requirements of law or court order. Additionally, the Georgia Department of Administrative Services generally considers pricing information to be subject to public disclosure. See State Rd. & Tollway Auth. v. Elec. Transaction Consultants Corp., 306 Ga. App. 487 (2010).

19. No Boycott of Israel.

Pursuant to O.C.G.A. § 50-5-85, the state shall not enter into a contract related to construction or the provision of services, supplies, or information technology with a total value of $100,000 or greater with a company that employs more than five persons, unless the contract includes a written certification that such company is not currently engaged in, and agrees for the duration of the contract, not to engage in a boycott of Israel.

20. Joint Ownership.

In general, the State is constitutionally prohibited from becoming a joint owner or stockholder in or with any individual, company, association, or corporation. Therefore, State Entities are generally prohibited from agreeing to joint ownership of intellectual property. See Ga. Const. Art. VII § IV, ¶ VIII.

21. E-Verify.

Pursuant to O.C.G.A. § 13-10-91, a public employer shall not enter into a contract for the performance of services unless the contractor registers and participates in the federal work authorization program. If a supplier is providing services under a contract with a total compensation amount of $2,500 or greater, (even if such services will be performed outside of the State of Georgia), DOAS requires a notarized affidavit from the supplier attesting to the following:

(A) The affiant has registered with, is authorized to use, and uses the federal work authorization program;

(B) The user identification number and date of authorization for the affiant;

(C) The affiant will continue to use the federal work authorization program throughout the contract period; and

(D) The affiant will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the same information required by subparagraphs (A), (B), and (C) of this paragraph.

Additional information regarding the State's E-verify requirements can be found at: http://www.audits.ga.gov/NALGAD/IllegalImmigrationReformandEnforcementAct.html

22. Benefits Based Funded Contracts (aka Cost Savings Contracts).

Benefits Based Funding Contracts, also referred to as "Cost Savings Contracts" are contracts where private companies assume financial risk for the success of a project and are then paid by the State Entity from the calculated savings or revenue gains generated from the project. While these projects may be appealing because they are designed to fund improvement initiatives without placing an additional financial burden on the State Entity, there are legal constraints in implementing these types of contracts. For example, unless specifically authorized in the Constitution, the State's credit cannot be pledged. Any liability which is not required to be discharged by money already in the treasury, or by taxes to be levied during the year in which the contract under which the liability arises was made, is a debt within the meaning of the constitution. A contract violating the Constitutional prohibition on pledging the State's credit is void.

Additionally, Public officials may not charge fees or collect money except as authorized by law. Except under limited circumstances, monies collected by a state agency must be deposited into the general fund of the state treasury.

Money may be withdrawn from the treasury only by appropriation made by law. Appropriations may not be "earmarked" for any special purpose and all revenues not contractually obligated lapse at the end of the year.

O.C.G.A. § 50-5-77 was implemented to increase flexibility in procuring benefits based funded contracts. In the event that the provisions of O.C.G.A. § 50-5-77 cannot be met for this type of contract, the Department of Law should be consulted for further guidance.

House Bill 113 Foreign Goods and Technology Purchases Prohibition O.C.G.A. §§ 50-5-84.1, 50-5-84.2 (repealed), 50-25-4 Effective Date: July 1, 2025. This bill prohibits the State of Georgia and its agencies from purchasing goods, directly or through a third party vendor or reseller, from foreign companies of concern or foreign countries of concern, as those terms are defined within the bill. The bill further requires the Georgia Technology Authority (GTA) to maintain an up-to-date list of such restricted goods, and it expands GTA's authority to evaluate security risks associated with technology-related purchases.

7. ILLINOIS-Illinois Learning Technology Purchase Program

GENERAL TERMS OF SALE TO ILTPP MEMBERS

ILTPP or its Member may change or cancel an order or any part of it, at no cost to ILTPP or its Member, at any time until Supplier has shipped the products.

If an error in the products is discovered or a change is requested after products have been shipped, ILTPP's Member shall be responsible for the cost of return shipping in the event it is the cause of the error or change. The Supplier shall be responsible for the cost of return shipping in the event it is the cause of the error. All products to be returned shall have Supplier's return authorization and documentation prior to shipment.

Prices. Prices may vary during the course of the contract year, but shall remain within the agreed upon price guidelines. New products made available shall be priced at or lower than the discount originally set and be readily identified as meeting the description of the replaced product(s). Pricing for new products offered at less favorable discounts or higher markups than originally agreed upon in these terms shall not occur. These terms shall similarly apply to new products added that are of equal or lesser configuration or construction.

The ILTPP process is structured to enable Members and Suppliers to negotiate discounts based on quantity. Posted prices are for a quantity of one. Discounts can be negotiated for any volume purchases and remain valid ILTPP purchases as long as the quote is identified as an ILTPP quote, pursuant to contract terms and conditions.

If the product is personal property, a separate charge for shipping shall be included on all Supplier invoices for orders less than $500.

All ILTPP Members are tax exempt and Supplier shall not charge or assess Members for sales tax. Proof of tax-exempt status shall be supplied by ILTPP or Member upon request from Supplier.

Payment. Invoices are due and payable in full within thirty (30) days after the date of the invoice. All Invoices shall reference applicable purchase order numbers and be sent via U.S. Mail to the address identified on the purchase order or letterhead orders.

Binding prices for products shall be listed and identified in Exhibit A or the agreed upon pricing work book as submitted by the Supplier.

Delivery. All Supplier ship dates are estimates. Loss or damage that occurs during shipping is Supplier's responsibility and any such claims shall be resolved between Supplier and its courier. Title to product passes from Supplier to ILTPP or its Member upon receipt at ILTPP or its Member's facility, also known as Freight on Board (F.O.B.) – Destination.

Association of Educational Purchasing Agents Terms and Conditions. To the extent any transaction relates to performance involving or related to the Association of Educational Purchasing Agents (AEPA), the terms and conditions regarding ILTPP as set forth on the AEPA website are and shall be deemed attached hereto, made a part hereof, and incorporated by reference herein.

"Total Satisfaction" Return Policy. Products may be returned to the Supplier up to thirty (30) days after the day they are delivered. If paid for, Supplier will provide a full refund. If unpaid for, Supplier shall withdraw and cancel the purchase. ILTPP or its Member must request and the Supplier shall issue a Credit Return Authorization Number before products are returned. If the product(s) consist(s) of personal property, they shall be shipped at Member's expense to Supplier in their original packaging, shipping charges prepaid. Risk of loss or damage during shipment to Supplier shall be the responsibility of the Member. Returned products must be in as new condition, together with all manuals and other items.

Limited Warranties. Subject to the risk of loss provisions otherwise contained in this Agreement, Suppliers warranties do not cover damage due to external causes, including matters involving electrical power, servicing not authorized by Supplier, usage not in accordance with product specifications and instructions, failure to perform preventative maintenance, abuse and misuse.

Customer and Technical Support. The Supplier shall endeavor to provide the reasonable best customer and technical telephone support in its industry. The Supplier's support staff shall provide telephone assistance regarding any problem involving Supplier products.

Ownership of Products and Related Content. ILTPP hereby acknowledges that the Supplier is the sole owner of the Products, the Product content and all related websites and web pages, and ILTPP expressly disclaims any ownership interest in the Products, Product content and/or any of the components thereof. The Supplier reserves the right to make changes to its Products at any time.

8. INDIANA-Wilson Education Service Center (WESC)

Additional Agency Terms and Conditions

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

B. Wilson Education Service Center will inform all public-school corporations, private/parochial schools, charter schools, nonprofit entities, municipalities, other governmental entities and higher education entities of contract awards via web sites and various marketing strategies. Vendors will have the primary responsibility to market contracts to eligible buyers within Indiana. After contracts are awarded and product information is available on our eProcurement site vendors are free to contact eligible buyers and vice versa. The Wilson Education Service Center utilizes an eProcurement facilitation system as the primary mechanism for ordering and the primary method of marketing. Vendors are encouraged to use the IAESC Procurement System upon award. A 2% administrative fee will be assessed on gross monthly sales for IAESC Procurement. Vendors shall not include shipping and handling charges, federal excise tax, or state sales tax on invoices. Taxes do not apply to purchases by the participating entities. All participating entities have a "Not for Profit Tax Exemption Certificate" which will be furnished by the buyer upon request by the vendor. The vendor will ship and invoice the buyers directly. The Wilson Education Service Center does not warehouse items nor provide services. Quantities shipped in excess of quantities designated in the Purchase Order, or unapproved product substitutions will be returned at the vendor's expense. The vendor makes all deliveries and installation of products and services.

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

D. Additional Provisions:

1. Pursuant to IC 22-9-1-10 and Civil Rights Act of 1964, the vendor and its agents, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, sex, disability, national origin, ancestry or status as a veteran. The Bidder, and its subcontractor(s), if any, shall comply with all applicable affirmative action reporting requirements. Breach of this covenant may be regarded as a material breach of this contract. The Bidder shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended.

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

debarment or suspension in accordance with this section may result in their response being disqualified for award of the solicitation.

3. Hazardous Materials: If any hazardous chemicals are supplied under a contract/purchase order arising out of this solicitation, a Material Safety Data Sheet (MSDS) shall accompany the delivery of any hazardous chemicals supplied by the vendor.

4. Force Majeure-In the event that either party is unable to perform any of its obligations under this contract, or to enjoy any of its benefits, because of natural disaster or decrease of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the Force Majeure event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

AEA Purchasing (Iowa)

1. **Additional Member Agency <u>General Terms and Conditions that apply to all categories</u>**
   Right to Assign
   AEA Purchasing specifically reserves the right, in its sole discretion, to assign and transfer its interest in the Contract with the Vendor Partner, consistent with the terms and conditions of said Contract, to any organization, along with all corresponding duties, responsibilities, and obligations of both parties, and under the terms provided herein.

2. **Additional Member Agency Terms and Conditions for <u>Non-Construction Products and Services</u>**
   None.

3. **Additional Member Agency Terms and Conditions for <u>Construction Products and Services</u>**
   AEA Purchasing may participate in Construction Products and Services bids through AEPA on a limited basis due to the restrictions mandated in the Iowa Code, Chapters 26 and 573.

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

5. **Agencies Expressly Allowed to Purchase under the Member Agency**

   - K-12 Accredited Public and Nonpublic Schools
   - Area Education Agencies

6. **Non-K-12 Governmental Agencies**
   The following non-K-12 governmental agencies may be eligible to use awarded contracts but are not actively solicited by AEA Purchasing:

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

Kansas Terms & Conditions

KANSAS, Southeast Kansas Education Service Center (SEKESC) (Greenbush)
SEKESC is classified as Interlocal No. 609. It has all the rights and privileges of a school district, except the power to levy taxes. SEKESC is governed by a board consisting of one representative from each of the five original or "charter" districts.

A. Additional Member Agency General Terms and Conditions that apply for all categories
Kansas Competitive Bid Thresholds are defined in K.S.A. 72-1151 for political subdivisions and K.S.A. 75-3739 for state agencies.

Kansas Mandatory Contract Provisions

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

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

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

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

Anti-Discrimination Clause: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the

duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

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

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

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

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

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

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

Campaign Contributions / Lobbying: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds

provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Conflict of Interest: The vendor affirms that no employee or official of SEKESC or any participating entity has or will benefit financially or materially from this contract. SEKESC reserves the right to terminate the agreement if a conflict is discovered.

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

Purchase Orders

Any purchase order issued by SEKESC, or one of its eligible entities, is cancelable under provisions of K.S.A. 10-1113.

Marketing

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

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

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

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

60-1111. Public works bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. **Procedure for Processing Orders**

All purchase orders shall be issued by the SEKESC or its participating eligible entities desiring to acquire the products or services under the contract. Said purchase order shall include adequate reference to identify the contract to which it relates.

The SEKESC utilizes the following ordering/delivery procedures:

- SEKESC utilizes an eCommerce system, Greenbush MarketPlace, as a supporting vehicle for order facilitation for some contracts. Purchases may also be placed directly on the vendor's site when the customer can be fully identified and processed under the relevant contract.
- Purchase orders will be issued by the individual eligible entity.
- Vendors must issue invoices directly to the ordering eligible entity as specified on each purchase order.
- Delivery of all items included in this solicitation will be made to the locations within each eligible entity as will be specified on the purchase order.
- Each order shall contain a packing slip of its contents to assist in prompt processing of payments to Vendor.
- The SEKESC reserves the right to implement a Vendor Quotation Number process for contract awards related to, but not limited to project-based and construction related proposal activities.

Administrative Fee - The percentage of sales that each Vendor Partner pays SEKESC for sales under the contract.

Awarded Vendor will provide SEKESC an Administrative Fee of up to 2% of the net total invoice amounts, including installation, on all orders processed pursuant to this solicitation and award. Administrative fees shall not appear as a line item on a quotation or on listed contract pricing. The vendor will be provided a quarterly sales report template.

Administrative fees shall be paid to the SEKESC by the vendor, on a quarterly basis, (Q1: Jan. 1 to March 31; Q2: Apr. 1 to Jun. 30; Q3: July 1 to Sep. 30; Q4: Oct. 1 to Dec. 31), for all items purchased during the preceding quarter from this solicitation. Vendor shall have 30 days after the end of each quarter to remit to SEKESC administrative fees from paid invoices received from eligible entities during that quarter. Administrative Fees not paid when due shall bear interest at a rate equal to the lesser of one- and one-half percent (1.5%) per month or the maximum rate permitted by law until paid in full. Failure to report sales utilizing the template provided, and make payments in the stated time period, may result in cancellation of agreement, award, and ineligibility for the following year(s) agreement.

Administrative Fee Payments will be mailed to:

Southeast Kansas Education Service Center
Attn: Tina Smith
PO Box 189
Girard, KS 66743

Agencies Allowed to Purchase under the Member Agency

Southeast Kansas Education Service Center (Greenbush) does not require a membership for entities to benefit from our cooperative purchasing contracts. Entities eligible to purchase from SEKESC (Greenbush) cooperative purchasing contracts include but may not be limited to:

- K-12 Public Schools
- K-12 Private Schools
- Colleges & Universities
- City, County, and State Governments
- Parks and Recreation Departments
- Public Libraries
- Non-profit organizations holding form #501C3
- Other Agencies/Out of State Agencies - This solicitation and resulting contract are issued pursuant to **K.S.A. 12-2904**, which allows for interlocal cooperation and reciprocal purchasing between public entities. This enables other public agencies, both within and outside Kansas, to utilize the contract under the terms agreed herein.

11. KENTUCKY

Kentucky, Green River Regional Educational Cooperative (GRREC)

Additional Member Agency General Terms and Conditions that apply for all categories

The Green River Regional Educational Cooperative, Inc. (GRREC) is one of eight educational cooperatives in Kentucky, all of which are participants in the AEPA bids. GRREC serves as contact agency for all AEPA correspondence for all eight educational cooperatives. For the Kentucky Educational Cooperatives, the collective bidding process is conducted consistent with KRS Chapter 45A, the Kentucky Model Procurement Code. Contracts with GRREC shall include the provision granting GRREC employees the right to access to the Contractor's records.

Vendor Contact: Vendor will designate to GRREC one individual who will represent them to Kentucky Bidding Cooperative members during the agreement period. This contact person will correspond with each ordering member for technical assistance, problems, or questions that may arise. Include instructions if different contacts for different geographical areas are needed; this information will be distributed to Kentucky Bidding Cooperative members upon award of this bid.

The following Federal Clauses are required as a part of KY bid documents:

1. CLEAN AIR/CLEAN WATER
   - A. Vendor Partner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq). Vendor Partner agrees to report each violation to the USDA and the appropriate EPA Regional Office.
   - B. Vendor Partner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Vendor Partner agrees to report each violation to the USDA and the appropriate EPA Regional Office.
2. SUSPENSION AND DEBARMENT

   Vendor Partner understands that a contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by GRREC. If it is later determined that Vendor Partner knowingly rendered an erroneous certification, in addition to remedies available to GRREC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Vendor Partner agrees to comply with the requirements of 2 CFR 180.220 while the above- referenced contract is valid. Vendor Partner further agrees to include a provision requiring such compliance in its lower tier covered transactions.
3. LOBBYING

   Vendor Partner will comply with the Byrd Anti–Lobbying Amendment (31 U.S.C. § 1352) and the New Restrictions on Lobbying and has signed and attached to this Addendum the Certificate Regarding Lobbying and, if applicable, the Disclosure of Lobbying Activities (Forms SF-LLL) and annually will sign and submit a certificate, if applicable, Form SF-LLL to GRREC.
4. PROCUREMENT OF RECOVERED MATERIALS PURSUANT TO 2 C.F.R. § 200.322

   Vendor Partner agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
5. BUY AMERICAN

   "Domestic Commodity or Product" are defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards School Food Authorities
("SFAs") must comply with when purchasing commercial food products served in the school meals programs.

Buy American: AEPA Member Agencies or Participating Entities participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (at least 51 percent) using agricultural commodities that are produced in the US.

Federal regulations require that all foods purchased for Child Nutrition Program be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when: the product is not produced or Manufactured in the US in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and competitive proposals reveal the cost of a domestic product is significantly higher than a non- domestic product.

ALL products that are normally purchased by Vendor Partner as non-domestic and proposed as part of this contract must be identified with the country of origin. Vendor Partner shall outline their procedures to notify GRREC when products are purchased as non-domestic.

Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by GRREC, prior to the delivery of the product to the AEPA Member Agency or Participating Entities. Any non-domestic product delivered to the AEPA Member Agencies or Participating Entities, without the prior, written approval of GRREC will be rejected.

Vendor Partner must affirm its willingness to assert its best and reasonable efforts to ensure compliance with this federal rule.

6. COST REIMBURSEMENT CONTRACTS

Solicitation Requirements for cost reimbursable contracts:

A. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

B. Contractor will separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or (B) Contractor will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

C. Contractor's determination of its allowable costs will be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

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

E. Contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

F. Contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

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

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

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

1. It should be noted that where performance bonds are required, it should include both performance and payment bonds.
2. State Prevailing Wages shall apply for projects of $250,000.00 or more, or Davis Bacon wages (when federal funds are utilized) if higher than State Prevailing Wages.
3. All work shall be in accordance with necessary approvals from the Kentucky Department of Housing, Buildings and Construction and the Kentucky Building Code.
4. All processes of the project comply with 702 KAR 4:160, the Capital Construction Process, including necessary approvals from the Kentucky Department of Education.
5. Performance and payment bond on AIA document 312 must be provided for all projects that exceed
   $25,000. (Also provide that the Surety shall comply with state requirements.)
   a. In accordance with 702 KAR 4:160, AIA and KDE documents be utilized on all projects including but limited to: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
6. Architectural services shall be provided in accordance with KRS 322.360 and other relevant Kentucky Revised Statutes by the vendor or the Owner at the Owner's preference.

C. Procedure for Processing Orders

Once the award is made to the Contractor/vendor, GRREC and Kentucky's other cooperatives will inform their members (school districts and other entities) of the contract by: 1) including the contract in the Current Bids section on their websites and 2) publishing the contract information in catalogs disseminated to all members. A list of members, contact names, addresses and phone numbers is made available to the Contractor. At this point the Contractor/vendor contacts the members and members may contact the Contractor/vendor. When the member identifies a product or service, it will issue a purchase order for that item to the vendor. The vendor's price will include a two percent (2%) administrative fee that the vendor will collect from the member and remit to GRREC on a quarterly basis. Municipal and county governments, and other governmental, quasi-governmental, or nonprofit organization price will reflect a two percent (2%) administrative fee. On the occasion that an AEPA contract awarded by Kentucky is utilized by public school

and public non-school entities in other states, purchases in these instances will also reflect a two percent (2%) administrative fee. The vendor will also compile and provide to GRREC a quarterly report showing all purchases made by Kentucky members (with specific detail as to what purchases were made by which members) under this contract. Further, if no purchases are made in any given quarter, the Vendor shall remit a "No Activities" statement to GRREC for that quarter. The vendor will also produce and provide to GRREC an annual summary report for all purchases made under this contract for a period of beginning with the award of the contract through December 31st and all consecutive annual periods if contract is extended. The vendor will make all administrative fee payments to the GRREC by the 15th of the month following the end of the quarter (i. e. April 15th, July 15th, October 15th and January 15th). All checks are to be made payable to GRREC and sent to GRREC, 230 Technology Way, Bowling Green, KY 42101 and Attention: 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.

D.Members Purchasing under the Agency

Currently there are 8 Bidding Cooperatives in Kentucky and all are participating in this invitation through GRREC's solicitation. There are 170+ independent and county school districts and all are eligible for membership in a Bidding Cooperative and approximately 98% of the districts are members of one of the cooperatives. No district is obligated to use these services. Additional members may include other public educational institutions in the state, public colleges or universities, community colleges, vocational or technical schools, municipal and county governments, and other governmental, quasi- governmental, or non-profit organizations. Kentucky currently shares its AEPA contracts with the following states: AL, LA, and TN.. Only those districts or institutions listed on an approved Bidding Cooperative membership list are eligible to purchase under these contracts. This list may change during the contract period.

COMMONWEALTH TERMS AND CONDITIONS

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

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

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

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

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

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

6. *Confidentiality.* The Contractor shall comply with M.G.L. c. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to, the Department's public records, documents, files, software, equipment or systems.

7. *Record-keeping And Retention, Inspection Of Records.* The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of six (6) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

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

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

10. *Affirmative Action, Non-Discrimination In Hiring And Employment.* The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability,

handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

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

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

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

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

15. *Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.* Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law; provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1 of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory signing the Standard Contract Form.

13. MICHIGAN-Oakland Schools

Michigan, Oakland Schools, (OS) Revised May 13, 2025

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

1. Conflict of Interest

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

2. Iran Economic Sanctions Act

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

   The Act defines an Iran Linked Business as:

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

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

3. Hazardous Materials

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

4. Modifications to Contracts

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

5. Governing Law

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

B. Additional Member Agency Terms and Conditions for:

1. **Non-Construction Products and Services**:

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

2. **Construction Products and Services**:

All Contractors understand and agree that the use of AEPA contracts is not intended for use by Michigan intermediate school districts or public K-12 school districts for construction, renovation, or remodeling projects under MCL 380.1267 and agree to comply with all applicable standards and statutes for said construction projects. Based on MCL 380.1267, labor must be bid. However, intermediate school districts or public K-12 school districts can choose to buy material only from a cooperative purchasing contract.

The AEPA cooperative contract has been bid in accordance with Michigan statute. It was advertised as required in the state and a material price book meeting the requirement of providing a discount for the opportunity of responding to a multi-state bid for goods and services with a national scope was submitted at the time of bidding by the vendor and awarded to the lowest responding vendor. To be able to purchase material only for a project, the board of a school district or board of directors of a public-school academy needs to adopt a written policy governing the procurement of supplies, materials, and equipment. Material only fits into the classification of MCL 380.1267 of a cooperative bulk purchasing program.

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

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

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

C. Procedure for Processing Orders:

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

1. OS follows the AEPA Standard Ordering Process (see Part A, General Terms and Conditions for All Agencies, "Ordering Procedures").

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

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

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

14. Minnesota, Cooperative Purchasing Connection (CPC)

The Cooperative Purchasing Connection (CPC) is a joint powers group of service cooperatives in Minnesota, organized pursuant to Minnesota Statutes §123A.21 and §471.59. CPC obtains the legal authority to develop and offer, among other services, cooperative procurement services to members and participants. Lakes Country Service Cooperative is the legal fiscal agent for CPC.

Eligible and existing participants include state, city, and county governments, tribal nations, government agencies, public and non-public educational agencies, colleges, universities, nonprofit (501(c)(3)) organizations, and other entities contracted on behalf of an agency.

South Dakota eligible agencies may also utilize CPC's purchasing contracts pursuant to South Dakota State Statute §5-18A-37.

1. General Terms and Conditions (All Categories)

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

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

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

d. **Lease and Rental Agreements:** The Vendor may allow participating agencies to enter into a rental, lease, or lease-purchase agreements, providing such agreements comply with Minnesota Statutes and guidelines. CPC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Vendor and the participating agency. The Vendor agrees that leases will comply with the Uniform Commercial Code. The applicable administrative fee must be included in the lease cost based on the total value of the goods and applicable services purchased. This fee is referred to under the Technical Specifications. In the event of a lease, the total administrative fee for the value of goods shall be paid to CPC by the vendor at the front end of the lease. CPC reserves the right to review all purchase orders, lease documents and invoices to ensure contract compliance.

e. **Non-Discrimination (MN Statute §181.59):** Any resulting contract for on or behalf of participating agencies, said Vendor agrees to:

   i. That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, because of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

   ii. That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

   iii. That a violation of this section is a misdemeanor; and

   iv. That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, shall be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

f. **Participating Agency:** A participating agency shall be defined under Minnesota Statutes M.S. §471.59, and M.S. §123A.21, Sub. 11 and South Dakota Statutes §5-18A-37. An eligible agency includes any school, higher education, city, county, other governmental agency, nonprofit organization, or other entity contracted to conduct business on behalf of a participating agency provided that they are required to follow state and local procurement regulations.

g. **Prompt Payment:** Participating Agencies will follow M.S. §471.425 regarding prompt payment of local government bills.

h. **Substance Use and Conduct:** All Vendor partners and subcontractors must adhere to local substance (alcohol, drug, smoking, etc.) and conduct (dress code, language, parking, etc.) policies while on a participating agencies' premises.

i. **Vendor Orientation (CPC 101):** The Vendor and their participating resellers/sub-contractors will be required to participate in an online training session that is designed to educate the Vendor and resellers/sub-contractors on the purpose and nature of CPC. The Vendor may not be marketed to participating agencies until they have completed the vendor orientation session.

2. **Additional Participating Agency Terms and Conditions for Non-Construction Products and Services**
If requested by CPC, the contracted vendor will work with CPC to develop an order form, or order forms, containing the most purchased items, that CPC can utilize to market the contracted vendor to its participating agencies.

3. **Additional Participating Agency Terms and Conditions for Construction Related Products and Services**
Upon acceptance and approval of the Vendor's offer by AEPA, CPC will independently consider the offer and consult with the Vendor to determine if the Vendor can meet the requirements for construction-related products and services and to enter and execute a contract in the state of Minnesota. The contracted vendor will be required to work with CPC's participating agencies and require that an architect's signature or certification is noted on the specifications as required by **Minnesota Statute §326.12 subd. 3**. With certain exceptions, **Minnesota Rules part 1800.5200, subpart 1**, requires a licensed architect or engineer to prepare and certify specifications for building alterations or renovations. Once CPC and the Vendor can confirm that business can be conducted in Minnesota, CPC will make a final decision to complete the contract execution process.

Performance Bond (for construction and/or installation related projects)
Performance bonds will be required:
1. As defined by all applicable state statute(s) where the project is being conducted.
2. As required by the participating agency.

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

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

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

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

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

4. **Insurance:**
The Vendor shall purchase, maintain, and provide certification from the insurer for minimal coverage during the life of an awarded contract, to include, but not limited to, comprehensive public and/or commercial liability, errors and omissions, workman's compensation, unemployment, and other insurance coverage required by and applicable to each of CPC's individual state's statutes and federal laws which proposed products and services will be offered and provided. Any required insurance that is canceled before the expiration date of the contract agreement, the issuing company will send immediate notice to CPC. Respondents shall provide a statement of insurance from the issuing company or their authorized agent upon request. The Vendor shall meet the following requirements:
    a. Commercial General Liability: $1,000,000 each occurrence, $500,000 annual aggregate

b. Automobile Liability: $1,000,000 each occurrence
c. Workers Compensation: $100,000

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

5. Procedure for Contract Award, Notification and Processing Orders

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

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

6. Administrative Fees & Reporting

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

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

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

7. Express Online Marketplace

CPC provides participating agencies with an online purchasing platform called Express, powered by Euna Solutions. Express is a one-stop-shop for many of CPC's commodity-based contracts. The Vendor does not have to have an e-commerce site to be included in Express. Express offers integration into two (2) of the main K-12 school financial systems in Minnesota. CPC will work with the Vendor to determine if the contract agreement is suitable for the online platform.

15. MISSOURI-EducationPlus (EDUCATIONPLUS) [Formerly Cooperating School Districts of the Greater St. Louis Area (CSD)]

A. Additional Agency Terms and Conditions

Lease and Rentals: Vendor may allow EDUCATIONPLUS customers to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with Missouri statutes and Missouri Department of Elementary and Secondary Education policies, rules and regulations. EDUCATIONPLUS must receive a copy of the executed leasing documents prior to processing a purchase order. EDUCATIONPLUS 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 EDUCATIONPLUS customer, and what that cost will be. No sale of a contract to a third party will be made without first informing EDUCATIONPLUS and the EDUCATIONPLUS customer of the sale. If Bidder sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original vendor. An administrative fee, as stipulated in the AEPA solicitation document, 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, EDUCATIONPLUS will inform its members and other potential customers of the contract by announcing the award on its website and by including the award in presentation comments and in other communications.

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

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

(4.) The purchase order must include an additional administrative fee (as stipulated in the AEPA solicitation document) 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 EDUCATIONPLUS after the sale and payment is made to vendor. Payment shall be made to EDUCATIONPLUS on a quarterly basis along with complete sales history during that period.

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

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

(7.) EDUCATIONPLUS uses its own online Marketplace to market vendor goods. Not all goods are appropriate to a Marketplace; however, where appropriate, all participating vendors agree to work with EDUCATIONPLUS and its marketplace vendor to ensure goods are available through the EDUCATIONPLUS Marketplace.

C. Customers Purchasing Under the Agency

We take great pride in the fact that EDUCATIONPLUS is providing a complete line of purchasing services to our 60+ member school districts and hundreds of additional school districts, educational institutions, and nonprofit organizations. EDUCATIONPLUS 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 and nonprofit dollars, and simultaneously provide an ongoing market for those vendors doing business with EDUCATIONPLUS.

D. Governing Law

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

E. Prohibition Against Boycotting Israel

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

16. MONTANA-Montana Cooperative Service

COOPERATIVE PURCHASING IN MONTANA:

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

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

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

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

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

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

18-4-401. Definitions. As used in this pai1, the following definitions apply:

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

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

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

(4) "State public procurement unit" means a state depa11ment, agency, or official that expends public funds for the procurement of supplies and services.

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

18-4-402. Cooperative purchasing authorized. The depa11ment may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the pa11icipants independent of the requirements of part 3. **Cooperative purchasing may include purchasing through** federal supply schedules of the United States general services administration, joint or multiparty contracts

between public procurement units, open-ended state public procurement unit contracts that are made available to local public procurement units, and **competitive contracts established by for-profit, not-for- profit, or nonprofit cooperative**

entities. (emphasis added).

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

C. Local governmental entities are authorized to enter agreements with each other in order to purchase cooperatively.

7-11-104. Authorization to create interlocal agreements -- issuance of bonds for joint construction -- hiring of teacher, specialist, or superintendent. One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-40 I, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties. (emphasis added).

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

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

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

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

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

Part C – AEPA Member Agency (Nebraska, Educational Service Unit Coordinating Council (ESUCC)) Terms and Conditions

State Specific Terms and Conditions

Nebraska, Educational Service Unit Coordinating Council (ESUCC)
Additional Agency Terms and Conditions

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

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

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

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

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

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

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

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

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

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

- **Equal Employment Opportunity:** (All Contracts) The parties shall comply with the Equal Employment Opportunity Clause required under Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- **Copeland "Anti-Kickback" Act:** The parties shall comply with the Copeland "Anti-Kick Back" Act (40 U.S.C. 3145), as supplemented in Department of Labor regulations (29 CFR 3).
- **Davis-Bacon Act:** (Contracts that exceed $2,000) The parties shall comply with 40 U.S.C. 3141-3148, the Davis-Bacon Act, as supplemented by Department of Labor Regulations 29 CFR 5. This Act provides that contractors and their subcontractors are to pay workers (laborers and mechanics) employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character as determined by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- **Contract Work Hours and Safety Standards Act:** (Contracts that exceed $100,000) The parties agree to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).
- **Reporting Notice:** The USDOE's and any other federal agency's requirements and regulations pertaining to reporting include, but are not necessarily limited to, 34 CFR Part 80.
- **Patent Rights:** The USDOE's and any other federal agency's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Agreement include, but are not necessarily limited to, 34 CFR Part 80.
- **Copyrights and Right in Data:** The USDOE's and any other federal agency's requirements and regulations pertaining to copyrights and rights in data include, but are not necessarily limited to, 34 CFR Part 80.
- **Access to Documents:** The Owner and its grantees and subgrantees, the USDOE and/or other federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
- **Record Retention:** The parties shall retain all required records for at least 3 years after the Owner makes final payments and all other pending matters are closed.
- **Clean Air and Federal Water Pollution Control Acts:** (Contracts that exceed $150,000) The parties shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).
- **Energy Policy and Conservation Act:** The parties shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- **Work Hours:** The parties agree to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) which requires each contractor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- **Debarment and Suspension:** (All Contracts) The parties agree and understand that under Executive Orders 12549 and 12689 that a contract award (see 2 CFR 180.220) must not be made to any party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM).
- **Lobbying:** The parties agree and understand that under the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

that contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

- **Termination for Cause and Convenience: (**Contracts that exceed $10,000) Termination for cause and convenience are governed by the Agreement. To the extent not addressed by the Agreement, the Agreement may not be terminated for convenience and may be terminated for any cause allowed by law.
- **Solid Waste Disposal Act:** The parties agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- **Remedies:** Contracts for more than the simplified acquisition threshold (currently set at $150,000 but is subject to inflation adjustment) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- **Energy Policy and Conservation Act:** (All Contracts) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- **Domestic Preference for Procurements.** As appropriate and to the extent consistent with law, Owner should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

11) Governing Law and Venue: All bids and contracts shall be governed by and construed in accordance with the laws of the State of Nebraska. The venue for any litigation arising out of or related to a bid or contract will be in any eligible state or federal court of Nebraska.

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

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

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

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

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

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

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

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

13) Exclusion of Persons with Criminal Record

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

14) Piggyback Clause

For the term of the Agreement and any mutually agreed extensions, other public agencies may purchase, lease-purchase, or rent the identical item(s) at the same price and upon the same terms and conditions as provided in this Agreement. The term "public agencies" means any county, city, village, school district, or agency of any state government or of the United States; any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of Nebraska; and any political subdivision of another state.

15) Scrutinized Company

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

16) Duration of Services Purchased

If this Agreement, for any reason, terminates before the service end date of any agreement or license between a Member and the Contractor, the Contractor shall continue, maintain, and make such Services available to such Member until the agreed upon date between the Contractor and Member or until the term for the service expires. For example, if the Contracted Services allow a member to purchase or license Services for a certain period of time, but this Agreement expires prior to the end of the service period, the Contractor agrees to maintain such Contracted Services until the expiration of said period of service and in accordance with the terms and provisions of the purchase or license**.**

17) Student Privacy Protections

A. Definition of Data. Data include all Personally Identifiable Information (PII), Member Data, and other non-public information. Data include, but are not limited to, student data, metadata, and user content.

B. Definition of Member Data. Member Data includes all PII and other information that is not intentionally made generally available by the Cooperative, ESUCC, ESUs, or its members on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.

C. Definition of Personally Identifiable Information. Personally Identifiable Information includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as used in Neb. Rev. Stat. § 84-712.05 and personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g.

D. Definition of User. User means a participant, instructor, or administrator of the Cooperative, ESUCC, or its members who are authorized with login credentials by the Cooperative or its Members to use the goods and/or services provided by this Agreement.

E. Data De-Identification. Contractor may use deidentified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify deidentified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt reidentification.

F. Marketing and Advertising. Contractor will not use any Data to advertise or market to students or their parents. Advertising or

marketing may be directed to the Cooperative, ESUCC, Members, or their school districts only if student information is properly de-identified."

G. Modification of Terms of Service. Contractor will not change how Data are collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from the Cooperative, the Members, and the affected school district(s).
H. Data Collection. Contractor will only collect Data necessary to fulfill its duties as outlined in this Agreement.
I. Data Use. Contractor will use Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.
J. Data Mining. Contractor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.
K. Data Sharing. Data cannot be shared with any additional parties without prior written consent of the User except as required by law.
L. Data Transfer or Destruction. Contractor will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the Contractor may have transferred Data, are destroyed or transferred to the Cooperative under the direction of the Cooperative when the Data are no longer needed for their specified purpose, at the request of the Member.
M. Rights and License in and to Data. Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of the Member, and Contractor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Contractor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.
N. Access. Any Data held by Contractor will be made available to a Member upon request by the Member.

Security Controls. Contractor will store and process Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan, to include prompt notification of the Member in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Contractor agrees to share its incident response plan upon request.

18) Drug/Alcohol/Tobacco/Weapons Free Workplace.

The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on Cooperative, ESUCC, ESU, or Member premises or at Cooperative, ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on Cooperative, ESUCC, ESU, or Member property or at Cooperative, ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESUCC, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESUCC, ESU, or Member premises or at Cooperative, ESUCC, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. The Cooperative may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.

19) Sales Tax. The Cooperative, ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUCC, ESUs, and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.

20) Procedure for Contract Award, Notification

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

- The contract will be listed on the ESUCC Coop website (https://www.esucc.org/cooperative-purchasing/).
- Upon award and completion of the vendor orientation, ESUCC will promote the contract opportunity to its members in one or more of the following ways: website; email marketing campaign; digital marketing flier at conferences; and inclusion in the ESUCC Marketplace if vendor has punchout capabilities.
- ESUCC will requires a 1-page (Front & Back) marketing flyer, brochure, or other similar marketing piece, in an electronic format, from each vendor promoting the available contract with the vendor.

21) Procedure for Processing Orders

All orders will be executed by participating members, directly, with the Vendor. ESUCC affiliated members will send purchase orders electronically through the ESUCC Marketplace or directly to the vendor. The vendor is responsible for shipping the merchandise direct to the member, and in turn directly invoices the members the cost of merchandise. The Vendor will make all deliveries and installation of products and services. ESUCC will not warehouse items or provide services.

22) Members Purchasing Under the Agency

ESUCC represents 17 Educational Service Units statewide who in turn service Nebraska school districts with over 325,000 students. ESUCC is authorized to coordinate purchases for public school districts, nonpublic school systems, other ESUs, and other public agencies, including any county, city, village, school district, or agency of the state government, any drainage district, sanitary and improvement district, or other Municipal Corporation or political subdivision of the State of Nebraska.

- Purchases through ESUCC contracts are to be primarily for Nebraska educational public schools, nonpublic schools, Educational Service Units, Community Colleges, State Colleges and Universities. However other state entities may use the ESUCC contracts when an Interlocal agreement has been executed between ESUCC and a qualifying entity. All inquiries to purchase on the behalf of a non-profit group not in state statute or receiving state funding must be approved by ESUCC.

23) ESUCC Marketplace

ESUCC provides participating members with an online purchasing platform called the ESUCC Marketplace. Through the ESUCC Marketplace, agencies can search for and purchase items with purchase orders sent electronically to vendors. Essentially, the ESUCC Marketplace is a one-stop-shop for many of ESUCC's commodity-based contracts.

24) Administrative Fee. Contractor shall submit to the Cooperative as an administrative fee a sum equal to two percent (2%) of the total gross dollar volume, less freight of all goods and services and excluding annual support and maintenance purchased by the Cooperative, ESUCC, ESUs, and Members. This fee will be submitted to ESUCC on a calendar quarter basis beginning from the Effective Date of this Agreement for all transactions completed and paid during said quarter. Payments must be received either via check or authorized ACH. An ACH enrollment/authorization form must be provided to ESUCC for completion. If mailing a check, it should be made out to Educational Service Unit Coordinating Council with it being mailed to:

ESUCC COOP
1292 East 4th Street
Ainsworth, NE 69210

Vendors must provide a quarterly report to ESUCC Cooperative Purchasing coop@esucc.org of sales from members under the contract. The report should include:

- Date of purchase
- Name of participating member or entity
- Address of purchasing agency (city, state, zip code)
- If a school the ESU number affiliation (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19)
- Quantity or job order units
- Amount of purchase
- List price
- Administrative fee generated by sale
- Savings generated by sale

25) Construction, Remodeling, or Repair. Contractor understands that Nebraska law (including Neb. Rev. Stat. § 73-106) generally requires a school district to individually bid projects for construction, remodeling, or repair of any school-owned building or for site improvements, except for those projects with a contemplated expenditure of $~~109~~136,000.00 or less. Contractor understands and agrees that any bid award received herein does not alleviate the school district's requirement to bid certain projects, and Contractor shall not subvert the bidding requirements through any bid awarded herein.

26) Buses and Student Transportation Vehicles. If Contractor intends to sell, supply, or otherwise coordinate the sale of any school bus, school van, or other vehicle used to transport students, the Contractor shall affirmatively verify that every bus, van, or other vehicle conforms with all federal laws and regulations, as well as all Nebraska state laws and regulations, including Nebraska Department of Education Rules 91 and 92. If, for any reason, any governmental agency or regulatory body determines or finds that any such bus, van, or vehicle sold or provided by Contractor to a Nebraska school or ESU does not (upon the vehicle's delivery) conform with any such legal requirements, then Contractor agrees to promptly retrieve the bus, van, or vehicle at its sole cost and expense and, within 14 days of the governmental agency or regulatory body's decision, shall issue a full refund to any purchaser.

27) Artificial Intelligence. For vendors providing, using, or incorporating Artificial Intelligence-powered educational tools or services, additional data privacy terms shall apply as set forth below.

ARTICLE I: DEFINITIONS

1.1 Aggregated Data means information that has or collected together from multiple sources in a way that does not personally identify any individual, and from which individual identities and information have been removed.

1.2 **AI Training Data** means any data used to train, test, or validate the Contractor's artificial intelligence or machine learning algorithms, models, or systems.

1.3 **Applicable Laws** means all applicable federal, state, and local laws, regulations, and industry standards relating to the privacy, confidentiality, or security of student data, including but not limited to FERPA, COPPA, PPRA, and the student data privacy laws of Nebraska.

1.4 **Authorized School Representative** means a person designated by ESUCC or a Member thereof who has the authority to access student data and provide consent for the collection, use, and disclosure of such data on behalf of the ESUCC or Member.

1.5 **Change of Control** means any merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of Contractor or of the portion of Contractor that performs the Services in the Service Agreement.

1.6 **Data Breach** means an unauthorized release, access to, disclosure or acquisition of student data that compromises the security, confidentiality or integrity of the student data maintained by the Contractor in violation of applicable state or federal law.

1.7 **Data** means all data, including all Personally Identifiable Information (PII), Member Data, and any other non-public information. Data include, but are not limited to, student data, metadata, and user content.

1.8 **Member Data** means all PII and other information that is not intentionally made generally available by the ESUCC or its Members on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.

1.9 **Personally Identifiable Information** means personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as used in Neb. Rev. Stat. § 84-712.05 and personally identifiable information contained in student education records as that term is defined in FERPA, 20 U.S.C. § 1232g.

1.10 **User** means a participant, instructor, or administrator of the Cooperative or its Members who are authorized with login credentials by the Cooperative or its Members to use the goods and/or services provided by this Agreement.

1.11 **De-Identified Data** means information that has been collected, manipulated, or anonymized that does not identify individual students and for which there is no reasonable basis to believe that the information can be used to identify an individual student. De-identification requires the removal of all direct and indirect student identifiers, including but not limited to: name, ID numbers, date of birth, demographic information, location information, and school ID.

1.12 **Educational Records** shall have the meaning as set forth under FERPA, 20 § U.S.C. 1232g (a)(5)(A).

1.13 **Metadata** means information that provides meaning and context to other data being collected including but not limited to date and time records and purpose of creation. Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information or Student Data.

1.14 **Parent** means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

1.15 **School Official** means a contractor that: (1) performs an institutional service or function for which the agency or institution would otherwise use employees; (2) is under the direct control of the agency or institution with respect to the use and maintenance of Student Data including Educational Records; and (3) is subject to FERPA 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Educational Records.

1.16 **Service Agreement** means the quote, corresponding contract, purchase order or terms of service and/or terms of use.

1.17 **Student Data** means any data, whether gathered, created or inferred by Contractor or provided by the Cooperative, its members, or its users, students, or students' parents/guardians, for a school purpose, that is descriptive of the student including, but not limited to, information in the student's Educational Record, persistent unique identifiers, or any other information or identification number that would provide information about a specific student. Student Data includes Metadata that has not been stripped of all direct and indirect identifiers. Student Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law.

1.18 **Student Generated Content** means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content. "Student Generated Content" does not include student responses to a standardized assessment where student possession and control would jeopardize the validity and reliability of that assessment.

1.19 **Subprocessor** means a party other than the Cooperate, a member, or the Contractor, whom Contractor uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to or storage of Student Data, including security, storage, analytics, and other processing activities necessary to perform a contractor business purpose.

1.20 **Subprocessor Agreement** means the agreement between the Contractor and a third party Subprocessor.

1.21 **Targeted Advertising** means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the Contractor Internet web site, online service or

mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements.

ARTICLE II: SCOPE

In order to perform the Services outlined in this Agreement the Contractor shall only collect, use, and share Student Data as necessary to provide the Services to the Cooperative or its Members and to facilitate the Contractor's Services outlined in this Agreement. The Contractor shall not collect, use, or share Student Data for any other purpose without the Cooperative or Member's prior written consent.

The Contractor shall only share Student Data with the Cooperative and other educational institutions that have entered into a Student Data Privacy Agreement with the Contractor that provides protections at least as stringent as those set forth in this Exhibit "E." Data cannot be shared with any additional or outside parties without prior written consent of the Cooperative or its Member, except as required by law.

The Contractor may only use deidentified Data and Aggregated Data derived from the Student Data for product development, research or other purposes, provided that the Contractor shall:

1. Remove all direct and indirect personal identifiers. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID;
2. Not attempt to re-identify the deidentified data or transfer deidentified data unless that party agrees not to attempt reidentification;
3. Not use such De-Identified Data or Aggregated Data for any purpose other than improving the Contractor's educational products or services;
4. Implement and maintain technical and organizational measures to prevent re-identification of De-Identified Data; and
5. Maintain documentation of the de-identification process and make such documentation available to the Cooperative upon request.

The Contractor shall provide at least 30 days' written notice to the Cooperative before it intends to use deidentified Data and Aggregated Data derived from the Student Data.

ARTICLE III: DATA OWNERSHIP AND AUTHORIZED ACCESS

3.1 Student Data Property of the Cooperative or its Members.

As between the Cooperative, its members, and Contractor, all Student Data processed by the Contractor, or created by students, is and will continue to be the property of and under the control of the Cooperative or its Member (whichever is applicable). The Contractor further acknowledges and agrees that all copies of such Student Data processed by the Contractor, including any modifications or additions or any portion thereof from any source, are also subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement, shall remain the exclusive property of the Cooperative or its Member (whichever is applicable).

3.2 Parent, Legal Guardian and Student Access.

The Cooperative and its Members shall establish reasonable procedures by which a parent, legal guardian, or eligible student (as defined in FERPA) may review Student Data and request deletion or modification, and request delivery of a copy of the Student Data. In support of this, the Contractor shall establish reasonable procedures by which the Cooperative's Members may access, and correct, if necessary, Education Records and/or Student Data, and make a copy of the data available to the parent, legal guardian or eligible student directly. If a Member is not able to review or update the Student Data itself, Contractor shall respond in a reasonably timely manner (and no later than thirty (30) days from the date of the request) to the Member's request for Student Data held by the Contractor to view or correct as necessary.

In the event that a parent or legal guardian of a student or eligible student contacts the Contractor to correct, delete, review or request delivery of a copy of any of the Student Data collected by or generated through the Services, the Contractor shall refer that person to the Member, who will follow the necessary and proper procedures regarding the requested information.

This Agreement does not impede the ability of students, parents, or guardians to download, export, or otherwise save or maintain their own Student Generated Content directly from Contractor or for Contractor to provide a mechanism for such download, export, transfer or saving to students, or the student's parent or legal guardian. Nor does it impede the ability of Contractors to offer the Cooperative or its Members features to allow such ability.

3.3 Subprocessors.

Contractor shall enter into a Subprocessor Agreement with any Subprocessors performing functions for the Contractor in order for the Contractor to provide the Services, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this Agreement. Every Subprocessor Agreement must provide that the Subprocessor will not Sell the Student Data. The terms of a Subprocessor Agreement shall not be materially modified by the Subprocessor unless notice is provided to the Contractor. The Contractor will provide a copy of all Subprocessor Agreements, upon reasonable request of the Cooperative or a Member thereof.

3.4 Third Party Request.

Should a Third Party, including law enforcement and government entities, contact Contractor with a legally binding request for

data held by the Contractor pursuant to the Services, the Contractor shall notify the Cooperative or its Member in advance of a compelled disclosure to such Third Party.

ARTICLE IV: DUTIES OF THE CONTRACTOR

4.1 Privacy and Security Compliance.

The Contractor shall comply with all laws and regulations applicable to Contractor's protection of Student Data privacy and security, and, at the direction of the Cooperative and its Members, shall cooperate with any state or federal government-initiated audit of the use of the Services.

4.2 Contractor Employee Obligation.

Contractor shall require all of Contractor's employees who have access to Student Data to comply with all applicable provisions of this Agreement with respect to the Student Data shared under the Service Agreement. Contractor agrees to require and maintain an appropriate confidentiality agreement from each employee with access to Student Data pursuant to the Service Agreement.

4.3 No Disclosure.

Contractor acknowledges and agrees that it shall not sell or disclose any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data, except under (and only under) the following circumstances:

1. Disclosure is directed or permitted by the Cooperative, its member, or this Agreement.
2. Disclosure is required pursuant to a judicial order or lawfully issued subpoena or warrant.
3. Disclosure to Subprocessors performing Services on behalf of the Contractor, pursuant to this Agreement.
4. Disclosure is to a student's parents or legal guardians.
5. Disclosure is for any other purpose approved in written advance by the Cooperative or its Member.

4.4 De-Identified Data.

Contractor agrees not to attempt to re-identify De-Identified Student Data without the written direction of the Cooperative.

4.5 Disposition of Data.

Upon written request from the Cooperative or a Member thereof, Contractor shall dispose of or provide a mechanism for the Member to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree.

If the Contractor has a standard retention and destruction schedule, that schedule shall apply to Student Data as long as this Agreement is active. The Contractor's practice relating to retention and disposition of Student Data shall be provided to the Member, upon request.

Contractor will ensure that all Data in its possession and in the possession of any subproccessors, or agents to which the Contractor may have transferred Data, are destroyed or transferred to the Cooperative under the direction of the Cooperative when the Data are no longer needed for their specified purpose or at the request of the Coopeartive.

At the termination of this Agreement, the Contractor shall, unless directed otherwise by the Cooperative or a Member thereof, dispose of and delete Student Data obtained by the Contractor under the Agreement within sixty (60) days of termination (unless otherwise required by law).

4.6 Advertising Limitations.

Contractor is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to the Cooperative or its Members; or (c) for any commercial purpose other than to provide the Service to the Cooperative or its Members, or as authorized by the Cooperative or its Members or a parent/guardian.

4.7 Data Mining

Contractor is prohibited from mining Data for any purposes other than those agreed in writing and in advance by the Parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.

ARTICLE V: DATA SECURITY AND BREACH PROVISIONS

5.1 Data Collection.

Contractor will only collect Data necessary to fulfill its duties as outlined in this Agreement.

5.2 Data Storage.

If Student Data is stored outside the United States, Contractor will provide a list of Countries where data is stored."

5.3 Data Security.

Contractor agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Contractor shall adhere to any applicable law relating to data security of Student Data. The Contractor shall implement an adequate Cybersecurity Framework that incorporates one or more of the nationally or internationally recognized standards, including but not limited to NIST Cybersecurity Framework, ISO 27001, and SANS Critical Security Controls, or as otherwise updated in industry standards. Additionally, Contractor may choose to further detail its security programs and measures.

Contractor's safeguards must be documented in a comprehensive information security program that is reviewed and updated

at least annually.

5.4 Data Breach.

In the event that Contractor confirms a Data Breach, the Contractor shall provide notification to the Cooperative within seventy-two (72) hours of confirmation of the Data Breach, unless notification within these time limits would disrupt investigation of the Data Breach by law enforcement. In such an event, notification shall be made within a reasonable time after the Data Breach. Contractor shall follow the following process:

1. The Data Breach notification described above shall include, at a minimum, the following information to the extent known by the Contractor and as it becomes available:
    a. The name and contact information of the Contractor subject to this section,
    b. the date of the notice,
    c. the date of the Data Breach, the estimated date of the Data Breach, or the date range within which the Data Breach occurred,
    d. Whether the notification was delayed because of a law enforcement investigation, if legally permissible to share that information,
    e. A general description of the Data Breach, if that information is possible to determine at the time the notice is provided,
    f. A description of the Student Data reasonably believed to have been the subject of the Data Breach; and
    g. Identification of impacted Members and individuals.
2. Contractor agrees to adhere to all applicable federal and state laws with respect to a Data Breach related to the Student Data, including any required responsibilities and procedures for notification and mitigation of any such Data Breach.
3. Contractor further acknowledges and agrees to have a written Data Breach response plan that is consistent with applicable industry standards and federal and state law for responding to a Data Breach, involving Student Data and agrees to provide the Cooperative or its Members, upon reasonable written request, with a summary of said written Data Breach response plan.

5.5 Adherence to Cooperative Marketplace

Contractor shall comply with all additional, reasonable data sharing, privacy, and security requirements established by the Cooperative for Contractors participating in the ESUCC Cooperative Purchasing Marketplace, including but not limited to:

1. The ESUCC Cooperative's Contractor certification requirements;
2. The ESUCC Cooperative's data security standards and protocols;
3. The ESUCC Cooperative's transparency and reporting requirements; and
4. Any additional requirements that may be established by the ESUCC Cooperative from time to time.

5.6 Duty to Notify the ESUCC Cooperative

Contractor shall promptly notify the ESUCC Cooperative of any changes to its data privacy and security practices that may impact the Contractor's participation in the Cooperative. Such notification shall:

1. Be provided at least thirty (30) days prior to the implementation of any material changes;
2. Include a detailed description of the proposed changes;
3. Explain the potential impact of the changes on the privacy and security of Student Data; and
4. Provide the Cooperative with an opportunity to review and approve the changes before they are implemented.

5.7 Designation of a Data Privacy and Security Officer

Contractor shall designate a qualified individual to serve as the Contractor's data privacy and security officer, who shall:

1. Be responsible for the Contractor's compliance with this Agreement and Applicable Laws;
2. Serve as the primary point of contact for the Cooperative on all matters related to data privacy and security;
3. Participate in regular meetings with the Cooperative's data privacy and security team; and
4. Provide regular reports to the Cooperative on the Contractor's data privacy and security practices.

5.8 Maintenance of Documentation

Each Party shall maintain comprehensive documentation of its compliance with this Agreement and the Cooperative's requirements and shall make such documentation available to the other Party, upon reasonable request.

18. NEW JERSEY-Educational Services Commission of New Jersey (ESCNJ)

Applicability of Contract Provisions to New Jersey Participants

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

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

1. The Bidder by submitting its bid hereby declares that this Bid is made without any connection with any other person or person making any proposal for the same items, that it is in all respects fair and without collusion or fraud and that no person acting for or employed by ESCNJ or a New Jersey Participant is directly or indirectly interested in the proposal or in the goods or services to which it relates, or in any portion of the profits there from.
2. **Event of default and termination of Contract:**
   ESCNJ shall have the right to cancel the contract based upon a default by Contractor. A New Jersey Participant shall have the right to cancel its purchase arrangement based on a default by the Contractor with regard to such purchase arrangement. In addition, ESCNJ and each New Jersey Participant reserves the right to withhold payments for goods and services that are not in compliance with the terms of the contract or if the Contractor is in default. Any of the following shall be a default under the contract: 1) The Contractor fails to adequately perform the services set forth in the contract; 2) Contractor fails to deliver all or any part of the goods, or delivers defective goods; 3) The Contractor fails to make progress in the performance of the contract and/or does not deliver within the agreed-upon schedules; 4) The Contractor fails to observe any of the terms and conditions of the contract, including, without limitation, assigning the contract and/or failing to deliver required insurance or performance bonds; 5) The Contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the New Jersey Participant; or 6) the Contractor has become insolvent, makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy or is subject to an involuntary petition in bankruptcy not discharged within thirty (30) days. ESCNJ and each New Jersey Participant shall follow the following procedure if the contract or purchase order is to be terminated:
   Step 1 - Issue a warning letter of concern outlining the violations and length of time to correct the problem(s). The length of time to correct the problem shall be determined by ESCNJ or the New Jersey Participant, as applicable, in its sole discretion, based on the problem.
   Step 2 - Issue a letter of intent to cancel the contract or purchase order, if the problem(s) is not resolved by the given date.
   Step 3 - Issue the letter to cancel contract or purchase order.
   Upon receipt of the written notice of concern, the Contractor shall have ten (10) business days to provide a satisfactory response to ESCNJ and the New Jersey Participant that provided the notices. Failure on the part of the Contractor to address adequately all issues or concerns may result in contract cancellation.

   The remedy to terminate and withhold payments is in addition to any other remedies ESCNJ and the New Jersey Participants may have. In the event of Contract termination by a New Jersey Participant, such New Jersey Participant's payment obligation shall cease as of the final date on which services in accordance with this Contract are last performed by the Contractor. Upon termination of this Contract under this section, the Contractor (and its surety) will be responsible for all of such New Jersey Participant's expenses, losses and damages incurred in replacing Contractor for the remainder of the term of the Contract.
3. **Assignment:**
   Contractor shall not subcontract, assign, transfer, convey, sublet or otherwise dispose of its/his/her contractual duties to any other person, firm, or corporation, without the previous written consent of ESCNJ and any New Jersey Participant that has an outstanding open purchase order or financing arrangement. If the Contractor wants to assign its/his/her right to payment of the Contract, Contractor shall notify ESCNJ and any New Jersey Participant that has an outstanding open purchase order or financing arrangement immediately, in writing, of such assignment of right to payment. In no case shall such assignment of Contract relieve the Contractor from its/his/her obligations or change the terms of the Contract.
4. **Indemnification:**
   Contractor shall indemnify, defend, keep and save harmless ESCNJ, each New Jersey Participant and its respective agents, officials, employees and volunteers (each an "Indemnified Party") against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses (including attorneys' fees) which result from, arise out of, or in connection with the performance, or breach of performance, under the Contract of Contractor and any of its/his/her employees, agents or personnel. The Contractor shall, at its/his/her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the Indemnified Party in any such action, the Contractor shall, at its/his/her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Party as herein provided.
5. **New Jersey** Participant Policies:
   The Contractor must be familiar with a New Jersey Participant's policies or regulations which affect the services provided under this Contract and that have been or will be distributed during the term of this Contract. Policies and regulations include, but are

not limited to, New Jersey Public Contracts Law, school district policies, municipality policies, charters school policies, and county ordinances.

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

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

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

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

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

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

summary of the customer purchases. ESCNJ will not collect lease payments or be involved in the terms and conditions of the Contractor lease. All lease arrangements are between the Contractor and the New Jersey Participant only.

9. **Affirmative Action:**
   The Contractor/Vendor must have an employment policy that there shall be no discrimination against anyone on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, physical disability or sexual orientation in the hiring, upgrading, demotions, recruitment, termination and selections for training, in any manner prohibited by the laws of the United States or of the State of New Jersey. The Contractor/Vendor further agrees to be an "affirmative action-equal opportunity employer." The Contractor/Vendor must provide one of the following: "Letter of Federal Affirmative Action Plan Approval", "Certificate of Employee Information Report" or a completed "Employee Information Report Form AA302" prior to award of bid.
10. **Independent Contractor:**
    The Contractor shall not be held or deemed in any way to be the agent or employee of ESCNJ and/or a New Jersey Participant. It is the intention of the parties that the Contractor shall be and is to be considered an independent contractor.
11. **Incorporation of Bid Documents:**
    The bid documents, including all appendices executed by Contractor that have been accepted by ESCNJ (the "Bid") are specifically incorporated into this Contract.
12. **New Jersey Public Records Act:**
    The Contractor acknowledges that ESCNJ and New Jersey Participants are subject to the New Jersey Public Records Act, New Jersey Public Contracts Law and information submitted to ESCNJ and/or such New Jersey Participants may be made available to the public under the provisions of this Act.

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

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

B. **Procedures for Processing Orders**

1. Once the award is made to the Contractor, ESCNJ will inform the potential New Jersey Participants of the Contract, including a webpage dedicated to the contract on the ESCNJ website. At this point, the Contractor may directly contact any potential New Jersey Participant and any potential New Jersey Participant may directly contact the Contractor.
2. Purchase orders will not be accepted or processed by ESCNJ. All business will be contracted directly with the New Jersey Participant, which will issue a purchase order and provide payment for the applicable good or service directly to the Contractor.
3. The total cost of ESCNJ's program is funded through a 2.0% participation fee paid to ESCNJ quarterly by the participating Contractors. The administrative fee percentage is based upon the total sale or lease of goods and services, including installation, if included. This fee shall be included in all price quotations to New Jersey Participants and shall not be printed as a line item on the quotation.
4. Along with the participation fee, the Contractor will produce and provide to ESCNJ quarterly reports ending March 31, June 30, September 30 and December 31 throughout the contract period. The reports shall be in Microsoft Excel and be available in electronic form, shall identify the Contractor and the quarter being reported, shall be delivered to ESCNJ on the 15th of the month, shall include a minimum of the fields listed below and shall allow for sorting on any of these fields:
    1. Date of order.
    2. The name of the New Jersey Participant.
    3. ESCNJ Bid Number
    4. ESCNJ Co-op Number (New Jersey State Approved Cooperative Pricing System #65MCESCCPS)
    5. List (or academic) price sales totals.
    6. New Jersey Participant price sales totals.
    7. New Jersey Participant savings totals to be sent to the ESCNJ in summary and to each individual New Jersey Participant.
5. Quarterly reports and administrative fee payments are to be made payable to ESCNJ and sent to ESCNJ, 1660 Stelton Road,

2nd Floor, Piscataway, NJ 08854, Attn: Timothy Havlausch, or such other address that ESCNJ will provide from time to time.

6. If no purchases are made in any given quarter, the Contractor shall remit a "No Activities" statement to ESCNJ for that quarter. The Contractor will also produce and provide to ESCNJ an annual summary report for all purchases made under each contract awarded by ESCNJ pursuant to this document for a period beginning with the award of the contract and ending December 31 and all consecutive annual periods, if the contract is extended.
7. New Jersey School Districts, New Jersey Municipal Government entities 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 ESCNJ Co-op Participant.

C. Members Purchasing Under the Agency

There are 600+ operating school districts in New Jersey and all are eligible for membership. No school district is obligated to use these services. Additional New Jersey Participants may include other public educational institutions, public colleges or universities, community colleges, vocational or technical schools, municipal governments, and other governmental, quasi-governmental, or non- profit organizations. The ESCNJ Cooperative Pricing System currently has 1,560+ New Jersey Participants located in all 21 Counties of the State of New Jersey.

CONFLICT OF INTEREST

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

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

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

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

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

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

American Goods - American Goods Clause—N.J.S.A. 18A:18A-20 - American goods and products to be used where possible All contracts for work for which it will pay any part of the cost or work which by contract it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available, to be used in such work.

Anti-discrimination - All parties to any contract with the ESCNJ agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. l0:5-1 et seq. and N.J.S.A. l0:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

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

For Time and Material bids - DPMC - There is a non-refundable fee of $100.00 which must be submitted to the State with your application. All payments must be made on company checks (no-cash) made payable to "Treasurer, State of New Jersey". No application will be processed without the fee. If you have any questions, please contact the Contractor Classification unit by accessing the DPMC web site at www.state.nj.us/treasury/dpmc/ NOTE: It is suggested that a photocopy of this completed form be retained for your records. Please submit the completed application and all required documentation to the Treasurer, State of New Jersey. Upon review and approval of this application, your firm will be notified by mail of the effective and expiration dates, type of work, and rating assigned to your firm. Please submit your certificate with your bid package.

Any contractor who submits a bid for a public works contract the amount which exceeds **$20,000**, pursuant to N.J.S.A. 18A:18A- 26, 27

et seq., shall be classified by the Department of Treasury, Division of Property Management (DPMC) as to the type of work and trades (character) and the aggregate rating (amount) of public work they are qualified to submit bids.

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

Notice of Classification—DPMC-27
The Notice of Classification is a document issued by the DPMC that provides the following information about the qualified contractor:

- Trade(s) classification held by the contractor

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

Trade Number	Trade
C029	Structural Steel & Ornamental Iron
C030	Plumbing
C032	HVACR
C047	Electrical

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

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

For Time and Material bids - Total Amount of Uncompleted Contracts - DPMC 701
This document is completed by the contractor submitting a bid, on the form provided by the DPMC. The document lists the amount of uncompleted contracts held by the contractor and a certification that the amount of uncompleted contracts, added to the bid amount for the ESCNJ Participant project, does not exceed the Aggregate Amount rating as assigned by the DPMC.

For Time and Material bids - Pre-Qualification Affidavit/No Material Adverse Change
Pursuant to N.J.S.A. 18A:18A-32, no bidder is qualified to bid on any public work contract unless they provide an affidavit that there has been no material adverse change in his qualification information pursuant to N.J.S.A. 18A:18A-28.

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

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

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

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

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

Sample Certificate of Authority



STATE OF NEW JERSEY
Certificate of Authority

DIVISION OF TAXATION
TRENTON, N.J. 08695

The person, partnership or corporation named below is hereby authorized to collect
NEW JERSEY SALES & USE TAX

pursuant to N.J.S.A. [redacted]

This authorization is good ONLY for the named person at the location specified herein.
This authorization is null and void if any change of ownership or address is effected.

Acting Director, Division of Taxation

[redacted]

Tax Registration No. [redacted]
Tax Effective Date 10-15-10
Document Locator No. [redacted]
Date Issued 10-14-10

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

For Time and Material bids – <u>Contractor Trade Licenses</u>

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

Sample Contractor Trade License


THIS DOCUMENT IS PRINTED ON WATERMARKED PAPER, WITH A MULTI-COLORED BACKGROUND AND MULTIPLE SECURITY FEATURES. PLEASE VERIFY AUTHENTICITY.

NOT AN ELECTRICIAN'S OR PLUMBER'S LICENSE

State Of New Jersey
New Jersey Office of the Attorney General
Division of Consumer Affairs

THIS IS TO CERTIFY THAT THE
Division of Consumer Affairs

HAS REGISTERED

ABC CONSTRUCTION
123 YOUR BLOCK
ANYTOWN USA

FOR PRACTICE IN NEW JERSEY AS A(N): Home Improvement Contractor

11/01/2013 TO 12/31/2014
VALID

1234567890123
LICENSE/REGISTRATION/CERTIFICATION #

Signature of Licensee/Registrant/Certificate Holder

DIRECTOR

For Time and Material bids – Contractor's Registation evidence "Public Works Contractor Registration Act"

A. Valid Certificate – Receipt of Bid

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

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

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

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

For more information contact:

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

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

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

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

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

Term of Contract and Extensions: Multiyear contracts – 18A:18A-42
All contracts for the provision of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12 consecutive months. Any Board of Education may award a contract for longer periods of time for the listed goods/services as stated in 18:A-18A-5. Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year extensions, subject to the following limitations: a. the contract shall be awarded by resolution by the ESCNJ Board Members upon a finding by the ESCNJ that the services are being performed in an effective and efficient manner; b. no such contract shall be extended so that it runs for more than a total of five consecutive years; c. any price included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. the terms and conditions of the contact remain substantially the same. All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts for insurance coverages, insurance consultant or administrative services, participation or membership in a joint self-insurance fund, risk management programs or related services of a school board insurance group, participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6 or contracts for thermal energy authorized pursuant to subsection a. above and contracts for the provision of performance of goods and services to promote energy conservation through the production of I renewable energy, authorized pursuant to subsection o. of this section, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the

extended obligation, or contain an annual cancellation clause. All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Public School Contracts Law" N.J.S.18A:18A-1et seq., except that a contract may be extended by mutual agreement of the parties to the contract when a board of education has commenced rebidding prior to the time the contract expires or when the awarding of a contact is pending at the time the contract expires.

19. NEW MEXICO-Cooperative Educational Services (CES)

DEFINITIONS AND TERMINOLOGY:

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

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

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

""Bidder", "Contractor"," Contract Holder", "Offeror", "Proposer" and "Supplier": is used to identify the person(s) or firm(s) responding to a CES or AEPA Solicitation.

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

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

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

a) Federal Agency [25 USC 3001 (4)] is defined as any department, agency, or instrument of the United States, any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of government, including the Executive Office of the President or any independent regulatory agency established through legislative and/or administrative action.
b) State Agency NMSA 1978, § 13-1-190 is defined as any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or office of the executive, legislative, or judicial branch of the government of this State. "State agency" includes the purchasing division of the General Services Department (GSD) and the state purchasing agent but does not include local public bodies.
c) Local Public Body [NMSA 1978, § 13-1-67] is defined as a political subdivision of the State and the agencies, instruments, and institutions thereof, including: two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code [NMSA 1978, § 13-1-28].

d) Non-Profit, Non-Public Educational Institutions and other Non-Profit Organizations (Section 501(c) 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) of the Internal Revenue Code, or corresponding section of the Federal Tax Code.

CES Regions: New Mexico is a large state geographically. For this Bid or RFP, CES is dividing the State into eight (8) service regions. Offerors will be required to indicate to which of these service regions of the State they wish to provide services, and prioritize the areas, in order, that their firm intends to concentrate its efforts, if given an award. The first eight (8) service

regions are listed below with the Public-School Districts located in each. Any public educational institution, i.e., BIA schools, charter schools, colleges, universities, community colleges or participating entities which consist of cities, counties, state agencies, etc., physically located within these regions are considered as part of that region.

1. **Region One (1)** – Aztec, Bloomfield, Central, Dulce, Farmington, Gallup-McKinley, and Zuni School Districts; Navajo Preparatory School, Pine Hill Schools, San Juan College, Shiprock Associated Schools, and University of New Mexico - Gallup Branch
2. **Region Two (2)** – Chama Valley, Cuba, Española, Jemez Mountain School, Los Alamos, Mesa Vista, Pecos, Peñasco, Pojoaque Valley, Questa, Santa Fe and Taos School Districts; New Mexico School for the Deaf, Northern New Mexico College, Santa Fe Community College, Santa Fe Indian School, University of New Mexico- Los Alamos Branch, and University of New Mexico – Taos Branch
3. **Region Three (3)** – Cimarron, Clayton, Des Moines, Las Vegas City, Maxwell, Mora, Mosquero, Raton, Roy, Santa Rosa, Springer, Wagon Mound and West Las Vegas School Districts; Luna Community College and New Mexico Highlands University
4. **Region Four (4)** – Albuquerque, Belen, Bernalillo, Estancia, Grants-Cibola, Jemez Valley, Los Lunas, Magdalena, Moriarty-Edgewood, Mountainair, Quemado, Rio Rancho, Socorro, and Vaughn School Districts; Alamo Navajo School, New Mexico CFYD, New Mexico Institute of Mining and Technology, New Mexico State University at Grants, University of New Mexico and University of New Mexico - Valencia Campus
5. **Region Five (5**) – Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico, and Tucumcari School Districts; Clovis Community College, Eastern New Mexico University and Mesalands Community College
6. **Region Six (6)** – Artesia, Carlsbad, Dexter, Eunice, Hagerman, Hobbs, Jal, Lake Arthur, Loving, Lovington, Roswell, and Tatum School Districts; Eastern New Mexico University-Roswell, New Mexico Junior College, New Mexico Military Institute and New Mexico State University at Carlsbad
7. **Region Seven (7)** – Alamogordo, Capitan, Carrizozo, Cloudcroft, Corona, Hondo Valley, Ruidoso, and Tularosa School Districts; Mescalero Apache School, New Mexico School for the Blind and Visually Impaired, New Mexico State University at Alamogordo
8. **Region Eight** (8) – Animas, Cobre, Deming, Gadsden, Hatch Valley, Las Cruces, Lordsburg, Reserve, Silver and Truth or Consequences School Districts; New Mexico State University and Western New Mexico University

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

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

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

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

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

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

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

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

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

than the creator.

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

CES GENERAL TERMS AND CONDITIONS:

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

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

Administrative Fee: CES' two percent (2%) administrative fee must be included in the Offeror's net price for all services and deliverables (material, labor rates, reimbursable and other fees/charges) that are quoted and invoiced to CES, CES Member or Participating Entity.

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

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

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

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

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

Assignment of CES Payments: If the Offeror requests that its payment from CES, its Members or Participating Entities be issued to a third party or that a joint check be issued to the Offeror and a third party, this request must be submitted and approved by CES prior to the Offeror accepting a purchase order. CES reserves the right to assess a special handling charge of Thirty-Five Dollars ($35) per check. The special handling charge will be deducted from the amount of the invoice being paid. If the Offeror wishes to have all payments under a contract executed as a result of this solicitation (RFP) made to a third party, Offeror must state this in its response.

Audit Rights: I In accordance with applicable State of New Mexico Procurement Code, NMSA 1978 §§ 13-1-161 and federal law, the Offeror's books and records related to any process and/or activity that occurs as a result of a contract executed as a result of this solicitation (RFP) may be inspected by CES and/or the New Mexico State Auditor. The offeror must retain payment records received from CES for a period of (3) years from the date of final payment. Contingent upon funding source, a longer retention period may be required.

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

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

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

Brand Names: The use of the name of a manufacturer, brand name, or catalog number does not restrict the offer. Brand names are used to indicate the character, quality and/or performance equivalence of the commodity on which proposals are submitted. However, CES reserves the right to decide if alternatives to the identified manufacturer and brand are, in fact, equal to that described in the proposal.

Breaches and Dispute Resolution: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Cooperative Educational Services Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director of Cooperative Educational Services. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

a. Performance During Dispute - Unless otherwise directed by Cooperative Educational Services, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
b. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
c. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the Cooperative Educational Services and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Cooperative Educational Services, its Members and Participating Entities is located.

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

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

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

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

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

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

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

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

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

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

Contract Month-to-Month Extensions: CES reserves the right to offer month-to-month extensions as authorized by Educational Purchasing Agencies (AEPA) if that is determined to be in the best interest of CES, its Members, and Participating Entities but, in

any case shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150 and the Association of Educational Purchasing Agencies (AEPA).

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

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

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

Cooperative Use of Contract: Any contract as a result of AEPA Bid or RFP, will be made available to other public agencies nationally, including state, native and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit. Offeror will reimburse CES the CES Administrative Fee for all sales utilizing this contract.

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

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

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

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

Debarment Disclosure: If the Offeror has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government or agency, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall include a letter with its response identifying the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances must be

provided by the Offeror, including the details enumerated above. A response from an Offeror who is currently debarred, suspended, or otherwise lawfully prohibited from any public procurement activity may be rejected. Failure of an Offeror to disclose a debarment or suspension in accordance with this section may result in their response being disqualified for award of the solicitation.

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

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

a. Offeror must immediately notify CES, its Members or Participating Entities if Offeror is unable to meet a Delivery Date. At any time prior to the Delivery Date, CES, its Members or Participating Entities may, upon notice to Offeror, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of CES, its Members or Participating Entities or due to failure of Offeror to comply with this Agreement, unless otherwise noted
b. Title and risk of loss or damage shall pass to CES, its Members or Participating Entities upon receipt of Goods at the Delivery Point, unless otherwise agreed to by the CES, its Members or Participating Entities in writing. CES, its Members or Participating Entities has no obligation to obtain insurance while Goods are in transit from Offeror to the Delivery Point.

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

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

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

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

Indemnification: To the fullest extent permitted by law, Offeror shall, defend, indemnify and hold harmless CES, its Members, its Participating Entities, its officers and employees, against any and all liability, claims, demands, actions, damages, losses, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, government action and all expenses, including attorneys' fees and litigation expenses, demands or expenses asserted by a third-party, caused by, or resulting from, Offeror's and/or its employees, act(s) or omissions(s) while Offeror, and/or its employees, perform(s) or fails to perform its obligations and duties under any agreement entered into as a result of this solicitation or acts or omissions occurring outside of said agreement. Any equipment or facilities damaged by

Offerors' operation shall be repaired and/or restored to their original condition at Offerors' expense. Offeror shall at all times during the life of the contract entered into as a result of this solicitation keep in force the minimum liability insurance limits as outlined in this solicitation. Failure to maintain current coverage in the amounts stated may result in termination of any agreement entered into as a result of this solicitation CES shall be named as a co- insured on the insurance policy and the policy shall provide that the policy cannot be modified or cancelled without the approval of CES. "This provision shall survive any termination of any Agreement entered into as a result of this solicitation Offeror will promptly advise CES in writing of any action, administrative or legal proceedings or investigation as to which defense and indemnification shall apply."

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

a. Give the Offeror written notice, within forty-eight (48) hours of its notification of any claim.
b. Allow the Offeror to manage the defense and settlement of the claim as permitted by law; and
c. Cooperate with the Offeror, in a reasonable manner, to facilitate the defense or settlement of the claim. CES, its Members, and Participating Entities Rights: If any product or service becomes, or in the Offeror's opinion is likely to become, the subject of a claim of infringement, the Offeror shall, at its sole expense.
d. Provide CES, its Members and Participating Entities the right to continue using the product or service and fully indemnify CES, its Members and Participating Entities against all claims that may arise out of CES, its Members and Participating Entities use of the product or service.
e. Replace or modify the product or service so that it becomes non-infringing; or
f. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the Offeror.
g. The Offeror's obligation will be void as to any product or service modified by CES, its Members and Participating Entities to the extent such modification is the cause of the claim.

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

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

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

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

Insurance: Upon contract award, the contractor will, at its own expense, purchase and maintain insurance that will protect it

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

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

Leasing: Contractor may offer CES Members the option to enter into a lease or lease purchase agreements, providing such agreements are in compliance with New Mexico statutes. CES must receive a copy of the executed leasing documents between the leasing agency and the CES Member or Participating Entity. The contractor providing the equipment(s) to the CES Member or Participating Entity that is funded thru a lease option shall pay CES the two percent (2%) administrative fee on the total cost of the equipment(s), maintenance agreement, extended warranties and any products and services included in the lease agreement The CES administrative is non-refundable should the

lease terminate early. CES will not collect lease payments, the CES Member or Participating Entity will make lease payments directly to the leasing agency. All terms of the leasing agreement must be included in the proposal, including interest rates as related to a government standard. Contractor must indicate if the shipping costs for the return of leased equipment are the responsibility of the CES Member or Participating Entity and what that cost will be. No sale of a contract to a third party will be made without informing CES and CES Member or Participating Entity of the transfer. If Offeror sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original Offeror.

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

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

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

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

Limitation of Liability: The contractor's liability to CES or any CES Member or Participating Entity, for any cause whatsoever shall be for the total amount of damages resulting from the Offeror, sub-contractors and/or employees acts that may result in personal injury, property damage or any other damages as identified by CES or its CES Member or Participating Entity caused by

the contractor's negligence. The liability of CES or any CES Member or Participating Entity will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, as amended.

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

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

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

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

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

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

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

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

CES will be reimbursed for all expenses incurred by CES in fully cooperating with Offeror as specifically requested by contract. CES is not required to incur any expenses specified in this paragraph, which are not reimbursable, by the Offeror. If any CES Member and Participating Entity is involved by any party in a Patent and Copyright infringement dispute, the same provisions that apply to CES in this paragraph will apply to the CES Member or Participating Entity. Offeror's obligation under this section is conditioned on CES' agreement that if the subject of such a claim, CES will permit the Offeror, at its expense and option, either to procure the right for CES and its Members or Participating Entity to continue using the equipment and/or software, or to replace equipment or software which are functionally equivalent so that they become non-infringing. If neither of the foregoing alternatives is available on terms which are reasonable in Offeror's judgment and satisfactory to CES, CES will request its Members or Participating Entity to return the equipment or software upon written request by Offeror at Offeror's expense. Offeror agrees to refund CES and/or its CES Member/Participating Entity for returned equipment as depreciated to current market value unless otherwise mutually agreeable in writing. The depreciation will be an equal amount per year over the life of the equipment in accordance with GAAP/GASB guidelines. In the event that an Offeror's written request for return of equipment is made after full depreciation, the Offeror will pay CES, or its CES Member/Participating Entity who purchased the equipment, an amount equivalent to the fair market value of the returned equipment. If CES, or any of its CES Member/Participating Entity, fails to return the equipment, the Offeror is not obligated to that Member under this clause. Offeror will have no obligation with respect to any such claim based upon a Member's or Participating Entity's modification of

the equipment or software or combination, operation or use with apparatus, data or programs not furnished by Offeror. However, one Member's or Participating Entity's action will not preclude Offeror's obligation to other Members/Participating Entities not having modified their equipment or software.

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

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

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

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

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

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

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

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

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

Quality: Unless otherwise noted in this solicitation, Offeror warrants that for one (1) year after acceptance of the equipment or

materials or work performed for the CES Member or Participating Entity, they shall be:

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

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

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

Sample: Samples may be required prior to awarding a contract and/or prior to entering into an individual project contract. Upon request of CES Member or Participating Entity, the Offeror will provide adequate samples and detailed specifications for any item offered. Samples must be submitted within ten (10) days of request from CES Member or Participating Entity. Samples will be free of charge and submitted and removed at Offeror's expense. Samples will be

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

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

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

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

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

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

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

Survivability: Except as otherwise expressly set forth in this Agreement, upon the termination of this Agreement or the expiration of the Term, the respective rights and obligations of the parties that accrued prior to such termination or expiration shall survive such termination or expiration to the extent necessary to carry out the intentions of the parties hereto. The Agreement shall continue in effect until there are no further rights or obligations of the parties hereto that accrued prior to such termination or expiration outstanding hereunder and shall not be terminated by any party without the express written consent

of all parties.

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

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

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

Termination for Convenience: CES, or the CES Member/Participating Entity can, by (30) day written notice to the Offeror terminate any Agreement executed as a result of this solicitation (RFP), for convenience in whole or in part. CES or the CES Member and Participating Entity shall pay for acceptable work performed prior to the Offeror's receipt or issuance of a notice of termination. The Offeror shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination.

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

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

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

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

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

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

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

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

CES SUPPLEMENTAL TERMS AND CONDITIONS FOR CONSTRUCTION

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

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

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

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

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

Change Orders:
A mutually agreed upon system for establishing changes orders must be identified, including changes in scope and changes in compensation for the prime Contractor. All change orders will be agreed to in writing by the Contractor and the CES Member or Participating Entity. No change order or Supplemental Job Order that increases the cost of the project will be permitted without a purchase order to CES from the Member ordering the change.

A copy of the approved change order must accompany a revised purchase order to CES. Minor changes mutually agreed upon between the CES Member or Participating Entity and the Contractor that do not involve compensation may be made without informing CES.

Minor changes mutually agreed upon between the CES Member or Participating Entity and the Contractor that do not involve compensation may be made without informing CES.

Claims and Disputes

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

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

Commencement Date/Substantial Completion Date:

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

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

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

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

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

or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act.

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

Contractor License: As defined in Construction Industries Licensing Act 60-13-12 NMSA 1978. A Contractor's license is required for any construction project. Exceptions per the NM Regulations and Licensing Department trades that have been de-classified are as follows:
GS-3 Tile
GS-10 Fencing
GS-11 Fixtures, Cabinets, Millwork
GS-12 Flooring
GS-17 Ornamental Iron and Welding
GS-18 Painting GS-22 Sandblasting
GS-26 Vaults and Depositories
GS-28 Gunite
GS-6 Doors are incorporated into
GS-14 Windows and Skylights

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

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

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

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

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

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

1. The insurance required shall be written for not less than limits of liability required by law. Coverage shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after final payment.
2. Certificates of Insurance shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least **forty-five (45) days** prior written notice has been given to the Owner. If any of the foregoing insurance coverages are requested to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both shall be furnished by the Contractor with reasonable promptness.
3. The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates, and dates of expiration of policies of Insurance. The Contractor will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate Cordiform.
4. Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged at the site of the Project under this Contract, including Subcontractor employees. In case any class of employee engaged in work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and cause each Subcontractor to provide Employer's Liability Insurance in an amount not less than five hundred thousand ($500,000). Failure to comply with the conditions of this Subparagraph 11.1.5.1 will subject this Contract to termination.
5. Public Liability Insurance shall not be less than the liability amounts set forth in the New Mexico Tort Claims Act, §41-4-1 et seq. NMSA 1978, as it now exists or may be amended.
6. Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars ($1,000,000) per occurrence combined single limit for both personal injury and property damage.

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

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

Liquidated Damages: The CES Member or Participating Entity has the right to assess liquidated damages to the Contractor (and its Surety); and the Contractor shall be liable for the amount of liquidated damages as determined in the contract documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall

pay them to Owner without limiting Owner's right to terminate this agreement for default as provided elsewhere herein. The liquidated damages are assessed per calendar day of delay until the work is determined by CES and its Member or Participating Entity to be substantially complete. Liquidated damages will comply with the requirements of 55-2-718 NMSA 1978.

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

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

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

New Mexico Building Codes and Regulations

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

- 60-13-3 NMSA 1978 - Definition of contractor used in the Construction Industries Licensing Act,
- NMAC 6.27.30 - Statewide Adequacy Standards
- NMAC 14.5.1 - General Provisions: "This rule applies to all the administration, interpretation, and enforcement of contracting work performed in New Mexico subject to the jurisdiction of Construction Industries Licensing Act (CILA) and LP GAS Act."
- NMAC 14.5.2 – Permits: "This rule applies to all permitted work performed in New Mexico on or after November 15, 2017, that is subject to the jurisdiction of CID.
- NMAC 14.5.3 – Inspections: "This rule applies to all contracting work performed in New Mexico on or after November 15, 2016, that is subject to the jurisdiction of CID…"
- NMAC 14.5.8 - Investigations and Enforcement
- NMAC 14.5.9 - Code Bond Determinations
- NMAC 14.6.3 - Contractor's License Requirements
- NMAC 14.6.4 - Journeyman Certification
- NMAC 14.6.6 - Classifications and Scopes: This rule applies to any person who engages in contracting, as that term is defined in Construction Industries Licensing Act (CILA) Section 60-13-3 NMSA 1978.
- NMAC 14.6.6.9 - General Construction Classifications
- NMAC 14.6.6.10 - Electrical Classifications
- NMAC 14.6.6.11 - Mechanical And Plumbing Classifications
- NMAC 14.6.7 - Modular Building Structures
- NMAC 14.7.2 - 2021 New Mexico Commercial Building Code
- NMAC 14.7.7 - 2021 New Mexico Existing Building Code
- NMAC 14.7.8 - 2021 New Mexico Historic Earthen Buildings
- NMAC 14.7.9 - 2021 New Mexico Commercial Energy Conservation Code
- NMAC 14.8.2 - 2021 New Mexico Plumbing Code
- NMAC 14.8.3 - 2012 New Mexico Swimming Pool, Spa and Hot Tub Code
- NMAC 14.9.2 - 2021 New Mexico Mechanical Code
- NMAC 14.9.3 - 1997 Uniform Mechanical Code
- NMAC 14.9.4 – Boilers
- NMAC 14.9.6 - 2012 New Mexico Solar Energy Code
- NMAC 14.10.4 - 2020 New Mexico Electrical Code
- NMAC 14.10.5 - 2012 New Mexico Electrical Safety Code
- NMAC 14.11.3 - 1997 Uniform Plumbing Code
- NMAC 14.12.1 - Manufactured Housing
- NMAC 19.15.40 - New Mexico Liquefied Petroleum Gas Standards
- NFPA 54 - 2024 National Fuel Gas Code
- NFPA 58 - 2024 Liquefied Petroleum Gas Code.

- Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.
- LP Gas Act, Sections 70-5-1 through 70-5-23 NMSA 1978.
- Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978
- Public Works Contracts, Sections of 13-4-1 to 13-4-43 NMSA 1978
- Public Works Minimum Wage Act, Sections 13-4-10 through 13-4-17 NMSA 1978

- Subcontractors Fair Practices Act, Sections 13-4-31 to 13-4-42 NMSA 1978
- Prompt Payment Act, Sections 57-28-1 to 57-28-11 NMSA 1978
- New Mexico Public School Facility Authority Adequacy and Construction Standards for K-12 Educational Facilities only.
- Davis-Bacon Wage Rate Act 29 CFR Part 5 Subpart A

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

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

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

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

New Mexico State Wage Rate Documentation:

1. The New Mexico Department of Workforce Solutions (NMDWS) requires that certain forms be completed for every project in excess of $60,000. CES will submit for the wage decision and, upon receipt of the decision, will provide it to the prime Contractor. The Contractor is responsible for completing and submitting the required forms to the NMDWS and must provide CES with a copy of the following required forms: Notification of Award, Statement of Intent to Pay Prevailing Wages, and Affidavit of Wages Paid.
2. The prime Contractor must submit the Statement of Intent to Pay Prevailing Wages and the Notification of Award to NMDWS with a copy being mailed, faxed, or e-mailed to CES, prior to the start of the project. The Affidavit of Wages Paid must be submitted to NMDWS with a copy being mailed, faxed, or e-mailed to CES at the conclusion of your work on the project. The prime Contractor is responsible for insuring that its subcontractor(s) also submit the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid to NMDWS, with a copy being mailed, faxed or e- mailed to CES.
3. CES will not make any payments until copies of the Notification of Award, Statement of Intent to Pay Prevailing Wages and for projects $25,000 or greater until the Payment and Performance Bonds are received by CES. Final payment will not be released until CES receives a copy of the Affidavit of Wages Paid.

Payment Retention, Progress Payments:

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

Permits, Fees and Notices:

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

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

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

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

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

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

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

Quality Control:

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

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

1. The Contractor will not construct any sub-assemble, structure, or device or produce any condition that intentionally violates a fire, health, safety or UBC code or safety standard.
2. Contractor must advise Agency's contact person whenever work is expected to be hazardous to students, Agency's employees,

or operators. Failure of the work to comply with currently adopted codes and requirements when a project is inspected, and a certificate of occupancy is required will be corrected by the Contractor at no additional cost of the owner.

3. Material Safety Data Sheets for any material supplied will be provided to the owner as part of the Project Close Documents or as request of CES Member or Participating Entity.
4. When working, loading, unloading, repairing, or operating equipment near an owner-used area, the prime Contractor will maintain a crewman in the area as a guard to keep students and adults from wandering in, if the area is not protected.
5. Fire extinguishers will be maintained within easy reach whenever power tools and torches are being used. The Contractor will advise the CES Member or Participating Entity contact person when volatile materials are to be used near air ventilation intakes, so that they can be shut down or blocked as directed.
6. All of the work and items supplied on this contract will comply with all current and applicable US Federal and State of NM Safety Standards, Statutes, Rules, and Regulations.

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

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

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

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

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

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

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

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

State Wage Rates: It is the contractor's responsibility to be acquainted with the New Mexico Department of Workforce Solutions rules, regulations, procedures, and requirements relating to state wage rates, and to comply with state and federal regulations

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

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

1. In accordance with the "Subcontractor Fair Practices Act", 13-4-31 to 13-4-42, NMSA 1978, the following information is required to be submitted with any job order project:
   A. The name of each subcontractor who will be performing work or rendering service on the public works project and whose total contract will be the greater of:
      1) Five Thousand Dollars ($5,000); or
      2) One half of one percent (.005%) of the total project (to be estimated by the architect and/or engineer of record).
   B. Address of the place of business
   C. Subcontractor license number
   D. Type of work or services to be performed by the subcontractor.
   E. Pursuant to Section 13-4-38 NMSA 1978, if an Offeror fails to list a subcontractor in excess of the listing threshold on any job order contract, and they do not state that the provider is a sole source or that they will put all work that exceeds the threshold to individual bid each time, they are stipulating that they are fully qualified to perform the proposed products and services themselves and that they will perform all work themselves. After the specific job order contract award, any change in subcontractors must be approved by CES and the CES Eligible Agency, otherwise, the Offeror will be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided therein.
2. Subcontractor must be registered with New Mexico Department of Workforce Solutions, Public Works section.
3. CES and its Eligible Agencies reserves the right to approve, reject and replace any subcontractor proposed by the Offeror pursuant to 13-4-36 NMSA1978.
4. Subcontractors shall provide performance and payment bonds to prime Contractor if the sub-contract is greater than $125,000 pursuant to 13-1-148.1.
5. Any agreements with subcontractors shall incorporate, by reference, the terms and conditions of this solicitation and each individual project contract.
6. No subcontract requiring licensure will be entered into with any unlicensed party. Contractor must use subcontractors openly, include such arrangements in the proposal and certify upon request that such use complies with the rules of the NMCID, New Mexico Public Works Act and New Mexico Procurement Code.
7. Subcontractor Payment: Contractor agrees to pay subcontractors in a timely manner and in accordance with the New Mexico Prompt Payment Act pursuant to 57-28-5 NMSA 1978. If Contractor receives a progress payment from CES, the Contractor will pay subcontractor(s), "…within seven days after receipt of payment from the owner, contractor or subcontractor…" pursuant to 57-28-5 C. NMSA 1978. CES will contract to provide release of liens from subcontractors within fifteen (15) days of date of payment. Failure to pay subcontractors, pursuant to 57-28-5 C. NMSA 1978, for work faithfully performed and properly invoiced can result in the suspension or cancellation of this contract.
8. Subcontractor's labor used must be of a standing or affiliation that will permit the work to be carried on harmoniously, without delay and will not cause any disturbance, interference, or delay to the progress of the project. Subcontractor and lower-tier subcontractors will not employ anyone whose employment might be objected to by prime Contractor or Member.
9. It is the responsibility of the Contractor to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract and that the CES Eligible Agency must make payments to CES before CES can issue progress payments to the Contractor. The Contractor must provide CES with all subcontractors and suppliers information utilized for any individual project performed.
10. Contractor and Subcontractor are responsible for complying with the provisions of §22-10.3.3.B NMSA 1978, regarding employees' having unsupervised access to students. The Contractor and Subcontractor may be required to obtain background checks for any employee working on a CES project per the CES Member's or Participating Entity's background check policy prior to accessing the project site.

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

Substantial Completion and Project Acceptance:
When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially

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

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

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

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

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

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

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

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

1. Contractor warrants that any construction products and services, equipment or material supplied to CES, or its Members or Participating Entities will conform to all requirements of the contract and all representations of Contractor and will be fit for all purposes and uses as required and defined for each individual project. All work performed, equipment and materials must carry a minimum 12- month warranty that includes parts, labor, and reimbursable expenses.
2. Contractor warrants that for one (1) year after acceptance of the individual project, the work performed, equipment and/or materials provided to the CES Member or Participating Entity will be:
    a. Of a quality to pass without objection in the industry or trade normally associated with them;
    b. Fit for the intended purpose(s) for which they are being purchased and/or being used;
    c. Of even kind, quantity, and quality within each unit and among all units, in the variations permitted by the contract;
    d. Adequately contained, packaged, and marked as the contract may require; and
    e. Conform to the written promises or affirmations of fact made by Contractor. Any extended manufacturer's warranty that is obtained to meet the 12-month requirement will be passed to the CES Member or Participating Entity without exception. CES reserves the right to cancel the contract if Contractor charges the agency for any product and/or

service received at no cost under a warranty.

3. The Contractor will be responsible for ensuring that all warranty work is completed either by performing the work itself or by working with the Agency to have it completed by a third party or subcontractor. The Contractor will remain available to the Agency should added services be required after warranty obligations are met. Even if final payment is made, if the Agency discovers an unfinished or missing job component or improperly installed material or equipment during the first year after acceptance which should have been completed as part of the original project scope of work, the Contractor will complete the work in a timely fashion at no additional cost.
4. The Contractor may offer extended warranties and maintenance agreements for additional cost to the CES Eligible Agencies as a separate line item. Upon request, no-cost training must be offered by the prime Contractor for the maintenance staff of the Agency and will be arranged after the installation and as part of the purchase contract.

20. North Carolina: Carolinas Alliance 4 Innovation (CA4I) dba Carolina BUY

1. **General Overview**
   a. CA4I is a 501.c.6 non-profit public benefit corporation whose mission is to promote innovative solutions for saving money, time and hassles in education and government for the purpose of community and economic development.
   b. CA4I does business as "Carolina BUY" in both North Carolina and South Carolina
2. **Eligible Entities**
   a. CA4I can serve all AEPA eligible members, including City, County, and State Government Agencies and Special Purpose Districts; K-12 Public and Private Schools; Colleges and Universities; Public Libraries; and Non-Profit Organizations.
3. **General Terms and Conditions that apply in all categories.**
   a. **Governing Law:** The laws of the State of North Carolina govern all contracts resulting from this solicitation. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
   b. North Carolina Law Codes: Cooperative Purchasing Authorized Title 01 - North Carolina Administrative Code (NCAC) SECTION 01 NCAC 05B .1513 - Cooperative Purchasing General Statutes § 143-129(e)(3) – Exceptions to Competitive Bidding Requirements Universal Citation: NCAC § 01-05B.1513; N.C. Gen. Stat. § 143-129(e)(3)
   c. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Catawba County, North Carolina. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Catawba County, North Carolina.
      d. Bids must comply with the public procurement laws of North Carolina (NCGS §143-129, §143-131, §143-48) and South Carolina (SC Code §11-35-10 et seq.). By submitting a bid, suppliers certify compliance with all applicable state requirements, including nondiscrimination (NCGS §143-422.2; SC Code §1-13-80), data privacy and breach notification (NCGS §75-65; SC Code §39-1-90), and student data protections where applicable (SC Code §59-1-490).
      e. CarolinaBUY reserves the right to reject any or all bids, waive informalities, and award in the best interest of participating public agencies. Awarded contracts may be used cooperatively by eligible public agencies in North Carolina and South Carolina.
   f. **Award:** Upon acceptance and approval of the Vendor's offer by AEPA, CA4I will independently consider the recommendation based on the value of the potential contract for its participating agencies and the Vendor commitment to emphasize AEPA established discounts and Carolina BUY local advocacy in making sales proposals. In the event of a Vendor award, CA4I will inform its members of the award and contract by posting information on its website, in newsletters, and announcements to affinity partners along with contract instructions and ordering process.
   g. **Processing Orders:** When an eligible educational, governmental, or nonprofit member identifies a desired product or service, the member and the vendor may negotiate with each other to establish a description of items and/or services. The vendor shall quote a price to the member, in writing, using AEPA established discounts and including the two percent (2%) administrative payment or payment in the quoted price. The administrative payment shall be based upon the total cost of goods and/or services including installation costs. The administrative payment shall not be listed as a separate line item on the quote. When a member decides to purchase through the CA4I-AEPA contract, the member issues the purchase order directly to the vendor. The purchase order must include the total invoiced cost, based on

i. The total cost of goods, service, and installation, including the AEPA established discounts and a 2% administrative payment.
ii. Notification will be made to the vendor in the event the purchase order is not in compliance with the contract and adjustments will be made at that time. CA4I and the Vendor will mutually resolve any issues concerning past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by CA4I otherwise. All sales and transactions may continue without delay or in anticipation of the CPC purchase order verification.
iii. Once all the items and services on the purchase order have been delivered to the member completely and satisfactorily, the Vendor then files a copy of the final invoice, which is available to CA4I by request in support of the quarterly sales summary.
iv. The Vendor makes all deliveries and installations of products and services. CA4I does not sell warehouse items or provide installation services.
v. This administrative payment is to be paid by the vendor to CA4I, quarterly, within twenty working days after the end of each fiscal quarter.
    - Payment preference is ACH or ETF
    - Physical Payments to the following address
      CA4I, P O Box 293, Greenville, SC 29602
vi. The AEPA vendor shall also submit to CA4I a sales report, in Excel format, listing the following information:
    - Name of purchasing agency
    - Address of purchasing agency (city, state, zip code)
    - Date of purchase
    - Invoice number
    - Amount of purchase
    - Administrative payment generated by sales.
    - Savings generated by sales.

This report shall include all sales made and payments received by the vendor in the said quarter. Combined sales report for both Carolinas is preferred.

The sales report shall be emailed to the following:

Fred Payne, Chairman: fred@carolinabuy.com
Nita Werner, Executive Director: nwerner@carolinabuy.com

Non Disclosure

The Contractor shall keep all non public CarolinaBUY and Participating Agency information confidential and use it only for performance of this Contract. Contractor personnel may not use or disclose such information for three (3) years after leaving the Contractor. Upon Contract expiration or termination, the Contractor shall immediately cease all use of CarolinaBUY, its platform, its members, and all Confidential Information, and shall return or destroy all such information.

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

The North Dakota Educators Service Cooperative (NDESC) is a joint powers of North Dakota school districts, multi-district special education units, cities, counties, other governmental agencies and nonprofits organized under the provisions of Chapter 54-40.3 of the North Dakota Century Code. The purpose of NDESC is to assist in meeting specific needs of the members which are determined to be better provided by a cooperative effort, including the joint purchasing of programs, goods and services which are priority needs of the members. NDESC may also assist in meeting specific needs that are identified by its individual members.

In addition, NDESC holds a joint powers agreement with Lakes Country Service Cooperative (LCSC) in Fergus Falls, Minnesota, to provide purchasing contracts to its participating agencies via Cooperative Purchasing Connection (CPC).

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

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

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

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

Performance Bond *(for construction and/or installation related projects)*

Performance bonds will be required:

1. As defined by all applicable state statute(s) where the project is being conducted.
2. As required by the participating agency.

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

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

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

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

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

4. Insurance

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

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

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

5. Procedure for Contract Award, Notification and Processing Orders

Once the award is recommended by the AEPA Review Committee, NDESC considers the recommendation based on the value

of the potential contract for its participating agencies. In the event of an award by the NDESC Board of Directors, NDESC will inform its participating agencies of the award.

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

6. Administrative Fees and Reporting

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

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

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

7. Express Online Marketplace

NDESC provides participating agencies with an online purchasing platform called Express, powered by Euna Solutions. Express is a one-stop-shop for many of NDESC's commodity-based contracts. The Vendor does not have to have an e-commerce site to be included in Express. NDESC will work with the Vendor to determine if the contract agreement is suitable for the online platform.

22. OHIO COUNCIL OF EDUCATIONAL PURCHASING CONSORTIA ("OCEPC")

TERMS AND CONDITIONS
2025

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

1. Authority for Participation in Solicitation

The OCEPC as the "Member Agency" participates in this solicitation and contract pursuant to Ohio Revised Code Chapter 167 and Ohio Revised Code Section RC 167.081.

2. Compliance with Laws/Forum Designation

Vendor Partner shall verify to the OCEPC that the Vendor Partner is complying with all Federal, State and Local Laws, Codes and Regulations while fulfilling the contract. 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 in the Court of Common Pleas where the Member Agency's main office is located to the exclusion of all other jurisdictions.

3. Delinquent Tax Affidavit

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

4. Secretary of State Registration

Vendor Partner 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.

5. Findings for Recovery

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

6. Project Personnel, Student Safety and Background Checks

Member Agency shall have the right to reject the participation of any personnel of Vendor Partner 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. Vendor Partner will advise Member Agency promptly of any change in the project manager or other key personnel assigned to the performance of the services.

Vendor Partner acknowledges that the safety of the Member Agency's students, employees, officials and guests is of the utmost importance. Vendor Partner 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 Vendor Partner'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 Vendor Partner 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.

Vendor Partner 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 students. Vendor Partner 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 Vendor Partner 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

Vendor Partner shall be an independent contractor and neither Vendor Partner nor any of its subcontractors, nor the employees of any thereof, shall be deemed to be the servants, employees, or agents of Member Agency. Vendor Partner shall be responsible for paying all costs related to its employees and managers performing the services. Vendor Partner 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 Vendor Partner 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 Vendor Partner pursuant to this contract shall become, upon payment of all undisputed compensation due the Vendor Partner 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 Vendor Partner.

9. Audit

Member Agency may audit and inspect Vendor Partner's records and accounts at any time during the Vendor Partner'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 Vendor Partner, it being understood that Vendor Partner 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. 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.

12. Insurance

Consistent with and supplementing the "insurance" clause in AEPA's "General Terms and Conditions for All Agencies," a Vendor Partner must procure before commencement of any work for a project and thereafter maintain, without interruption, all forms of insurance required by law as well as the following:

(I) Workers' Compensation Insurance covering the statutory requirements of the State of Ohio;
(II) Employers' Liability with policy limits not less than one million dollars ($1,000,000) each accident, one million dollars ($1,000,000) each employee, and one million dollars ($1,000,000) policy limit;
(III) Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts: (a) General Aggregate Limit: $1,000,000 each occurrence; (b) Each Occurrence Limit: $1,000,000 each occurrence;
(IV) Comprehensive Automobile Liability Insurance, including bodily injury, accidental death and property damage with a combined single limit of not less than One Million Dollars ($1,000,000) each occurrence; and
(V) Umbrella/Excess Liability Insurance of $5,000,000. Promptly following execution of the Agreement, the Vendor shall provide the Member Agency with certificates of insurance evidencing the required coverages and amounts.

The Vendor Partner shall provide certificates of insurance evidencing the required coverages and amounts including certificates of renewal of insurance. Each policy of insurance shall name the Member Agency as a certificate holder, and, with the exception of Worker's Compensation and Employer's Liability insurance, shall name the Member Agency as an additional insured. The additional insured coverage shall be primary and non-contributory to any of the Member Agency's insurance policies and shall apply to both ongoing and completed operations. The Vendor Partner shall pay all deductibles and/or self-insured retentions contained in the policies of insurance required of Vendor Partner. The Vendor Partner shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Member Agency purchases for the Project. The Vendor Partner's proportionate share will derive from the percentage of the associated claim or loss attributable to the negligence of the Vendor Partner or its consultants. The Member Agency does not represent that required coverages or limits are adequate to protect the Vendor Partner.

13. No Limits of Liability

Any provision in in an agreement that limits Vendor Partner's liability, that limits or disclaims warranties, that requires the Member Agency to indemnify, defend and/or hold any party harmless or that imposes a pecuniary obligation on the Member Agency are null and void and of no force or effect. It is understood that a pecuniary obligation of the Member Agency is subject to appropriation and certification by the Member Agency's fiscal officer of available funds.

B. Non-Construction Products and Services:

1. Bus Purchases

For the purchase of school buses, the successful Vendor Partner 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. Prior to commencing any work for a project, the Vendor Partner shall provide 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 Vendor Partner shall contain the applicable rates and such terms and provisions as may be required by law.

4. Vendor Partner shall comply with all applicable licensing requirements, including those of the Ohio Construction Industry Licensing Board.

5. As a condition of receiving final payment for a project, Vendor Partner shall provide unconditional lien waivers and releases from Vendor Partner and all subcontractors; current and reproducible as-built drawings, manufacturers' installation, operating and/or maintenance instructions or requirements, certificates and warranties; any special guarantees or warranties required by the agreement; assignment of all guarantees or warranties from subcontractors, vendors, suppliers or manufacturers; and a list of the names, addresses and telephone numbers of all subcontractors and any other persons providing guarantees and warranties. Vendor Partner shall promptly discharge and shall defend and indemnify the Member Agency from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any subcontractor or supplier of any tier. The Member Agency shall not have the obligation to pay, or to see to the payment of money to a subcontractor or supplier, except as may otherwise be required by law. Vendor Partner warrants that title to all materials and equipment covered by an invoice will pass to Member Agency no later than the time of payment and will be free and clear of liens, claims, security interests, or encumbrances.

D. **Procedures for Processing Orders:**

The OCEPC will keep informed its educational purchasing cooperatives that are members of the OCEPC and other qualified purchasers of contract information via web site and through other marketing strategies. A list of OCEPC educational purchasing cooperative member along with addresses, phones, contacts, etc. will be made available to successful Vendor Partners. After contracts are awarded, Vendor Partners may contact the OCEPC educational purchasing cooperative members and other qualifying purchasers concerning their products and services.

Participating OCEPC educational purchasing cooperative members and other qualified purchasers will submit all purchase orders directly to the Vendor Partner.

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

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

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

All educational purchasing cooperatives that are members of the OCEPC and the members of the educational purchasing cooperatives are eligible to participate and purchase from the awarded AEPA contracts. The educational purchasing cooperatives and their members shall enjoy the same rights and remedies of the OCEPC as the Member Agency, including the performance of by the Vendor Partner of the Vendor Partner's obligations under the AEPA contract.

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Revised and Approved January 11, 2023
Revised and Approved January 10, 2024
Approved January 22, 2025
Revised and Approved September 17, 2025

Oregon, Intermountain Educational Service District (IMESD)

A. Additional Agency Terms and Conditions – all categories

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

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

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

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

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

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

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

The agencies participating on IMESD agreement will need MSDS and labels for certain products defined as hazardous chemicals by the State of Oregon in accordance with ORS 654.025(2) and 656.726(3). The successful bidder has the responsibility to determine such products and to provide MSDS and labels for such products. The MSDS shall be received by the IMESD by or at the time of the initial shipment of such products. These requirements have been determined by the State of Oregon Workers Compensation Department, and published as Oregon Administrative Rules 437, Division 2 Hazard Communication. This document is available from Hazard Communication Coordinator, Accident Prevention Division, State of Oregon, Labor and Industries Building, 350 Winter St. NE, Salem, OR 97310, phone: (503) 378-3272 or (800) 922-2689 any local Accident Prevention Division Office.

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

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

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

amend the contract resulting from state law changes. Vendor- partners will be sent written notification of such changes.

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

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

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

None

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

1. Prevailing wage rates/Davis-Bacon.

As set forth in the conditions below, if this is a public works project (as defined below) Oregon State prevailing wage rates will apply unless exempted. If federal funds are being used, Bidders must take into account the need to comply with the Davis-Bacon Act. If both the federal and state prevailing wages are required the Contractor is required by law to pay the greater of the applicable prevailing wage. Pursuant to ORS 279C.365 no bid will be considered unless the bid contains a statement by the Bidder as a part of its bid that the provision of ORS279C.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 279C840 and if the state and federal prevailing wage laws both apply, Contractor shall pay as wages the great of the applicable prevailing wage. Every Subcontractor shall include the requirements of this section. Additional Requirements of Oregon Law for Public Contracts,

2. Residence status of Bidder

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

3. Licensure

If the contract involves asbestos or asbestos abatement, the contactor 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 and www.access.gpo.gov/davisbacon/or.html. If the state and federal prevailing wage laws both apply, Contractor shall pay as wages the greater of the applicable prevailing wage. Contractor shall comply with all wage reporting and certification requirements of the prevailing wage laws and/or the Davis- Bacon Act, as applicable.

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

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

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

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

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

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

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

(8) If any work supplied pursuant to the contract requires licensing with the Construction Contractors Board or the State

Landscape Contractors Board, Contractor must be so licensed in order to submit a bid for the contract, and Contractor and all relevant Subcontractors must remain licensed during the period required for performance. Contractor certifies that all Subcontractors and workers will be properly licensed to perform the work required by this Contract before their commencement of work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. *Procedure for Agencies Processing Orders under IMESD in Oregon*

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

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

E. *Agencies Allowed to Purchase under IMESD in Oregon*

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

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

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

AEPA Member Agency (State) Terms and Conditions
Pennsylvania, Central Susquehanna Intermediate Unit d/b/a Keystone Purchasing Network

1) Member Agency Terms and Conditions that apply to all categories

a) 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, New York, Delaware and the District of Columbia. 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.

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

i) Vendor will include the approved KPN logo, web address, KPN contract number and toll-free number in all print, electronic mail and other advertising and promotion intended for release to PA, MD, NY, DE and DC excluding national marketing releases.

ii) The KPN logo and associated KPN information shall be of a clearly readable size and in appropriate proportion to other elements in the printed material.

iii) Vendor agrees to provide KPN with a copy or proof sheet of the advertisement or promotion material. Vendor will provide KPN with date of release and name of publication, journal, etc.

iv) Vendor shall place a supplied KPN vendor sign on booths, tables, etc. of any or all exhibits for which the vendor displays/participates at tradeshows, conventions and the like. Vendor will supply in advance scheduled exhibit dates. Vendor agrees to make available at the exhibit KPN supplied brochures or other promotion materials.

v) Vendor agrees to insert the approved KPN logo, web address, KPN contract number and toll-free number on the vendor's web site promoting or a specific KPN landing page and providing a link to the KPN website.

vi) Vendor will supply product catalog information, product description, pricing, etc., in a spreadsheet format as specified by KPN for inclusion on the KPN website.

vii) Vendor agrees to cooperate in developing appropriate website content to promote its products, services and their advantages to KPN members.

viii) Requested materials will be submitted to KPN within 30 days.

c) **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. The KPN administrative fee must be incorporated into the pricing structure. The administrative fee cannot be assessed directly or separately to the purchasing member. 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. KPN reserves the right to accept or reject any pricing update after approval by AEPA.

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

When a KPN member seeks to procure goods and services through a KPN contract using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of

the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR § 200 (sometimes referred to as the "Uniform Guidance," "UG" or new "EDGAR"). All Contractors must agree to comply with those certain requirements applicable to specific purchases using federal grant funds. Purchasing Member must advise Contractor if an order will utilize funds under a federal grant or contract, in which case Section 1.d and all of its subsections (as applicable) shall apply.

i) Contractor Violation or Breach of Contract Terms:

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

ii) Termination for Cause or Convenience:

For any purchase or contract of more than $10,000 made using federal funds, the contractor agrees that the following terms and conditions shall apply:

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

The KPN member may terminate or cancel any purchase order under the Contract with cause pursuant to AEPA General Terms and Conditions.

iii) Equal Employment Opportunity:

Except as otherwise provided under 41 CFR Part 60, all KPN member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR § 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause provided under 41 CFR § 60-1.4(b) is hereby incorporated by reference. The Contractor agrees that such provision applies to any KPN member purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and the Contractor agrees that it shall comply with such provision.

iv) Davis-Bacon Act:

When required by Federal program legislation, the Contractor agrees that, for all KPN member prime construction contracts/purchases more than $2,000, the Contractor shall comply with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR § Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the Contractor must pay wages to laborers and mechanics at a rate not less than the

prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor shall pay wages not less than once a week.

Current Prevailing Wage determinations issued by the Department of Labor are available at http://www.dol.gov.

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

v) Contract Work Hours and Safety Standards Act:

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

vi) Rights to Inventions Made Under a Contract or Agreement:

If the KPN member's federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. The Contractor agrees to comply with the above requirements when applicable, but expressly retains as much of the entire right, title, and interest throughout the world to each subject invention as allowed by applicable law.

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

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

viii) Debarment and Suspension:

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

ix) **Byrd Anti-Lobbying Amendment:**

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) – Bidders who bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. As applicable, Bidders agree to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

x) Procurement of Recovered Materials:

For KPN member's purchases utilizing federal funds, the Contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as the district may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

xi) Profit as a Separate Element of Price:

For purchases using federal funds in excess of the simplified acquisition threshold currently set at $250,000, the KPN member may be required to negotiate profit as a separate element of the price. See, 2 CFR § 200.324(b). When the KPN member makes a reasonable determination that such information is required by law, the Contractor agrees to provide information and negotiate with the KPN member regarding profit as a separate element of the price for a particular purchase. However, the contractor agrees that the total price, including profit, charged by the contractor to the KPN member shall not exceed the awarded pricing.

xii) Bonding Requirements:

Pursuant to 2 CFR § 200.326, KPN requires applicable bid security, performance, and payment bonds on construction projects. As such, for construction or facility improvement

contracts or subcontracts exceeding the simplified acquisition threshold currently set at $250,000, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the KPN member, provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(1) A bid guarantee from each Bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Bidder will, upon acceptance of the bid, execute such contractual documents as required within the time specified.

(2) A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

(3) A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

The bonding requirements set forth above are in addition to and not in limitation of any bonding requirements under applicable state law.

xiii) Not-To-Exceed Price:

If requested by the KPN Member, on any contract based on time and materials, the Contractor shall set a ceiling price that Contractor exceeds at its own risk pursuant to 2 CFR § 200.318(j).

xiv) Contracting with Historically Underutilized Businesses:

When possible, the Contractor should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of labor's list) are considered as set forth below. Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

(3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

(4) Establishing delivery schedules (for example the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

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

xv) Equivalent Products:

(1) **Comparable (Alternate) Products:** Where the specification states a named product followed by "or equal," an alternate or comparable product may be bid; however, the burden is on the Bidder to provide evidence that a proposed alternate meets or exceeds the KPN specified named product and its attributes and that it provides an equal or better warranty. If comparable product(s) are proposed in the bid, the Bidder must provide a detailed comparison for each to include a list of all the significant qualities of the product named in the Specification and those of the proposed alternate product(s). Significant qualities include attributes such as performance, weight, size, durability, visual effect and specific features and requirements indicated. KPN reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.

(2) **Substitutions for Cause:** A Contractor (awarded bidder) may only propose substitutions pursuant to a purchase order submitted by a purchasing KPN member in the event of unavailability of product, regulatory changes, or unavailability of required warranty terms. The contractor must notify both KPN and the purchasing member of all substitutions for cause with full documentation at least thirty (30) working days before the commencement of work. All documentation must demonstrate that the proposed substitution is equal to or better than the specified product on all physical and in-service attributes and warranty provisions and can be implemented by subcontractors as necessary without disruption to the project. The purchasing member must approve all substitutions. The KPN member reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.

(3) **Substitutions for Convenience:** Bidders may not propose substitutions for convenience.

xvi) Preference for American Made Materials:

Contractor should to the greatest extent practicable and consistent with the law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

(1) "Produced in the United States" means that all manufacturing processes, from the initial melting stage through the application of coatings, occur in the United States for iron and steel products.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(3) Federal agencies providing federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

xvii) Build America, Buy America Act:

Where applicable, the Contractor agrees that unless a domestic preference requirement is waived by the United States Department of Education or other applicable agency, for infrastructure projects or activities funded by Federal grants or funds: (i) all iron and steel used in the infrastructure project or activity which is subject to the contract are produced in the United States; (ii) all manufactured products used in the infrastructure project or activity which is subject to the contract are produced in the United States; and (iii) all construction materials used in the infrastructure project or activity are manufactured in the United States. Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52. Upon request, the Contractor shall provide, and shall cause its suppliers, manufacturers, and subcontractors to provide a certificate(s), on a form reasonably acceptable to the CSIU-KPN and the applicable member agency, certifying compliance with the sourcing requirements of the Build America, Buy America Act, Pub. L. No. 117-58, for the applicable infrastructure project or activity.

xviii) General Compliance and Cooperation with KPN member:

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

For example, the KPN member must perform a cost or price analysis in connection with every

procurement transaction, including contract modifications, in excess of $250,000. Such a cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price without looking at the individual cost elements. Thus, the Contractor agrees to make a good-faith effort to work with the KPN member to complete such a cost or price analysis to comply with the law.

e) **Historically Underutilized Businesses (HUBs).** KPN requests any small business, minority business, women's business enterprise, veteran-owned business or labor surplus area firm to identify their status as such so that it can be made known to interested KPN Members.

f) **Fair Labor Standards Act.** By submitting a bid, the Bidder certifies for itself, that to the best of its knowledge and belief, Bidder and all its subcontractors, properly classify employees in a manner consistent with the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8 (FLSA), and that if awarded a contract, Contractor shall, and shall require its subcontractors, to continue to classify employees in a manner consistent with the FLSA. A Contractor must inform KPN if it or any of its subcontractors is found or determined to be classifying employees in a manner inconsistent with the FLSA. All notices must be in writing and received by KPN within 15 days of said finding/determination.

2) Additional Member Agency Terms and Conditions for <u>Non-Construction Products and Services</u>

No additional terms and conditions for non-construction product and services are included.

3) Additional Member Agency Terms and Conditions for <u>Construction Products and Services</u>

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

i) **Performance and Labor Material Payment Bonds**. The contractor must provide a performance bond and a labor and material payment bond, each in the amount of 100% of the contract price, before award of the contract (Sections 756 and 757 of the Commonwealth of Pennsylvania Public School Code of 1949, as amended, and the Public Works Contractors Bond Law of 1967).

ii) **Discrimination Prohibited**. According to 62 PA CSA 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 will by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

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

(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 and conditions of that portion of the contracts.

iii) **Human Relations Act**. The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (PL 744) (43 PS § 951 et. seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. The contractor agrees to comply with the provisions of this Act as amended that are made part of this specification. (CF: 16 PA Code 49 §101).

iv) **Competent Workmen Act**. Section 7-752 of the Commonwealth of Pennsylvania Public

School Code of 1949 requires that when the total estimated cost of a project is $25,000 or less, no person may be employed to do work under such a contract except competent first class workmen and mechanics. No workmen are regarded as competent first class, within the meaning of this Act, except those who are duly skilled in their respective branches of labor, and who are to be paid not less than such rates of wages and for such hours of work as are established and current rates of wages paid for such hours by employers of organized labor in performance of similar work in the district where work is being done.

v) **Pennsylvania "Prevailing Wage" Rates**. For projects for which the total estimated cost is greater than $25,000, paid for in whole or in part out of funds of a public body, except for maintenance work or work performed under a rehabilitation program or manpower training program, "Prevailing Wages" must be specified. Further information on the implementation of the act, definition of maintenance work and prevailing wage rates is available from the Pennsylvania Department of Labor and Industry, (800) 932-0665 or (717) 787-4763. When applicable, the federal Davis-Bacon Wage Rates schedule for federally assisted projects applies. This regulation and the general Pennsylvania prevailing wage rates (Act 442 of 1961, PL 987, as amended) as determined by the Secretary of Labor and Industry, which must be paid for each craft or classification of all workers needed to perform the contract during the anticipated term therefore in the locality in which the public work is performed, are made part of this specification.

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

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

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

(4) The contractor must insert in each of the 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 will be followed.

(6) All workmen employed or working on the work are to be paid unconditionally regardless of whether any contractual relationship exists or the contractual relationship which may be alleged to exist between any contractor, subcontractor and workmen, not less than once a week without deductions or rebate, on any account, either directly or indirectly, except authorized deductions, the full amount due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in this contract, the act or the regulations prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to the workmen of the work.

(7) The contractor and each subcontractor must post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:

(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 workers that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor and/or subcontractor are not complying with the Act or the regulations in any manner whatsoever, they may file a protest with the Secretary within three (3) months of the date of the occurrence, objecting to the payment to the contractor to the extent of the amount or amounts due or to become due to them as wages for work performed on the project. Any workmen paid less than the rate specified in the contract have a civil right of action for the difference between the wage paid and wages stipulated in the contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.

(f) The contractor and all subcontractors must keep an accurate record showing the name, craft and/or classification, number of hours worked per day, the actual hourly rate of wage paid (including employee benefits) to each worker employed in connection with the work and such record must include any deductions from each worker. The record must be preserved for two (2) years from the date of payment and is open at all reasonable hours to the inspection of the owner and the Secretary or the Secretary's authorized representative.

(g) Apprentices are limited to such numbers as in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the rules and regulations issued pursuant thereto will be employed on the work. Any workers using the tools of a craft who do not qualify as apprentices within the provisions of this submission must be paid the rate predetermined for journeymen in that particular craft and/or classification.

(h) Wages will be paid without deductions except authorized deductions. Employers not party to a contract requiring contributions for employee benefits, which the Secretary has determined to be included in the prevailing minimum wage rate must pay the monetary equivalent thereof to the worker.

(i) Payment of compensation to workers for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result will be deemed a violation of the Act and the regulations, regardless of the average hourly earnings resulting there from.

(j) Each contract and each subcontractor must file a statement each week and a final statement at the conclusion of the work on the contract with the owner, under oath, and in form satisfactory to the Secretary, prescribed by the regulations, or if any wages remain unpaid, to the amount of wages due and owing to each worker respectively.

(k) The provision of the Act and the regulations are incorporated by reference in the contract.

vi) **Standard of Quality**. The various materials and products identified in the specifications by name or description are stated to establish a standard of quality and of cost for bid or proposal purposes.

(1) Named Products: Items identified by the manufacturer's name. The specification may also include make, model number or other designation shown or listed in the

manufacturer's product literature current at the time of the bid. KPN reserves the right to require that a single manufacturer or source be provided and that no comparable products (alternates) or substitutions may be accepted.

(2) Comparable (Alternate) Products: Where the specification states a named product followed by "or equal," an alternate or comparable product may be bid; however, the burden is on the bidder to provide evidence that a proposed alternate meets or exceeds the KPN specified named product and its attributes and that it provides an equal or better warranty. If comparable product(s) are proposed in the bid, the bidder must provide a detailed comparison for each to include a list of all the significant qualities of the product named in the Specification and those of the proposed alternate product(s). Significant qualities include attributes such as performance, weight, size, durability, visual effect and specific features and requirements indicated. KPN reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.

(3) Substitutions for Cause: A contractor (awarded bidder) may only propose substitutions pursuant to a purchase order submitted by a purchasing KPN member in the event of unavailability of product, regulatory changes or unavailability of required warranty terms. The contractor must notify both KPN and the purchasing member of all substitutions for cause with full documentation at least thirty (30) working days in advance of the commencement of work. All documentation must demonstrate that the proposed substitution is equal to or better than the specified product on all physical and in-service attributes and warranty provisions and can be implemented by subcontractors as necessary without disruption to the project. The purchasing member must approve all substitutions.

(4) Substitutions for Convenience: Bidders may not propose substitutions for convenience.

vii) **Provisions for the Use of Steel and Steel Products Made in the United States**. In accordance with Act 3 of the 1978 General Assembly of e Commonwealth of Pennsylvania, if any steel or steel products are to be used or supplied in the performance of the contract, only those produced in the United States as defined therein will be used or supplied in the performance of the contract or any subcontracts there under in accordance with Act 161 of 1982, and cast iron projects must also be included and produced in the United States. Act 141 of 1984 further defines "steel products" to include machinery and equipment. The act also provides clarifications and penalties.

viii) **Prohibition on Cash Allowances**. Cash allowances are prohibited.

ix) **Time(s) of Completion of the Project**. Completion dates for projects must be stated in terms of actual date(s) or the number of calendar working days after notice to proceed with the work not to exceed one hundred eighty (180) calendar days unless otherwise agreed upon by member.

x) **Owner's Compliance in Retaining Payments**. Unless a member stipulates otherwise, payment retentions and progress payments are as follows: Ten percent (10%) of all contract payments are retained by the member as insurance of proper performance of the prime contractor. The prime contractor agrees to identify the amount of the invoices sent to the member agencies, then report usage of the contract and sales volume to KPN. When fifty percent (50%) of the work is completed, as determined by the member agency, one–half (1/2) of the amount retained will be paid to the prime contractor, if the prime contractor requests payment, provided that the prime contractor is making satisfactory progress and there is no specific cause for greater withholding. After fifty percent (50%) of the work is completed, not more than five percent (5%) of the amount of any subsequent progressive payments may be retained, unless the governing board of the member agency determines that satisfactory progress is not being made, at which point ten percent (10%) retention may

be reinstated. If the member and the prime contractor agree to a substitute security, the agreement must fully comply with Pennsylvania law. If the substitute security is agreed to, the prime contractor must provide KPN and the member with a signed and acknowledged waiver of any right or power of the obligor to set off any claim against KPN, the member, or the prime contractor, in relationship to the security assigned. The prime contractor, as authorized above, will pay any interest due a subcontractor or material supplier. A subcontractor to the prime contractor may request, in writing, that the subcontractor be notified within five (5) days of payment of each progress payment made to the prime contractor. It is the responsibility of the prime contractor to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract. Once all bonds are in place, the prime contractor and the authored agent of purchasing KPN member will agree in writing upon a schedule of payments based on identifiable milestones. Retention of payments must be done in accord with 62 PA CSA 3921.

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

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

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

xii) **Background Checks**. Pursuant to Section 1-111 of the Commonwealth of Pennsylvania Public School Code and Sections 6354 – 6358 of the Public Welfare Code, known as Acts 33, 34, 114 and 151, and any such sections that will be appended to such in the future, all persons hired to work on the premises of public or private schools or agencies serving children, including independent contractors and their employees, are required to obtain background checks prior to entering the premises to perform the work. The background

checks consist of the State Police Criminal History Record Information, the Pennsylvania Child Abuse History Clearance Form and the Federal Criminal History Record (FBI electronic fingerprinting). Contractors are required to perform the following measures:

(1) Assume the costs for the background checks.

(2) Identify all employees working on the premises of the project and present the original official documents containing background check information to the superintendent or superintendent's designee prior to the beginning of work. The school must make photocopies of the background checks, notate each with the date on which the original document was inspected and the name of the administrator who viewed the original. Such copies will be retained in the purchasing KPN school member's records, with the originals returned to the contractor.

(3) If new employees are added to the workforce during the course of the work, the contractor must follow the same procedures set forth above, §§ (1) and (2) prior to the new employee(s) working on the premises.

(4) The school entity must notify the contractor in writing if the decision to reject the contractor or any of the contractor's employees is based in whole or part on information revealed in the background checks.

(5) The purchasing KPN school member must follow the regulations promulgated by the State Board of Education concerning the confidentiality of the information contained in the background checks obtained pursuant to these laws and regulations.

(6) Upon written notice from the purchasing KPN school member, contractors must remove all persons declared unfit from the premises and project. The school district's right to declare such persons unfit is not limited to the required exclusion of persons from school property as set forth in Section 1-111 of the Pennsylvania School Code and/or Act 151 of 1994.

(7) The following applies to all prevailing wage projects:

E-Verify. The successful Bidder and its subcontractors (as such term is defined in the act) are required to comply with the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637). All Bidders shall submit with their Bid a Public Works Employment Verification Form (the "Verification Form") to CSIU - KPN in the form published by the Commonwealth of Pennsylvania, Department of General Services. Per the act, the Verification Form is to be obtained from the Secretary of the Pennsylvania Department of General Services. The Verification Form is presently available on the Department of General Services website. Per the act, the Verification Form shall include a certification that the information in the statement is true and correct and that the individual signing the statement understands that the submission of false or misleading information in connection with the verification shall subject the individual and the public works contactor or subcontractor, as the case may be, to sanctions provided by law; and the verification form shall be signed by a representative of the public works contractor or subcontractor, as applicable, who has sufficient knowledge and authority to make the representations and certifications contained in the statement. Prior to award of a contract or purchase order by a Member Agency to the successful Bidder for a particular project, the successful Bidder shall submit to the Member Agency a Verification Form. Per the act, the successful Bidder's subcontractors shall provide to the Member Agency, and successful Bidder shall cause its subcontractors to provide to the Member Agency, their Verification Forms prior to commencing work on the Member Agency's project.

Bidders are required to submit the E-Verify form along with any other state required forms to members before commencing work on any project.

xiii) **Prevention of Environmental Pollution**. Section 3301 of the Commonwealth of Pennsylvania Procurement Code (Chapter 33 enacted May 15, 1998) requires that all IFBs and RFPs for construction projects issued by any governmental agencies require adherence to all applicable provisions of federal and state statutes, rules and regulations addressing prevention of environmental pollution and preservation of public natural resources that affect the project.

xiv) **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.

xv) **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.

4) 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 name and address) 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 reduce the administrative fee at any time during the duration of the contract and any renewal period or to modify the administrative fee based on volume of purchase. If the administrative fee is reduced due to the size of the project the vendor will show the adjustment on the quote. The vendor will also compile a quarterly report showing all purchases made by KPN members under this contract. The vendor will make all administrative fee payments to KPN by the 20th of the succeeding month of each 3-month calendar quarter after they have received payment from the member agency and all checks are to be made payable to the Central Susquehanna Intermediate Unit (CSIU) and sent to Keystone Purchasing Network, 90 Lawton Lane, Milton, PA 17847, and Attention: Mark C. Carollo. All reporting of purchases will be made using the provided Excel spreadsheet and will be broken down by entity by state and will show Order Date, Agency Name, Street Address, City, State, Zip, PO #, and Total Price. Optionally, Item #, Item Description, Manufacturer #, Qty, Extended Advertised Price can be included.

5) Agencies Allowed to Purchase under the Member Agency

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

Delaware, District of Columbia and other Northeast & Mid-Atlantic states. Vendors may choose to offer KPN in other non-AEPA member states where cooperative purchasing laws allow.

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

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

25. South Carolina: Carolinas Alliance 4 Innovation (CA4I) dba Carolina BUY

1. **General Overview**
   CA4I is a 501.c.6, non-profit public benefit corporation whose mission is to promote innovative solutions for saving money, time and hassles in education and government for the purpose of community and economic development.
   a. CA4I does business as "Carolina BUY" in both North and South Carolina
2. **Eligible Entities**
   a. CA4I can serve all eligible members, including City, County, and State Government Agencies and Special Purpose Districts; K-12 Public and Private Schools; Colleges; Public Libraries; and Non-Profit Organizations.
3. **General Terms and Conditions that apply in all categories.**
   a. **Governing Law:** The laws of the State of South Carolina govern all contracts resulting from this solicitation. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
   b. South Carolina Law Codes: Cooperative purchasing authorized. 2013 South Carolina Code of Laws • Title 11 - Public Finance CHAPTER 35 - SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE 11-35-4810. Cooperative purchasing authorized. Universal Citation: SC Code § 11-354810 (2013)
   c. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Greenville County, South Carolina. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Greenville County, South Carolina.
   d. Bids must comply with the public procurement laws of North Carolina (NCGS §143-129, §143-131, §143-48) and South Carolina (SC Code §11-35-10 et seq.). By submitting a bid, suppliers certify compliance with all applicable state requirements, including nondiscrimination (NCGS §143-422.2; SC Code §1-13-80), data privacy and breach notification (NCGS §75-65; SC Code §39-1-90), and student data protections where applicable (SC Code §59-1-490).

4. CarolinaBUY reserves the right to reject any or all bids, waive informalities, and award in the best interest of participating public agencies. Awarded contracts may be used cooperatively by eligible public agencies in North Carolina and South Carolina.

   a. **Award:** Upon acceptance and approval of the Vendor's offer by AEPA, CA4I will independently consider the recommendation based on the value of the potential contract for its participating agencies and the Vendor commitment to emphasize AEPA established discounts and Carolina BUY local advocacy in making sales proposals. In the event of a Vendor award, CA4I will inform its members of the award and contract by posting information on its website, in newsletters, and announcements to affinity partners along with contract instructions and ordering process.
   b. **Processing Orders:** When an eligible educational, governmental, or nonprofit member identifies a desired product or service, the member and the vendor may negotiate with each other to establish a description of items and/or services. The vendor shall quote a price to the member, in writing, using AEPA established discounts and including the two percent (2%) administrative payment or payment in the quoted price. The administrative payment shall be based upon the total cost of goods and/or services including installation costs. The administrative payment shall not be listed as a separate line item on the quote. When a member decides to purchase through the CA4I-AEPA contract, the member issues the

purchase order directly to the vendor. The purchase order must include the total invoiced cost, based on

i. The total cost of goods, service, and installation, including the AEPA established discounts and a 2% administrative payment.
ii. Notification will be made to the vendor in the event the purchase order is not in compliance with the contract and adjustments will be made at that time. CA4I and the Vendor will mutually resolve any issues concerning past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by CA4I otherwise. All sales and transactions may continue without delay or in anticipation of the CPC purchase order verification.
iii. Once all the items and services on the purchase order have been delivered to the member completely and satisfactorily, the Vendor then files a copy of the final invoice, which is available to CA4I by request in support of the quarterly sales summary.
iv. The Vendor makes all deliveries and installations of products and services. CA4I does not warehouse items or provide installation services.
v. This administrative payment is to be paid by the vendor to CA4I, quarterly, within twenty working days after the end of each fiscal quarter.
    - Payment preference is ACH or ETF
    - Physical Payments to the following address
        a. CA4I, P O Box 293, Greenville, SC 29602
vi. The AEPA vendor shall also submit to CA4I a sales report, in Excel format, listing the following information:
    - Name of purchasing agency
    - Address of purchasing agency (city, state, zip code)
    - Date of purchase
    - Invoice number
    - Amount of purchase
    - Administrative payment generated by sales.
    - Savings generated by sales.

This report shall include all sales made and payments received by the vendor in the said quarter. Combined sales report for both Carolinas is preferred.

The sales report shall be emailed to the following:

Fred Payne, Chairman: fred@carolinabuy.com
Nita Werner, Executive Director: nwerner@carolinabuy.com

Non Disclosure

The Contractor shall keep all non public CarolinaBUY and Participating Agency information confidential and use it only for performance of this Contract. Contractor personnel may not use or disclose such information for three (3) years after leaving the Contractor. Upon Contract expiration or termination, the Contractor shall immediately cease all use of CarolinaBUY, its platform, its members, and all Confidential Information, and shall return or destroy all such information.

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

Terms and Conditions

Assignment

The Contractor shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of TexBuy. Any attempted sale, assignment, transfer, or conveyance of any part of the contract except in compliance with this section is void and ineffective.

Binding Agreement

This proposal, when properly accepted by TexBuy, shall constitute a contract equally binding between the successful Offeror and TexBuy. No different or additional terms shall become a part of this contract with the exception of a Change Order issued by TexBuy or an amendment agreed to by the parties.

Supplemental Agreements

An awarded TexBuy Contractor and TexBuy Member may enter into a separate supplemental agreement for the purpose of quantifying specific goods and services for a particular project beyond those specified in this solicitation. Such supplemental agreement shall be exclusively between the Member and the Contractor. TexBuy, its agents, Members and employees shall not be made party to any claim for breach of said agreement.

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.

School District awards

School district awards shall not consider whether a Vendor is a member of or has another relationship with any organization and bid specifications (and subsequent contracts) shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization in accordance with Texas Education Code §44.043.

Commitment of Current Revenues Only

Any contract resulting from an award shall be a commitment of current revenue only and shall allow the participating governmental agency the continuing right to terminate at the expiration of each budget period during the term of the contract shall be conditioned on a best efforts attempt by the agency's governing body to obtain and appropriate funds for payment of the contract, or shall contain both the continuing right to terminate and the best efforts conditions. Texas Local Government Code 271.903.

Termination

The contract shall remain in effect until contract expires or is terminated by either party with a thirty (30) day written notice prior to any cancellation, except for breach of contract. Notice of termination shall be transmitted via certified mail to the other party's designated representative. Notification must

state reason for cancellation. TexBuy reserves the right to award cancelled contract to the next responsible low Offeror or to purchase the service elsewhere as it deems most advantageous to TexBuy.

TexBuy may terminate a contract, in whole or in part, whenever TexBuy determines that such termination is in the best interest of TexBuy, without showing cause, upon giving written notice to the Contractor. The Contractor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

Enforcement

TexBuy reserves the right to enforce the performance of this contract in any manner prescribed by law and deemed to be in the best interest of TexBuy in the event of breach or default of this contract. TexBuy reserves the right to terminate the contract immediately in the event the Contractor fails to meet schedules or otherwise perform in accordance with these specifications.

Defective Products

The ordering TexBuy Member shall have the authority to disapprove or reject defective products. If required by the ordering TexBuy Member, Contractor shall promptly, as directed, correct all defective products and shall bear all direct, indirect and consequential costs of such correction.

Audit

TexBuy reserves the right to audit the records and performance of Contractor during the term of the contract and for three years thereafter.

Governing Law and Severability

This contract shall be governed by the laws of the State of Texas. Should any portion of this contract be in conflict with the laws of the State of Texas, the State laws shall invalidate only that portion. The remaining portion of the contract shall remain in effect.

Freight

Freight will be F.O.B. Destination/Inside Delivery/Freight Prepaid and Added. Contractor shall be responsible for all claims against the carrier for all freight and/or drayage damage. The ordering TexBuy Member assumes no liability for goods delivered in damaged or unacceptable condition. Contractor shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by ordering TexBuy Member of damage. Shipments shall be made to the specific locations described in the ordering TexBuy Member's purchase order. If the Contractor is required to deliver to a specified room, the Contractor shall remove all packing and debris which results from set-up and installation.

Payment

Payment will be made in accordance with Texas Government Code, Subchapter B, Payments and Interest, Chapter 2251.021 (b). Terms are to be 30 days net although Contractor may in addition offer early payment discounts for use at the ordering Member's discretion.

TexBuy Members are by statute tax-exempt public institutions. Therefore, the proposal price shall not include sales taxes, nor shall sales taxes be calculated on the invoices.

Indemnification

CONTRACTOR SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS REGION 16 ESC,TEXBUY, AND TEXBUY MEMBERS, AND ALL ITS OFFICERS, AGENTS AND EMPLOYEES WHO ARE PARTICIPATING IN THIS CONTRACT FROM ALL SUITS, CLAIMS, ACTIONS, DAMAGES, DEMANDS OR OTHER DEMANDS OF ANY CHARACTER, NAME AND DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS, OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OR FAULT OF THE CONTRACTOR, OR OF ANY AGENT, EMPLOYEE, SUBCONTRACTOR OR SUPPLIER IN THE EXECUTION OF, OR PERFORMANCE UNDER, ANY CONTRACT WHICH MAY RESULT FROM AWARD. CONTRACTOR SHALL PAY ANY JUDGMENT WITH COST WHICH MAY BE OBTAINED AGAINST TEXBUY AND PARTICIPATING ENTITIES GROWING OUT OF SUCH INJURY OR DAMAGES.

Escalation Clause

Pricing shall remain consistent during the initial term of the contract for listed items. For percent discount contracts, the percentage discounts shall remain consistent through the entire term of the contract. For unit price contracts, TexBuy may consider a unit price redetermination no earlier than ninety (90) days after award, thereafter once during each term of the contract, and at the anniversary date of the contract. All requests for price redetermination shall be in writing to TexBuy's Director of Purchasing and shall include documents supporting price redetermination such as Manufacturer's direct cost, postage rates, Railroad Commission rates, Federal/State minimum wage law, Federal/State unemployment taxes, F.I.C.A., Insurance Coverage Rates, etc. The Offeror's past performance of honoring contracts at the offered price will be an important consideration in the evaluation of

proposals. TexBuy reserves the right to accept or reject any/all of the price redetermination as it deems to be in the best interest of TexBuy. All other terms and conditions remain the same for the duration of the contract. Price escalations are only accepted upon issue of an executed contract Change Order by TexBuy.

If during the life of the contract, the Contractor's net prices to its customers for the same product(s) and/or services shall be reduced below the contracted price, it is understood and agreed that TexBuy and TexBuy Members shall receive such price reduction.

Discontinuance & Obsolescence

Models proposed may be subject to change due to discontinuance/obsolescence without notice. Contractor shall immediately notify TexBuy in writing when products are discontinued. Failure to make such notification shall result in the Contractor providing the upgraded or comparable model at contracted price as approved by TexBuy.

Catalog Price List

Contractors shall provide evidence of manufacturer's list price (i.e. a current catalog, line sheet, etc.) in electronic format to TexBuy at the beginning of contract and as new lists become available. Contract price lists will be made available by TexBuy to all its Members upon contract execution. Should Contractor fail to provide an updated price list prior to receiving a purchase order from TexBuy, the Contractor shall be required to provide the item at the price listed in the previous price list submitted to TexBuy.

Service Fees

Awarded Contractor agrees to pay TexBuy the service fees specified below. Unless otherwise expressly stated, the service fee is included in the awarded pricing provided in the submittal. The service fee is due and payable to Region 16 ESC in Amarillo, Texas, promptly upon completion of the quarterly service fee report.

The service fees are as follows:

- For all items, the service fee due to Region 16 ESC will be up to two percent (2%) of the gross sales amount invoiced to the Member from the TexBuy contract.
- The Contractor will submit a quarterly sales report to TexBuy's Director of Purchasing, via email, to document the sales made to all Members through the TexBuy awarded contract.
- TexBuy does not charge any fees to participating government agencies.

Contract

Any award from this solicitation does not become a contract unless and until the proposal is accepted by Region 16 ESC and executed by its authorized representative. Notice to the successful Offeror will be made through the issuance of a written notice of award and final execution of the contract by Region 16 ESC, whereupon the Contract becomes binding and enforceable. Contracts for awarded proposals will not be executed until the awarded Offeror submits all requested contract price sheets or catalogs to TexBuy for distribution to its Members. Contractor may submit subsequent changes to the catalog price sheets when they become available. Catalog price increases are not valid until submitted to TexBuy. The Contract is then utilized by a TexBuy Member by the Member issuing a signed purchase order for the awarded products or services. Contractor must honor all purchase orders issued by TexBuy Members during the Contract term in accordance with these Terms and Conditions.

Force Majeure

Force Majeure means a delay encountered by a party in the performance of its obligations under this agreement, which is caused by an event beyond the reasonable control of that party. Without limiting the generality of the foregoing, "Force Majeure" shall include but not be restricted to the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities; fires, floods, pandemics, epidemics or serious accidents; unusually severe weather conditions; strikes, lockouts, or other labor disputes; and defaults by subcontractors. In the event of a Force Majeure, the affected party shall not be deemed to have violated its obligations under this agreement, and the time for performance of any obligations of that party shall be extended by a period of time necessary to overcome the effects of the Force Majeure, provided that the foregoing shall not prevent this

agreement from terminating in accordance with the termination provisions. If any event constituting a Force Majeure occurs, the affected party shall notify the other parties in writing, within twenty-four (24) hours, and disclose the estimated length of delay, and cause of the delay.

Award Protest

Region 16 ESC/TexBuy's decision on awards is final. Any protest of a solicitation or its award must be received within seven (7) days after notice of the award is posted on TexBuy's website.

Venue

This contract is governed by the laws of the State of Texas, including the Uniform Commercial Code as adopted in the State of Texas. Venue for any litigation concerning TexBuy shall be in Amarillo, Randall County, Texas, and venue for any litigation between a TexBuy Member and Contractor arising under this contract shall be in the county of the administration office of the Member.

Fiscal Funding

State of Texas statutes prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. A TexBuy Member reserves the right to rescind or terminate a purchase order or other agreement to purchase goods or services under the contract at the end of the Member's fiscal year if it is determined that funding is not available to extend the agreement.

State of Texas Franchise Tax

By signing the proposal, the Vendor certifies that the Vendor is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.

Agricultural products

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 it the state of Texas are given a preference in accordance with Texas Education Code §44.042.

Recycled Materials

A participating governmental entity shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than ten percent greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules. 30 Texas Administrative Code 328.203.

Contractor verifies by its signature that it is not an abortion provider or an affiliate of abortion providers.

Felony Conviction Notice

(TexBuy Vendors will be required to sign a standard form required by the State of Texas): Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.

Debarment

Any bidder or any principals of a bidding company that are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State Government entity shall be considered ineligible to be awarded a contract by TexBuy.

Certificate of Interested Parties

Pursuant to Section 2252.908 of the Government Code, a governmental entity or state agency may not enter into

certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least $1 million or (3) is for services that would require a person to register as a lobbyist under Chapter 305 of the Government Code. Information regarding the Certificate and online filing process is available at: https://www.ethics.state.tx.us/filinginfo/1295/.

Certification of Residency

(TexBuy Contractors will be required to sign a standard form required of its contractors.) In part, this law reads as follows:

- **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."
- **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."

Minority and Women Business Enterprise (MWBE) participation

It is the policy of some TexBuy participants to involve MWBE Vendors in the purchase of goods and services. Vendors shall indicate on the proposal form whether or not they are an MWBE.

EDGAR Certification (Education Department General Administrative Regulations)

In accordance with Federal Regulations under 2 CFR § 200.318(c)(1) – When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (also known as the "Uniform Guidance" or "EDGAR''). All Vendors submitting proposals must complete this EDGAR Certification Form regarding the Vendor's willingness and ability to comply with certain requirements which may be applicable to specific TexBuy member purchases using federal funds. This completed form will be made available to TexBuy members for their use while considering their purchasing options when using federal funds. Members may also require Vendors to enter into ancillary agreements, in addition to the TexBuy's general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

Antitrust Certification

In accordance with Texas Government Code 2155.005, the state or a state agency shall not enter into contract with a Vendor that has violated any provision of the Texas Antitrust laws referenced in Texas Business & Commerce Code Chapter 15 or any federal antitrust laws.

Pursuant to Texas Government Code Chapter 2271

As amended, if any proposed contract is valued at $100,000 or more and if the Vendor has at least ten (10) full time employees, then Vendor by its submission of a proposal represents and warrants that Vendor does not boycott Israel and will not boycott Israel during the term of any applicable agreement. This section does not apply to a sole proprietorship.

Criminal History and Background Checks

In accordance with Texas Education Code Chapter 22 Subchapter C, shall be required should any employee or agent of an awarded Vendor have "continuing duties related to the contracted services" with a school district and that employee or agent will have "direct contact with students" (as those terms are defined in 19 Texas Administrative Code §153.1101). Vendor shall provide all necessary information to the school district in order for the school district to perform a criminal history and background check when applicable. For additional information regarding the process, see https://tea.texas.gov/texas-educators/investigations/fingerprinting/requirements-for-school-district-contrac tors.

Pursuant to Texas Government Code 2274

If any proposed contract is valued at $100,000 or more and if Vendor has at least ten (10) full-time employees, then Vendor by its submission of a proposal represents and warrants that Vendor does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of any applicable agreement. This provision does not apply to sole proprietorships.

Pursuant to Texas Government Code Chapters 809

If any proposed contract is valued at $100,000 or more and if Vendor has at least ten (10) full time employees, then Vendor by its submission of a proposal represents and warrants that vendor does not boycott energy companies and will not boycott energy companies during the term of any applicable agreement. This provision does not apply to sole proprietorships.

Conflict of Interest

In accordance with Texas Local Government Code Chapter 176, Vendors who have a business relationship as defined by Section 176.001(1-a) with a local government entity and meet the requirements under section 176.006(a) must file a Conflict-of-Interest Questionnaire (Form CIQ) with the local government entity when:

a) The Vendor has entered into a contract with the local government entity, or the local government entity is considering entering into a contract with the Vendor.
b) AND the Vendor provides certain income or gifts to a Local Government Officer (LGO) or first-degree family members as defined in the Texas Government Code
c) OR a family relationship exists between the LGO and the Vendor's employees or agents as defined in the Texas Government Code Chapter 176.

A sample Form CIQ is available here: https://www.ethics.state.tx.us/forms/conflict/.

Bid Security

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.

Successful Bidder's Security

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.

Performance / Payment Bonds

A TexBuy Member may require a performance bond or a payment bond from a Contractor as applicable to the contract and as may be required by law. The cost of such bond shall be in addition to the awarded contract price. Bonds, when required by Texas Government Code Chapter 2253, shall be furnished by the successful contractor in an amount equal to one hundred per (100%) of the total amount of the contract sum, 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.

Prevailing Wage Rate

No less than the Prevailing Wage rates must be paid to any contractors or subcontractors or their employees or agents in performing any work under the awarded contract. Texas Government Code Chapter 2258. The prevailing wage rates are determined by the participating agency. If federal funds are used the prevailing wage rate will be as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.) and its subsequent amendments.

Architect/Engineers

No architectural or engineering services shall be procured by TexBuy on behalf of any Texas governmental entities, see Texas Government Code 791.011(h). A Texas school district may not enter into a contract to purchase construction-related goods or services through TexBuy in an amount greater than $50,000 unless a

person designated by the school district certifies in writing that: (1) The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Texas Occupation Code Chapter 1001 or 1051; or (2) The plans and specifications required under Texas Occupation Code Chapters 1001 and 1051 have been prepared.

By submitting a proposal, the Vendor certifies as follows: under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated, and payment withheld if this certification is inaccurate.

Insurance

The Contractor shall file with the Participating Agency's designee, Insurance Certificates, as described herein, evidencing the minimum coverage required below or the minimum coverage required by the Participating Agency, and shall be supplied within ten (10) calendar days after receipt of the written "Notice of Award". In no instance shall the contractor begin work prior to the filing of the insurance requirements. Failure to do so shall be grounds to void the contract. The Participating Agency's designee shall be given ten (10) days' notice prior to the cancellation or change of any of the required insurance coverage. The Participating Agency shall be named as Certificate Holder.

a. Contractor's Liability Insurance: Produce and maintain in force the following kinds of insurance by companies licensed to do business in Texas and acceptable to the Participating Agency. Minimum Limits of Liability are stated.

1. 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 o Policy Limit—$500,000.00

2. Commercial General Liability - Combined Limits of Bodily and Personal Injury and Property Damage:

- Each Occurrence—$500,000.00
- General Aggregate—$500,000.00

3. Automobile Liability - Including non-ownership, hired and owned vehicle coverage:

- Bodily Damage Each Person—$250,000.00

o Each Occurrence—$500,000.00
o Property Damage Each Occurrence—$250,000.00

b. Umbrella or Excess Comprehensive Liability: excess over the above liability policies in the amount of $2,000,000.00 each occurrence. (Combined Limit)

Laws and Regulations

All equipment and services furnished under this contract shall comply with applicable federal, state, and local laws, ordinances and regulations. The Contractor shall give all notices and obtain all necessary permits. Without obtaining permits or giving such notice to the authorized ordering TexBuy Member representative, the Contractor shall bear all costs arising from such failure to give notice.

Procedure for Processing Orders

1. Purchase orders are issued by participating agencies to the Contractor.

2. "Automated contracts" may be negotiated with TexBuy that provide for purchase orders to be sent directly to the Contractor with reports of usage submitted periodically to TexBuy.
3. Contractors deliver goods/services directly to the participating agency and then invoice the participating agency. The Contractor receives payment directly from the participating agency.

4. TexBuy shall receive quarterly reports from the Contractor reflecting total sales made through the TexBuy contract with the Contractor. The Contractor shall remit payment of their participation fee up to two percent (2%) to TexBuy at net thirty-day (30) terms.

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.

Authorized Name _____Title_____

Authorized Signature (ink) _____

ADDITIONAL TERMS AND CONDITIONS

Prohibited Activities by Administrators of Texas Public Schools
Contractor is hereby warned that he or she faces a potential $10,000.00 civil penalty under Texas Education Code ("TEC") §11.006(e) if the Contractor is a public school administrator as defined by TEC 11.006(a) and receives a financial benefit under this contract, unless the Contractor's employing Board of Trustees has:

1. Been provided this contract; and
2. Taken a vote to approve the contract after determining:
    a. The contract will not harm the district;
    b. The arrangement does not present a conflict of interest; and
    c. The services to be performed by Contractor will be performed entirely on the Contractor's personal time.

Executive Orders
Contractor will comply, or continue to comply, with all applicable Federal and State executive orders. These orders include, but are not limited to:

1. Exec. Order No. 14214, 90 Fed. Reg. 9949 (2025), which prohibits schools and other educational institutions that receive federal financial assistance from conditioning student enrollment on COVID-19 vaccination status;
2. Exec. Order No. 14168, 90 Fed. Reg. 8615 (2025), which prohibits the use of Federal funds in the promotion of gender ideologies and further requires that intimate spaces (e.g., restroom) are designated according to one's biological sex;
3. Exec. Order No. 14190, 90 Fed. Reg. 8853 (2025), which prohibits the use of Federal funds for direct or indirect activities or educational instruction related to discriminatory equity ideology or social transitioning;
4. Exec. Order No. 14201, 90 Fed. Reg. 9279 (2025), which requires Title IX of the Education Amendments Act of 1972 be applied on the basis of biological sex, not gender identity, and prohibits transgender-identifying athletes from participating in all-women sports teams;
5. Exec. Order No. 14173, 90 Fed. Reg. 8633 (2025), which requires that grant recipients (which, in the State of Texas, extends to subrecipients by virtue of this assurance) agree that adherence to Federal anti-discrimination laws is material to the government's payment decisions and further requires that recipients certify that it does not operate any programs promoting DEI in a manner violative of Federal anti-discrimination laws (which, by virtue of this assurance, the subrecipient certifies);
6. Texas Exec. Order No. GA 55, which requires all people be treated equally, regardless of race; and,
7. Letter from Governor Greg Abbott to Chairmen and Executive Directors (Jan. 30, 2025), which requires Texas agencies to take actions on the basis of biological sex and not gender identity.

Equal Treatment of All Persons: Consistent with Article I, Section 3a of the Texas Constitution, the Fourteenth Amendment to the United States Constitution, federal and State law, and Executive Order No. GA-55, Contractor represents and warrants that:

(a) all conduct under this Contract shall be administered and performed in a neutral manner without regard to race of persons;
(b) Contractor shall not, in the specific performance of this Contract, elevate one individual person over another, or advantage any one person over another, due to race;
(c) Contractor shall not, in the specific performance of this Contract, employ practices or engage in any advancement of the programs known as diversity, equity and inclusion, critical race theory, affirmative action, or other similar, divisive agendas;
(d) Contractor's staff, agents, and subcontractors that are selected and employed in the specific performance of this Contract shall be selected and employed solely on merit and the ability to perform; and
(e) Contractor shall ensure that any subcontractors participating in the specific performance of this Contract represent and warrant to the provisions of this Clause.

Biological Sex and No Preferred Pronouns
Contractor represents and warrants that it shall ensure that all actions in specific performance of this Contract shall comply with federal and state law and reflect that there are only two sexes. Contractor's employees, officers, representatives, subcontractors, and agents shall not, in performance of this Contract, present, direct, request, or suggest the use of preferred personal pronouns in professional correspondence or presentations.

Obscene or Harmful Content and LEA Compliance with Laws
Contractor represents and warrants that all Contractor materials, works and any other deliverables hereunder and/or content accessible within a product provided under this Contract:

(a) Are and shall be compliant and consistent with all relevant laws and regulations to protect Texas students from obscene or harmful content, including, but not limited to:

i. the Children's Internet Protection Act, Pub. L. No. 106-554, 114 Stat. 2763A-335 (2000);
ii. Section 28.0022 of the Texas Education Code;
iii. Section 43.22 of the Texas Penal Code (meaning no violation of such Penal Code section); and
iv. any other law, rule or regulation that protects students from obscene or harmful content, including any TEKS or instructional materials suitability rubrics, and

(b) Shall not undermine, subvert or impede compliance with federal and state law by any LEA that uses goods or services provided under this Contract. Compliance with federal and state law includes, but is not limited to, Section 31.1011(a)(1) of the Texas Education Code, which requires that districts and charter schools must certify annually, for each subject and grade level in their curriculum, that (1) they provide each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level, and (2) that students are protected from obscene or harmful content in compliance with subsection (a)(i) above.

Any content included in Contractor Materials, Works or other deliverables and/or accessible content determined by the ESC to be out of compliance with (a) above shall be corrected by Contractor and resubmitted to the ESC within fifteen (15) working days of written notification from the ESC. This correction shall be made even if the deliverables have already been accepted

by the ESC. In addition, Contractor shall routinely report in writing to the ESC any feedback from participating school districts, LEAs, Education Service Centers, charter schools or other educators or parents that may relate to, or indicate a violation of, the above requirements, within fifteen (15) working days of receipt of such feedback.

Firearm Entities and Trade Associations Discrimination

Contractor verifies that:

(1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or

(2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the ESC.

COVID-19 Vaccine Passport Prohibition

Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in the Response or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

FERPA

Contractor, its employees and subcontractors, agree that in executing tasks on behalf of the ESC, they will not use any student-identifying information in any way that violates the provisions of applicable law and regulations, including without limitation, FERPA.

On behalf of the Contractor, I have read and agree to the additional terms and conditions listed above.

Signature of Authorized Company Official: _____

Printed Name: _____ Date: _____

COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA

1. **AUTHORITY**-The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the 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 any indebtedness. Any purchase order or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.

2. **DEFINITIONS**- Unless otherwise defined here, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

   AEPA: The Association of Educational Purchasing Agencies.

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

   CONTRACTOR: The individual, company, firm, corporation, partnership or other organization to whom a contract award has been made by the AEPA for cooperative use by its member agencies.

   COUNTY: The Lead Agency or, where this contract is being used by a Participating Member, this term shall mean and refer to such other Participating User.

   LEAD AGENCY: The Fairfax County School Board, as lead agency for the AEPA in the Commonwealth of Virginia.

   PARTICIPATING MEMBER: Any public body in the Commonwealth of Virginia (other than the Lead Agency) that uses this contract as a member of the AEPA.

   PURCHASING AGENT: The Director of the Lead Agency's Office of Procurement Services or, when this contract is being used by a Participating Member.

   PURCHASING RESOLUTION: The alternative procurement procedures adopted by the Fairfax County Board of Supervisors and available here. The Purchasing Resolution governs the Lead Agency's procurement of goods, services (other than construction and design) and insurance. For a Participating Member who is not subject to the Purchasing Resolution, the term shall mean and refer to corresponding provisions of the Virginia Public Procurement Act, Va. Code § 2.2-4300 *et seq*, or of any alternative procurement procedures adopted or otherwise applicable to such Participating Member.

3. **TAX EXEMPTION**-The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.

SPECIFICATIONS

4. **INSPECTION-ACCEPTANCE**- Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

CONTRACT PROVISIONS

5. **TERMINATION OF CONTRACTS**-Contracts will remain in force for (i) the full period specified or (ii) until all articles ordered before date of termination, but arriving after the termination date, are satisfactorily delivered, accepted, and any further requirements and conditions are met, unless the Contract is:

   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.

6. **TERMINATION FOR CONVENIENCE**-
   a. A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective.
   b. An equitable adjustment in the contract price shall be made by the Purchasing Agent for completed service, but no amount
   shall be allowed for anticipated profit on unperformed services. Paragraph 30.b shall survive termination of the contract.

7. **TERMINATION OF CONTRACT FOR CAUSE**-

   a. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County has the right to terminate the contract. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective. 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 the County's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

   b. Termination of the Contract for Cause does not relieve the Contractor 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.

8. **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 their authorized agent.

9. **SUBLETTING OR ASSIGNMENT** -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 its 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 its obligations or change the terms of the contract.

10. **FUNDING**- The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

11. **DELIVERY/SERVICE FAILURES**-If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace

goods or services not delivered or rejected. 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.

12. **NON-LIABILITY**-The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.

13. **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 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. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

14. **GUARANTEES & WARRANTIES**-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.

15. **CHANGES**-If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.

    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 are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

16. **PLACING OF ORDERS**-Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P- Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

17. **SHIPPING INSTRUCTIONS - CONSIGNMENT**-Unless otherwise specified in the solicitation, each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to ensure compliance with these instructions for items that are drop-shipped.

18. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED**-Unless otherwise specified in the solicitation, the

Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.

19. **INSPECTIONS**-Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is 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.

20. **COMPLIANCE**-Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.

21. **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.

22. **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.

23. **METHOD AND CONTAINERS**-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

24. **REPLACEMENT**-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

25. **PACKING SLIPS OR DELIVERY TICKETS**-All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:

    a. The Purchase Order Number,
    b. The Name of the Article and Stock Number (Supplier's),
    c. The Quantity Ordered,
    d. The Quantity Shipped,
    e. The Quantity Back Ordered,
    f. The Name of the Contractor.

    Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County's refusal to accept the goods.

BILLING

26. **BILLING**-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

27. **PAYMENT**-Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The 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 subsequent modifications.

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 includes erection, setting up or placing in position, service, or use) and testing, and the 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.

GENERAL

30. **GENERAL GUARANTY**-Contractor agrees to:

    a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
    b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
    c. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
    d. 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.
    e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
    f. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

31. **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 of those documents 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 government rules, regulations, methods, and procedures.
    d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
    e. 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.

32. **INDEMNIFICATION**-

    a. General Indemnification. Contractor must indemnify, keep and save harmless, and defend the County, its agents,

officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligent or wrongful act, error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its 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, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.

b. Intellectual Property Indemnification. In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing, while remaining functionally equivalent or better; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in this Paragraph, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

c. Right to Participate in Defense. The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases, Contractor must obtain the County's prior written consent before raising such defense or entering into such resolution.

d. No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any provision or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that provision or term is deemed stricken from this Contract and shall be of no force or effect.

33. **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: **https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax**.. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

34. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title
13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

35. **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.

36. **VIRGINIA FREEDOM OF INFORMATION ACT**-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

    a. The Contractor is advised that the County cannot maintain as confidential any information, data, or records that are not subject to exemption from disclosure under the Virginia Freedom of Information Act or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann.
    § 2.2-4342(F). The Contractor acknowledges and agrees that: (a) the County is a "public body" within the meaning of the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 *et seq*. (the "Act"), and that public records in the possession of the County are subject to disclosure under the Act unless exempted by law; (b) in the event the Contractor seeks confidential treatment for any information containing trade secrets or proprietary information that it wishes to transmit to the County, the Contractor will both (i) comply fully with the provisions of Va. Code § 2.2-4342(F), and (ii) conspicuously label all such records as "Confidential Information;" (c) provided the Contractor fulfills the foregoing obligations, the County will not disclose such records under the Act absent a court order to the contrary; and (d) the County's compliance with its disclosure obligations under the Act will in no event be deemed to breach or violate County's obligations hereunder. In the event of conflict between the terms of this paragraph and any other provision of the contract, this paragraph will in all events govern and control.

37. **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 Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the 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 Purchasing Agent's decision on the claim, unless the Purchasing Agent 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.

38. **LEGAL ACTION-**No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met. Statutory requirements include, but are not limited to, the requirements of the Virginia Public Procurement Act, as reflected in the Fairfax County Purchasing Resolution and the requirement that any contractor seeking monetary relief or damages from the County must submit its claim to the Board of Supervisors in compliance with Virginia Code I § 15.2-1243 through 1249.

39. **GOVERNING LAW; VENUE:** This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

40. **COOPERATIVE PURCHASING-**The County or any entity identified in the Fairfax County Purchasing Resolution,

Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.

41. **DRUG FREE WORKPLACE-**During the performance of this 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.

42. **IMMIGRATION REFORM AND CONTROL ACT-**Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

43. **AUDIT OF RECORDS** The parties agree that the County or its agent must have reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form.

44. **PERSONALLY IDENTIFIABLE INFORMATION**: Contractor will comply with all applicable laws regarding safeguarding and protection of personally identifiable information made available through this Contract. Contractor must report to the County all breaches that result in exposure of the County's data or other incidents compromising the security of the County's data. For purposes of this section "County data" means data that the Contractor accesses, stores, or hosts pursuant to this Contract and includes "personal information" defined by Virginia Code § 18.2-186.6 or "medical information" defined by Virginia Code § 32.1-
127.1:05. Such reports must be made to the County immediately upon discovery of the breach and no later than three days from
when Contractor discovered the breach. The requirements of this paragraph are in addition to and do not relieve Contractor of its obligation to comply with any requirements imposed by law regarding data breaches. If any notices to individuals or third parties are required by applicable law due to a data breach, the parties will cooperate to ensure that such notice is timely provided. If Contractor experiences a breach of protected health information governed under HIPAA, or substance use disorder information governed under 42 CFR Part 2, the terms of any Business Associate or Qualified Service Organization Agreement between the parties will control.

45. <u>DIGITAL ACCESSIBILITY REQUIREMENTS</u>

a. Compliance Requirement. All information and communications technology ("ICT") that is purchased or upgraded pursuant to this Contract for use by FCPS employees, students, and/or the public shall comply with the Information Technology Access Act, §§ 2.2-3500 through § 2.2-3505 of the Code of Virginia (the "ITAA"). As employed herein, the term ICT shall have the meaning set forth in § 2.2-3501 of the Information Technology Access Act.

b. Certification or Documentation. For ICT delivered under this Contract that will be used by FCPS employees, students, and/or made available to the public, the Contractor hereby certifies that such ICT conforms with "accessibility," as that term is defined in § 2.2-3501 of the ITAA.

If the Contractor cannot certify full conformance of accessibility, the Contractor must submit the following with its completed Attestation of Digital Accessibility Form:

i. A Contractor-paid and completed Accessibility Conformance Report (as that term is defined in Virginia Code § 2.2-3501) indicating the level of conformance with accessibility for the ICT being procured; and

ii. a Contractor-paid and completed Vendor Accessibility Roadmap (as that term is defined in Virginia Code § 2.2-3501) documenting any areas of nonconformance and including a timeline for each nonconforming area's completion.

c. No Waiver of Supplier Obligations. Consistent with 28 C.F.R. § 35.201 and 36 C.F.R. Part 1194, Appendix A, § E202, FCPS may, in its sole discretion, procure non-accessible ICT, if such procurement does not result in individuals with disabilities being denied the benefit of any program, service, or activity. This discretion does not waive the Contractor's obligations to comply with accessibility requirements and provide required certifications or documentation.

46. FORCED AND INDENTURED CHILD LABOR PROHIBITION:

Contractors are prohibited from the use of "forced or indentured child labor" in the performance of the contract. Forced or indentured child labor means all work or service (i) exacted from]any person younger than 18 years of age under the menace of any penalty for the nonperformance of such work or service and for which such person does not offer himself voluntarily or (ii) performed by any person younger than 18 years of age pursuant to the contract the enforcement of which can be accomplished by process or penalties.

47. COMPLIANCE WITH STATE LAW; CONTRACT TERMS INCONSISTENT WITH STATE LAW:

The Contractor acknowledges the requirements set forth in Code of Virginia § 2.2-4311.3. Compliance with state law; contract terms inconsistent with state law, as stated below.

As used in this section, "information technology goods and services" means communications, telecommunications, automated data processing, applications, databases, data networks, management information systems, and other related goods and services. b. No term or provision in any public contract for the acquisition of information technology goods or services shall be valid or enforceable to the extent that it is in conflict with Virginia law. A public contract containing such a term or provision shall otherwise remain enforceable. c. Any term or provision in such a public contract that (i) makes the public contract subject to, governed by, or interpreted under the laws of another state or country or (ii) requires or permits any litigation or other dispute resolution proceeding arising from the public contract to be conducted in another state or country shall be void. Such public contract shall instead be deemed to provide for the application of the law of the Commonwealth of Virginia, without regard to such contract's choice of law provisions, and to provide for jurisdiction in the courts of the Commonwealth.

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

A. KCDA Additional General Terms and Conditions

General Intent: KCDA may participate in all or any part of the goods and services listed in this IFB or RFP, 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 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, 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, phone/conference/video calls, in-person meetings, and/or other methods approved by KCDA.

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

KCDA staff will work jointly with all Vendors and their representatives to market the AEPA contracts to KCDA members and prospective members. Vendors may be requested to make joint presentations to KCDA or its members in either a one to one or a group setting. Some group presentations may be done in conjunction with other vendors.

Displaying exhibits at various statewide conferences are encouraged. Vendor agrees to make available KCDA supplied brochures or other promotional materials at these events. Vendor will provide KCDA with scheduled exhibit dates in advance.

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

Assignment:

Vendor shall not 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 Vendor from obligations or change the terms of 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. Vendors will be sent written notification of the changes.

Employees who have been Convicted of Crimes against Children:

The Contractor, or any subcontractors, shall not utilize any employee at a school site or allow any contact between school children and any employee when an employee has plead guilty to or been convicted of any felony crime involving the physical neglect of a child under RCW 9A.42, the physical injury or death of a child under RCW 9A.32 or 9A.36 (except motor vehicle violations under RCW 46.61), sexual exploitation of a child under RCW 9A.44 where a minor is the victim, promoting prostitution of a minor under RCW 9A.88, the sale or purchase of a minor child under RCW 9A.88, or violation of similar laws of another jurisdiction.

Contractors/Vendors who have regularly scheduled unsupervised access to children, and/or who hire employees who will have regularly scheduled unsupervised access to children, shall perform a record check through the Washington State Patrol criminal identification system under RCW 43.43.830-43.43.834, 10.97.030 and 10.97.050, and through the Federal Bureau of Investigation before hiring the employee. The record check shall include a fingerprint check using a complete Washington State criminal identification fingerprint card. The Contractor shall provide a copy of the record to the person applying for employment to the school location. If the Contractor or applicant has had a record check within the previous two years, the

Contractor may waive the requirement. The Contractor shall determine whether the applicant or the Contractor shall pay costs associated with the record check.

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

Governing Law and Venue/Legal Litigation:
All applicable local, state and federal laws and regulations will apply to any purchases of equipment, service or public works in any of the states KCDA currently services, as well as any other non-AEPA states where members may be added to KCDA membership throughout the term of these contracts. The laws of the State of Washington govern the Contract. Each and every provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. Venue for any litigation arising out of or related to the Contract shall take place in the State of Washington.

Hazardous Materials:
If any hazardous chemicals/materials are supplied under a contract/purchase order arising out of this solicitation, a Safety Data Sheet (SDS) shall accompany the delivery of any hazardous chemicals/materials supplied by the vendor. All SDS 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 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 Vendor, KCDA or the member agency and their respective officers, officials, employees, and volunteers, the Vendor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Vendor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the 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 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 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:
Member agencies, who have obtained goods or services under the terms of this contract, will be responsible for payment of all taxes such as sales tax, property tax, etc. Awarded Vendor must separately list all such taxes on member proposal and subsequent invoice.

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.

Termination for Convenience:
KCDA may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Vendor. Termination charges shall not apply unless both parties subsequently agree upon them. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Vendor prior to date of termination. KCDA will not be responsible for stock that the Vendor has on hand that has not been requested via a purchase order. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

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

- The Vendor fails to adequately perform the services set forth in the contract
- The Vendor fails to make progress in the performance of the contract and/or gives KCDA reason to believe the Vendor will not or cannot perform to the requirements of the contract
- The Vendor fails to observe any of the terms and conditions of the contract
- The Vendor fails to pay any applicable administrative fees.
- The 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 for default, 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 Vendor shall have ten (10) business days to provide a satisfactory response to KCDA. Failure on the part of the 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.

Use of Tobacco on School Districts/Public Agency Premises:
RCW 28A.210.310 prohibits the use of tobacco in any form on school district property. Smoking or other use of tobacco will not be permitted at the job site.

B. Order Procedure
After entering into an agreement with KCDA, KCDA will confirm the directions for placement of orders with the Vendor and will post directions on the KCDA website for both Vendor and members. These directions will also be posted on each awarded Vendor's website.

- Once the award is made to the Vendor, KCDA will inform members of the contract.
- At this point the Vendor may directly contact members or the member may contact the Vendor.
- Before a 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 Vendors about invoicing procedures.
- KCDA is funded through a service fee paid to KCDA by the participating 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 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, Bart Powelson at bpowelson@kcda.org and CFO, Yohan Lee at ylee@kcda.org.
- These reports shall be in Microsoft Excel format and shall have file names that identify the 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, service fee, member PO #, 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.

Agencies Allowed to Purchase under KCDA

King County Directors' Association (KCDA) is a member owned purchasing cooperative representing 294 Washington State public school districts. In addition, KCDA provides purchasing and procurement services for more than 1,800 public agencies and political subdivisions in Washington and other states, including but not limited to Alaska, Idaho, Montana, and Oregon. KCDA also provides purchasing services for accredited private K-12 schools in Washington State.

A listing of all KCDA members is available on the KCDA website, www.kcda.org.

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

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

a) Public Works:

State of Washington statute requires workers be paid **prevailing wages** when employed on **public works** projects and on public building service maintenance contracts. (RCW 39.04.010, RCW 39.12.010 and 020) It is the contractor's responsibility to be acquainted with and comply with State regulations regarding payment of prevailing wages on public works projects. Prevailing Wages are established by the Washington State Department of Labor and Industries and can be obtained on the web at https://secure.lni.wa.gov/wagelookup or by contacting Labor and Industries at 360-902-5335. KCDA serves all counties in Washington State. The County in which the project is located will be identified once a member initiates a request for the service, and the effective wage rate to be applied to a specific project is to be based on the date of this bid during the original contract term, and if contract extensions are granted, the prevailing wage rate in effect at the time of the latest extension.

Application: The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive administrative or professional in nature. It does not apply to work of a secretary, engineer or administrator, unless they are performing construction work, alteration work, repair work, etc. Prevailing wage application depends on the work that is performed, regardless of the worker's job title. (RCW 39.12.020 and WAC 296-128-510 through 530)

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

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

Contractors bidding a Public Works project exceeding $1,000,000.00 must declare the names and licensing information of their HVAC, Mechanical and Electrical subcontractors at the published bid submittal time and the names and licensing information of their structural steel installation and rebar installation subcontractors within 48 hours of bid submission, and submit this information with bid documents in order for the bid to be responsive. (RCW 39.30.060).

Apprentice Utilization Requirements (AURs)
Public works projects should conduct a 15% apprentice utilization requirement if the project belongs to any of below,

- State public works estimated to cost $1 million dollars or more;
- Municipality public works estimated to cost $2 million
  - For contracts advertised on or after July 1, 2026, municipality public works estimated to cost $1,500,000 or more;
- Department of Transportation projects estimated to cost $2 million or more;
- All school district public works projects estimated to cost $1 million or more; and
- All public works by a state four-year institution of higher learning estimated to cost $1 million or more.

And one of three requirements should happen on a project:

- The project meets the 15% AUR;
- The project does not meet the 15% AUR, however the awarding agency approves a good faith effort; or
- The monetary penalty written in the contract is assessed.

Good faith efforts are for the entirety of a project, not a single occupation unless there happens to be only one apprenticeable occupation on the project. Therefore, the prime contractor cannot only consider their occupation(s) when requesting a good faith effort and leave out the occupations and workforce used by subcontractors.

Within existing resources, awarding agencies are responsible for monitoring apprenticeship utilization hours by contractor. There must be a specific line item in the contract specifying that apprenticeship utilization goals should be met, monetary incentives for meeting the goals, monetary penalties for not meeting the goals, and an expected cost value to be included in the bid associated with meeting the goals. The awarding agency must report the apprenticeship utilization by contractor and subcontractor to the Supervisor of Apprenticeship at the Department of Labor and Industries by final project acceptance. The electronic reporting system that is being developed by the Department of Labor and Industries may be used for either or both monitoring and reporting apprenticeship utilization hours.

A contractor or subcontractor may not be required to exceed the apprenticeship utilization requirements of RCW 39.04.320.

This section establishes the minimum apprenticeship utilization requirements on public works contracts awarded by a municipality. Any standards or requirements relating to apprenticeship utilization established by any applicable local law or ordinance that are more favorable to apprentices than the minimum requirements under this section are not affected by this section and those more favorable laws apply and may be enforced as provided by law.

Refer to RCW 39.04.320, which covers apprentice utilization on public works projects for detailed information.

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

b) Prevailing Wage:

Definition: Prevailing Wage is the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers and mechanics. The rate is established by the Department of Labor and Industries for each trade and occupation employed in the performance of public work. If Federal funds are used, bidders must comply with provisions of the 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/subcontractors have submitted an approved intent form. KCDA cannot release retainage until all Contractors have an approved Affidavit of Wages Paid form certified by the Industrial Statistician. (RCW 39.12.030, 040, 042) Once the work is successfully completed, KCDA will release 95% of the project cost and withhold 5% retainage for 45 days as dictated by law. The final 5% will be paid when the following is completed: Receipt of approved Affidavit of Wages Paid Forms, Releases from Washington State Department of Labor & Industries, Employment Security Department and the Department of Revenue, and acceptance of project completion to the satisfaction of the KCDA ordering member. **The cost of filing required Intents and Affidavits is the responsibility of the Contractor, and may not be added as a line item charged to the member agency**. **All Intents and Affidavits must name the agency for whom work is being performed as the contract award agency, not KCDA.**

Federally Funded Projects: In addition to the Federal Requirements of Section III, Housing and Urban Development (HUD) Terms and Conditions**, Davis-Bacon** prevailing wage requirements apply to public works construction contracts of $2,000 or more when a project includes any federal funding of any amount. When there is a difference between applicable state and federal prevailing wages for a particular classification of labor, contractors and subcontractors are required to pay the higher of the two prevailing wages. Applicable federal prevailing wage determinations can be found at https://sam.gov/content/wage-determinations. Contractors/Subcontractors must be knowledgeable and adhere to all federal prevailing wage requirements, including but not limited to paying workers weekly and providing certified weekly payrolls for the contractor and subcontractors of any tier as required in the Davis-Bacon Act and applicable U.S. Department of Labor regulations. Falsification of any prevailing wage payroll records may subject the contractor or subcontractor to

civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code. Contractor shall inform all subcontractors of the Davis-Bacon requirements and the prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses. Contractor must coordinate all requirements related to federal funded projects with the KCDA member Agency.

c) Responsible Bidder:

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

Low Responsible Bidder

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

1 At the time of bid submittal, have a current certification of registration in compliance with RCW 18.27.
2 Have a current Washington State Unified Business Identifier (UBI) number.
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. If applicable:
   a. Have Industrial Insurance (workers' compensation) coverage for the Bidder's employees working in Washington State, as required in Title 51 RCW;
   b. Have a Washington State Employment Security Department number, as required in Title 50 RCW; and
   c. Have a Washington State Department of Revenue state excise tax registration number, as required in Title 82 RCW.
5. New bidder requirement. Certify that within the three-year period immediately preceding the bid solicitation date:
   a. The bidder is not a "willful" violator, as defined in RCW 49.48.082, or any provision of RCW 49.46, 49.48 or 49.52.
   b. As determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction.
   c. As of July 1, 2019, WA Labor and Industries has required all businesses to have public works training before bidding and/or performing work on public works projects. This training requirement has been added to the responsible bidder criteria in RCW 39.04.350 and RCW 39.06.020. Awarding agencies are required to verify all contractors submitting bids meet this requirement before awarding the contract.
6. At the time of bid submittal, provide signed sworn statement in accordance with RCW 5.50 verifying under penalty of perjury that the bidder is in compliance with the new responsible bidder criteria requirement.
7. Supplemental Bidder Responsibility Criteria. If supplemental criteria apply to this project, the criteria are included as "Exhibit A." The Bidder may make a written request to modify any or all of the supplemental criteria. Modification of supplemental criteria shall be at KCDA's discretion. Any modifications to the supplemental criteria shall be made by addenda prior to bid opening.

Subcontractor Responsibility

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

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

Payment & Performance Bond:

The prime Contractor shall provide a Performance and Payment Bond at 100% of the contract price to the KCDA member with a copy to KCDA before work begins. The only exception is for contracts of one hundred fifty thousand ($150,000) dollars or less. In this instance, at the option of the Contractor, the member may in lieu of the bond retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the

Department of Revenue, Employment Security Department, and the Department of Labor and Industries and settlement of any liens filed under RCW 60.28, whichever is later. The bond shall be issued by a surety company authorized to do business in the State of Washington and shall be on standard forms used for public projects (RCW 39.08.010) and as directed by the KCDA member.

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

Licenses

The prime contractor shall possess and maintain in current status all federal, state, and local licenses, bonds, and permits required for the performance and delivery of any and all products and services offered in its response to the bid solicitation. Before submitting a bid, Bidders must hold a current, valid contractor's license as required in Washington. The contractor's license must be in the name of the legal entity submitting and signing the bid. A Bidder may not substitute a contractor's license held by a subcontractor or joint venture. Bidders submitting bids in Washington State without a valid contractor's license in the name of the Bidder are in violation of RCW 18.27.020.

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

KCDA reserves the right to request copies of licenses at any time during the contract. Copies of licenses, upon request, must be submitted to the member prior to performing the work. The Contractor agrees to keep and ensure subcontractors keep any required license, permit or bond current and in compliance with Washington rules, regulations and statutes, as well as in states outside Washington in which contractor performs work under this contract. For work performed for any Washington State school district, public agency or municipality, the Contractor must comply with the bidder responsibility requirements of RCW 39.04.350 prior to the KCDA member awarding a contract. The contractor must verify the responsibility of all subcontractors used in accordance with RCW 39.06.020.

d) Permits:

Obtaining permits is the responsibility of the Member. Awarded Contractor may provide guidance and/or assistance in obtaining necessary permits. If Contractor does obtain permits on behalf of member, all fees are viewed as a "pass through" with no upcharge to the member.

e) Certificate of Insurance:

A certificate of insurance demonstrating current coverage of the types and amounts of insurance required by KCDA and the KCDA member must be provided to the KCDA member prior to performance of any work. In addition, the Commercial General Liability policies must be endorsed to name KCDA and the KCDA member as additional insureds. Such policies must be further endorsed to provide that the insurance is primary as respects KCDA and the KCDA member, and that any other insurance maintained by KCDA and the KCDA member shall be excess and not contributing insurance with the Contractor's insurance. These endorsements must be provided along with the certificate of insurance. The KCDA member must approve the certificate of insurance and endorsements.

f) Acceptable Pricing Method:

KCDA is unable to accept Alternative Costing Method quotations except in certain limited instances, (i.e. sole source) in which KCDA and Vendor may mutually determine the Alternative Costing Method is acceptable. This will be the exception rather than the rule. RS Means or line item bid pricing is acceptable.

g) Progress Payments:

The Contractor shall be paid, upon submission of a proper Payment Request, the prices stipulated herein for work performed (less deductions, if any), in accordance with all payment and retainage instructions herein. Submitted Payment Requests must contain the following minimum information:

a. Contract Number
b. Bid item ID, bid quantity, unit, unit price and description as appropriate
c. Sales Tax as applicable

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

KCDA, at its discretion, reserves the right to withhold payment on a given project, pending receipt of payment from the customer.

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

h) Payment Retainage:

In accordance with RCW 60.28 contract retainage [*not to exceed five percent of the moneys earned by the contractor toward completion of a public improvement contract*] shall be withheld and reserved in one of two ways:

a. As a trust fund for the protection and payment of 1) the claims of any person arising under the contract, and 2) the state with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from such contractor. Upon completion of a contract, the member agency shall notify the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries of the completion of contracts over thirty-five thousand dollars. KCDA will issue payment on the retainage amount forty-five days after notice from the KCDA Member Agency that the contract has been accepted as complete **or** upon receipt of all necessary releases, whichever is later.

b. Option of providing retainage bond for the full amount of the retainage (5% of the contract amount with a performance bond). This bond is separate from the performance bond under RCW 39.08.10. Providing a retainage bond means no retainage is withheld. If you choose to provide a retainage bond, a copy of the bond must be submitted.

i) Force Majeure:

Except for payments of sums due, neither party shall be liable to the other, nor be deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control or responsibility of the party affected and occurs without its fault or negligence, including, but not limited to the following: acts of God; acts of the public enemy; war; riots; strikes; industry-wide labor disputes; civil disorders; fire; flood; snow; earthquakes; tornadoes or violent winds; hail storms; lockouts; injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control or responsibility of the party declaring force majeure, which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring it notifies the other party of the existence of the force majeure, and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with the contract. The party receiving the notice of force majeure may contest the declaration of a force majeure. Force majeure shall not include late deliveries of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, internal labor disputes, or similar occurrences. If either party is delayed at any time by force majeure, the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours.

29. WEST VIRGINIA- Mountain State Educational Services Cooperative

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

1. Compliance with Laws/Forum Designation

Contractor shall comply with Federal, State, and Local Laws, Codes and Regulations while fulfilling the contract. It is the Contractor's responsibility to be aware of and comply with all state and local laws governing this procurement. Applicable laws, codes, and regulations (etc.) must be followed even if not specifically identified herein. The terms of the Agreement Addendum which is attached hereto and incorporated herein shall govern and supersede any contract terms to the contrary with respect to each procurement. Contractor shall verify to Mountain State ESC, its Member Agencies and other qualifying purchasers that the Contractor is complying with all Federal, State and Local Laws, Codes and Regulations while fulfilling the contract, and shall provide a copy of this contract and any addenda to each Member Agency when providing a price quotation. Moreover, this contract shall be governed by and construed in accordance with the laws of the State of West Virginia without giving effect to its principles of conflict of law. Legal proceedings arising under this contract shall be brought in a West Virginia Court of the County where the Member Agency's main office is located.

2. Delinquent Tax Affidavit

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

3. Secretary of State and State Tax Department Registrations

Contractor shall meet and maintain all registration requirements as necessary to conduct business in the State of West Virginia, including but not limited to registration with the West Virginia Secretary of State (WV SOS) (Legislative Rule CSR §148-1-6.1.7) and a Business Registration Certificate with the WV State Tax Department (WVC §11-12-3) unless specific exemptions apply.

4. West Virginia Workers Compensation Insurance

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

5. Project Personnel, Student Safety and Background Checks

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

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

times while on the Member Agency's property. The Member Agency shall have the right to effect the immediate removal of any person associated in any way with Contractor from Member Agency property for failure to wear identification, for being outside a designated work Contractor shall perform or cause to be performed by the West Virginia State Police and Federal Bureau of Investigation criminal background check of any personnel that will be performing the services within the proximity of minors. Contractor shall notify the Member Agency of any proposed employee who has been convicted, pled guilty or pled "no contest" to a criminal offense, and the Member Agency reserves the right to reject the proposed employee with a criminal background. No person shall be employed by Contractor who has been found guilty of any of the criminal offenses enumerated in West Virginia State Code without prior approval of the Member Agency.

6. Independent Contractor

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

7. Ownership of Instruments of Service

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

8. Audit

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

9. Notices

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

10 Non-Appropriation and Other Contract Terms Applicable to Member Agencies as Political Subdivisions of the State

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

11. No Personal Liability

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

12. Price Quotation

Contractors must quote to a Member Agency the pricing listed in the current contract awarded by the Association of Educational Purchasing Agencies. Vendor will follow the procedures for price reductions to AEPA Member Agencies and Participating Entities set forth in the AEPA general terms area, and conditions. The price quotation must be submitted to a Member Agency and Participating Entity in writing, and any other expenses that the Contractors intend to charge a Member Agency or Participating Entity must be separately itemized on the quotation page in bold font with a good faith estimate of the dollar amount of each item, such as use tax if applicable. The failure to list an item or include a good faith estimate of the dollar amount on the quotation page will preclude a Contractor from charging the same.

13. Jobs Act

As the unemployment rate in the State of West Virginia is significantly higher than most other states, the West Virginia Legislature enacted the West Virginia Jobs Act, which deems it necessary for those employers contracted to perform construction work on state funded public improvement projects, which equal or exceed $500,000.00 in cost, to hire 75% of their workers from the local labor market. The local labor market is defined as including every county within the State of West Virginia as well as any county outside of West Virginia, if any portion of that county is within 50 miles of the state border.

There are certain exclusions to this requirement, which includes an exemption for projects that contain any amount of federal funding as well as an allowance for out-of-state contractors to bring two (2) of their own employees from outside the local labor market to work on the project and still remain in compliance.

14. Miscellaneous

Headings and titles of articles, paragraphs and other subparts of this contract are for convenience of reference only and shall not be considered in interpreting the text of this contract. This contract and any appendices constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto and all agreements or understandings with a Member Agency. No contract amendments can be made without the approval of the AEPA membership.

B. Construction Products and Services:

For construction improvements, the following shall apply:

1. The successful Contractor shall provide such bonds required by West Virginia State Code§38- 2-39.
2. Contractor shall comply with all applicable licensing requirements, including those of the West Virginia Contractor Licensing Board pursuant to West Virginia State Code §21-11-3.

C. Procedures for Processing Orders:

The Mountain State ESC will keep informed its Member Agencies and other qualified purchasers of contract information via web site and through other marketing strategies. A list of Mountain State ESC Member Agencies along with addresses, phones, contacts, etc. will be made available to successful Contractors. After contracts are awarded, Contractors may

contact the Mountain State ESC Member Agencies and other qualifying purchasers concerning their products and services.

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

The Contractor price shall include a two percent (2%) administrative fee that the Contractor will collect from the Member Agency or other qualified purchaser. Administrative fees are to be remitted to the Mountain State ESC on April 15, July 15, October 15 and January 15 of every calendar year with checks payable to the Mountain State ESC, 501 22nd Street, Dunbar, WV 25064

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

D. Agencies Allowed to Purchase under Member Agency:

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

E. No Debt Affidavit

The No Debt Affadavit is administered in accordance with the West *Virginia* **Code,** *§5A-3-10A* According to the statute, no contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor Is a debtor as defined in this section and the debt owed is an amount greater than $1,000 in the aggregate.

Wisconsin AEPA Terms & Conditions Updated April 2025

A. Additional Terms and Conditions

(Note: anything that is not already in Part A – General Terms and Conditions for AEPA) Terms and Conditions must be compliant with Wisconsin State Statutes 16.70 to 16.848

B. *Additional Participating Agency Terms and Conditions for Non-Construction Products and Services* Some larger districts, like Milwaukee Public Schools, may require an additional one page "piggyback" memorandum of understanding to utilize the contract.

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

Construction contracts are subject to Wisconsin State Statutes 16.855 or 66.0901.

B. Procedure for Processing Orders

All districts directly process orders with the CESA Purchasing AEPA vendor partner unless otherwise arranged. The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to CESA Purchasing on a quarterly basis.

C. Members Purchasing Under CESA

CESA Purchasing membership is free. Membership is available to the following agencies based on WI State Statutes Chapter 116 which governs the work of WI Cooperative Educational Service Agencies: school districts, University of Wisconsin System institutions, and technical colleges. All public, private, and tribal schools, and all public and private agencies and organizations, that provide services to pupils. Please note in Wisconsin we do not require additional registration of members and define members as those defined by WI Statute 116 that guides our work.

31. Wyoming – Northeast Wyoming Board of Cooperative Educational Services (N.E.W. BOCES)

Authority and Purpose

N.E.W. BOCES is an educational cooperative authorized pursuant to **W.S. §§ 21-20-101 through 21-20-111**. This cooperative purchasing program has been established to provide eligible participants with a streamlined and cost-effective method for procuring goods and services in compliance with applicable law.

Upon execution of this agreement, the Respondent agrees to submit bids in accordance with the terms and conditions set forth herein. **N.E.W. BOCES reserves the right to accept or reject any and all bids, in whole or in part, and to award contracts as determined to be in the best interest of its members.**

Eligible Participants

Participation in this cooperative purchasing program is voluntary. Eligible participants include, but are not limited to:

- K-12 School Districts
- Community Colleges
- Child Development Centers
- Residential Child Care Institutions
- Nonprofits
- Municipalities
- Tribal entities
- **Participating agencies in Wyoming, South Dakota, and Utah**

Participation by entities outside the State of Wyoming shall be permitted **only to the extent allowed by applicable law**, including but not limited to **SDCL § 5-18A-37** for South Dakota agencies.

Wyoming Preferences

Wyoming Statutes provide for percentage-based preferences for goods supplied by Wyoming resident bidders and for products produced or grown within the State of Wyoming. Such preferences shall not apply when federal funds are utilized. Preferences will be applied in accordance with W.S. §§ 16-6-101 through 16-6-107 and 16-6-301, as amended. For procurements involving federal funds, refer to W.S. § 16-6-108.

For additional information, vendors may contact the Wyoming Department of Workforce Services, Division of Labor Standards.

Vendor Registration Requirements and Compliance with Laws

Vendors shall comply with all applicable federal, state, and local laws, regulations, and ordinances. Vendors are responsible for ensuring proper registration and good standing with all required agencies, including but not limited to:

- Wyoming Secretary of State - 2020 Carey Avenue Cheyenne, WY 82002 Phone: (307) 777-7378
- Wyoming Department of Workforce Services, Division of Unemployment Insurance 100 W. Midwest P.O. Box 2760 Casper, WY 82602 Phone:(307)235-3217

Identification Requirements

To the extent permitted by law, the Vendor shall indemnify, defend, and hold harmless N.E.W. BOCES and its participating members from and against any claims, damages, or liabilities arising out of the Vendor's negligent acts, errors, omissions, or willful misconduct in the performance of this contract.

Ordering Process

- N.E.W. BOCES will notify members and eligible purchasers upon contract award.
- Participating entities will issue purchase orders directly to the awarded vendor.
- Pricing must reflect contract terms as agreed upon between the vendor and the purchaser.

Administrative Fee

A maximum administrative/marketing fee of up to two percent (2%) shall be included in all sales under this contract.

- Fees are collected by the vendor and remitted quarterly to N.E.W. BOCES.
- Payments are due on April 15, July 15, October 15, and January 15.
- The Vendor shall maintain accurate records of all sales under this contract.

Vendor Responsibilities

- Vendors are responsible for all delivery, installation, and service.
- N.E.W. BOCES does not warehouse products or provide direct services.
- Vendors shall not market or utilize competing cooperative contracts within the N.E.W. BOCES membership for awarded categories.

Vendor Contact

Vendors must designate a primary contact for coordination with N.E.W. BOCES and participating members. This contact will handle technical support, issue resolution, and general communication, including news and announcements, public calendar events, contracts and flyers.

Reporting Requirements

Vendors shall submit quarterly sales reports and promotional materials electronically to N.E.W. BOCES. **Please send the reports to bleonard@newboces.org. Quarterly reports will include sales volumes, discounts and other important information regarding sales.**

N.E.W. BOCES Commitments

N.E.W. BOCES will support awarded vendors through:

1. Website promotion, including contract listings and announcements
2. Newsletter and event promotion
3. Marketing to current and prospective members
4. Participation in conferences and trade events

Contract Terms and Conditions

1. Exclusive Agreement

Each purchase order issued under this contract constitutes a binding agreement incorporating these terms. Modifications require written consent of both parties. The laws of the State of Wyoming shall apply in all disputes. Unless exceptions are clearly noted in the bid response, the goods shall conform to specifications, drawings, and any other description attached hereto and shall be free from defects in materials and workmanship.

2. Packaging

All goods shall be packaged according to standard commercial practices at no additional cost and must include packing documentation.

3. Delivery

Timely delivery is essential. Failure to meet delivery timelines may result in contract termination. Acceptance of late deliveries does not waive future performance requirements.

4. Receipt and Acceptance

Goods are deemed received upon delivery and signing of shipping documents, any defects must be noted, and vendors must rectify.

5. Rejection and Termination

Non-conforming goods may be rejected at the vendor's expense. N.E.W. BOCES's and its members reserve the right to terminate the agreement upon breach.

6. Assignment

Assignment of payments or obligations requires written consent from both parties.

7. Warranties

Vendors warrant that goods are merchantable, free from defects, and conform to all specifications. Article 2-314 (2) of the Uniform Commercial Code in effect on the date of

this order in the State of Wyoming. Additionally, the goods shall conform to specifications, drawings, and any other description and shall be free from defects in materials and workmanship.

8. Taxes

N.E.W. BOCES and its members are exempt from applicable federal and state taxes. Documentation will be provided upon request.

9. Title

Vendors guarantee clear title to all goods, free of liens or encumbrances.

10. Antitrust Assignment

Vendors assign all applicable antitrust claims related to this contract to N.E.W. BOCES and its members. When awarded, contractor through its duly authorized agent, conveys, sells, assigns, and transfers to, N.E.W. BOCES CO-OP its' Members and qualified purchasers and the State of Wyoming all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Wyoming, relating to the goods or services purchased or herein acquired.

11. Public Records

Contract documents may be subject to disclosure in accordance with the Wyoming Public Records Act, except to the extent exempt by law.

12. Audit Rights

Vendors must retain records for a minimum of five (5) years and provide access for audit purposes. Improper billing may result in cost recovery and further action. Should such an audit disclose incorrect billings or improprieties, N.E.W. BOCES reserves the right to charge the Vendor for the cost of the audit and pursue appropriate reimbursement. Evidence of criminal intent will be turned over to the proper authority.

State Specific Forms

An AEPA Member Agency (State) may have forms relating to this solicitation that require completion before an award is made by that AEPA Member Agency.

For this solicitation, New Jersey and West Virginia are the only AEPA Member Agency with required forms. The forms can be found on the following pages.

NEW JERSEY REQUIRED DOCUMENTS FOR GOODS AND SERVICES BIDS

BUSINESS REGISTRATION CERTIFICATE (N.J.S.A. 52:32-44)

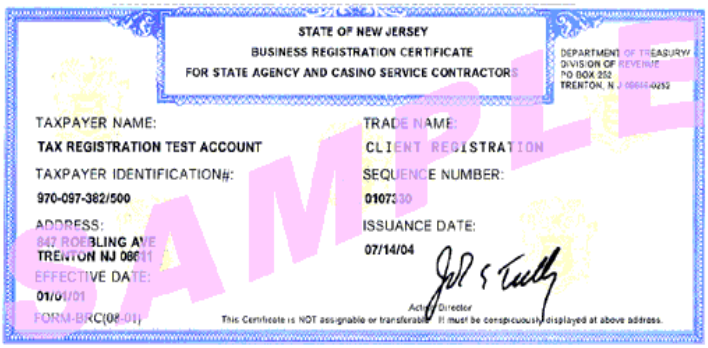
Pursuant to N.J.S.A. 52:32-44, all respondents shall submit prior to award of bid, a copy of their "New Jersey Business Registration Certificate" as issued by the Department of Treasury of the State of New Jersey. The ESCNJ requests that all respondents for this bid/proposal submit a current New Jersey Business Registration Certificate with the bid/proposal but no later than the bid award.

Goods and Services Contracts

N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that knowingly provide goods or perform services for a contractor fulfilling this contract:

1. The contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
2. The contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
3. Prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors or attest that none was used.
4. The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609) 292-6400.

For more information on how to obtain a Business Registration Certificate, please visit the State of New Jersey, Department of Treasury, Division of Revenue and Enterprise Services website at:
http://www.state.nj.us/treasury/revenue/busregcert.shtml


STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE
FOR STATE AGENCY AND CASINO SERVICE CONTRACTORS

DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 252
TRENTON, NJ 08646-0252

TAXPAYER NAME:
TAX REGISTRATION TEST ACCOUNT

TRADE NAME:
CLIENT REGISTRATION

TAXPAYER IDENTIFICATION#:
970-097-362/500

SEQUENCE NUMBER:
0107330

ADDRESS:
847 ROEBLING AVE
TRENTON NJ 08611

ISSUANCE DATE:
07/14/04

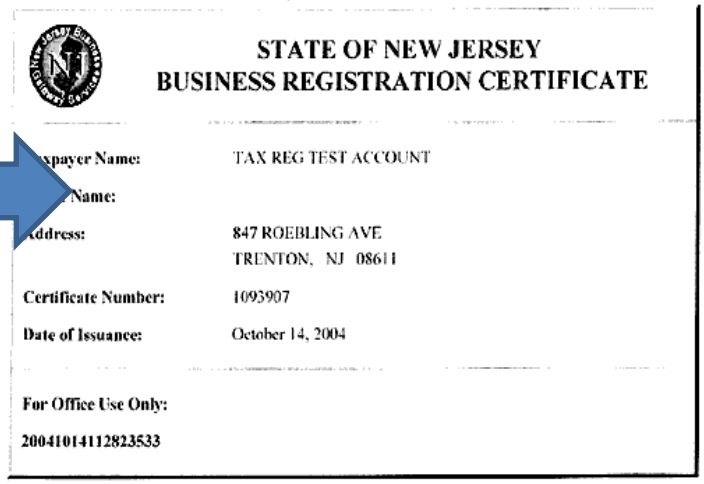
EFFECTIVE DATE:
01/01/01

Acting Director

FORM-BRC(08-01)

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

SAMPLE


STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE

Taxpayer Name: TAX REG TEST ACCOUNT

Trade Name:

Address: 847 ROEBLING AVE
TRENTON, NJ 08611

Certificate Number: 1093907

Date of Issuance: October 14, 2004

For Office Use Only:

20041014112823533

N.J.S.A. 54:49-4.1: Violations of Registration Requirements; Penalties.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false information of business registration under the requirements of either of those sections, shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration copy not properly provided under a contract with a contracting agency.

All respondents are urged to submit with their response, a copy of their firm's New Jersey Business Registration Certificate. Failure to submit the Certificate to the ESCNJ prior to the award of contract will result in the rejection of the entire bid or proposal.

CONTRACTOR/VENDOR REQUIREMENTS—OFFICE OF THE NEW JERSEY STATE COMPTROLLER

Contractors/vendors doing business with the ESCNJ are reminded of the following legal requirements pertaining to the Office of the New Jersey State Comptroller:

A. Access to Relevant Documents and Information—N.J.S.A. 52:15C-14 (d)

Private vendors or other persons contracting with or receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education shall upon request by the State Comptroller provide the State Comptroller with prompt access to all relevant documents and information as a condition of the contract and receipt of public monies. The State Comptroller shall not disclose any document or information to which access is provided that is confidential or proprietary. If the State Comptroller finds that any person receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education refuses to provide information upon the request of the State Comptroller, or otherwise impedes or fails to cooperate with any audit or performance review, the State Comptroller may recommend to the contracting unit that the person be subject to termination of their contract, or temporarily or permanently debarred from contracting with the contracting unit.

B. Maintenance of Contract Records—N.J.A.C. 17:44-2.2

Relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).

The contractor/vendor to whom a contract has been awarded shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

D. Renewal of Contract; Services

The ESCNJ may, at its discretion, request that a contract for services be renewed in full accordance with N.J.S.A. 18A:18A-42. The ESCNJ may negotiate terms for a renewal of contract proposal and present such negotiated proposal to the Board. All multi-year contracts and renewals are subject to the availability and appropriation annually of sufficient funds as may be needed to meet the extended obligation.

The ESCNJ is the final authority in awarding renewals of contracts.

DEBARMENT, SUSPENSION, OR DISQUALIFICATION

The ESCNJ will not enter into a contract for work with any person, company or firm that is on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List, or the State of New Jersey Consolidated Debarment Report (https://www.state.nj.us/treasury/revenue/debarment/index.shtml).

All bidders are required to submit a sworn statement indicating whether or not the bidder is, at the time of the bid, included on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List or

the State of New Jersey Consolidated Debarment Report, or the Federal Debarred Vendor List—Excluded Parties List System—System for Award Management—SAM.gov

PROHIBITED ACTIVITIES IN RUSSIA AND BELARUS & INVESTMENT ACTIVITIES IN IRAN N.J.S.A. (18A:18A-49.4)

The ESCNJ, pursuant to N.J.S.A. 18A:18A-49.4, shall implement and comply with Public Law 2012, c.25, Disclosure of Investment Activities in Iran and Public Law 2022, c.3, Prohibited Russia-Belarus Activities —N.J.S.A. 52:32-55 et seq.

Pursuant to N.J.S.A. 52:32-57, et seq. (P.L. 2012, c.25, P.L. 2021, c.4 and P.L. 2022, c.3), any person or entity that is a successful bidder or proposer, or otherwise proposes to enter into or renew a contract, for goods or services must complete the certification below prior to contract award to attest, under penalty of perjury, that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list or Chapter 25 list as a person or entity engaging in prohibited activities in Russia, Belarus or Iran. Before a contract for goods or services can be amended or extended, a person or entity must certify that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list. Both lists are found on Treasury's website at the following web addresses:
https://www.nj.gov/treasury/administration/pdf/RussiaBelarusEntityList.pdf
www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf . Bidders must review this list prior to completing the certification. If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

In addition, bidders must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in Russia or Belarus and/or investment activities in Iran outlined above by completing the boxes on the lower portion of the enclosed form. The person or entity must cease engaging in any prohibited activities and provide an updated certification before the contract can be entered into. If a vendor or contractor is found to be in violation of law, action may be taken as appropriate and as may be provided by law, rule, or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages, declaring the party in default, and seeking debarment or suspension of the party.

The ESCNJ has provided within these specifications, a Prohibited Russia-Belarus Activities & Iran Investment Activities certification form for all persons or entities, that plan to submit a bid, respond to a proposal, or renew a contract with the ESCNJ, to complete, sign and submit with the proposal. The Prohibited Russia-Belarus Activities & Iran Investment Activities Form is to be completed, certified and submitted prior to the award of contract, preferably with the bid submittal.
Please sign and submit the Disclosure of Investment Activities in Iran form and include with your bid package. This form must be submitted no later than the time of the award of a contact.

POLITICAL CONTRIBUTIONS DISCLOSURE – AWARD OF CONTRACTS

Pursuant to N.J.A.C. 6A:23A-6.3 (a) (1-4) please note the following:

Award of Contract – Reportable Contributions – N.J.A.C. 6A:23A-6.3 (a) (1)
"No board of education will vote upon or award any contract in the amount of $17,500 or greater to any business entity which has made a contribution reportable by the recipient under P.L. 1973, c83 (codified at N.J.S.A. 19:44A-1 et. seq.) to a member of the board of education during the preceding one-year period."

Contributions During Term of Contract – Prohibited – N.J.A.C. 6A:23A-6.3 (a) (2, 3)
"Contributions reportable by the recipient under P.L. 1973, c83 (codified at N.J.S.A. 19:44A-1 et. seq.) to any member of the school board from any business entity doing business with the school district are prohibited during the term of the contract."

"When a business entity referred in 4.1(e) is a natural person, contribution by that person's spouse or child that resides therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity."

Chapter 271 Political Contribution Disclosure Form – Required – N.J.A.C. 6A:23A-6.3 (a) (4)

All respondents shall submit with their bid package a completed and signed Chapter 271 Political Contribution Disclosure Form. The Chapter 271 form will be reviewed by the district to determine whether the vendor is in compliance with the aforementioned N.J.A.C. 6A:23A-6.3 (a) (2) Award of Contract.

The Chapter 271 Political Contribution Disclosure form shall be submitted with the response to the bid/proposal or no later than ten (10) days prior to the award of contract. Failure to provide the completed and signed form shall be cause for disqualification of the bid/proposal.

POLITICAL CONTRIBUTION DISCLOSURE STATEMENT – PAY TO PLAY

Annual Disclosure

A business entity as defined by law is advised of its responsibility to file an annual disclosure statement on political contributions with the **New Jersey Election Law Enforcement Commission** pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005 Chapter 271 section 3) if the business entity receives contracts in excess of $50,000 from public entities in a calendar year. It is the business entity's responsibility to determine if filing is necessary. Additional information on this requirement is available from the New Jersey Election Law Enforcement Commission at 1-888-313-3532 or at www.elec.state.nj.us.

Chapter 271 Political Contribution Disclosure Form

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
  - of the public entity awarding the contract
  - of that county in which that public entity is located
  - of another public entity within that county
  - or of a legislative district in which that public entity is located or, when the public entity is a county,
  - of any legislative district which includes all or part of the county.

The disclosure must list reportable contributions to any of the committees that exceed $300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

The ESCNJ has provided a Chapter 271 Political Contribution Disclosure Form within the specifications package for use by the business entity. The ESCNJ has also provided a list of agencies to assist the contractor. The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

STATEMENT OF OWNERSHIP N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)
No business organization, regardless of form of ownership, shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, prior to the receipt of the bid or accompanying the bid of said business organization, bidders shall submit a statement setting forth the names and addresses of all persons and entities that own ten percent or more of its stock or interest of any type at all levels of ownership.

The included Statement of Ownership shall be completed and attached to the bid proposal. This requirement applies to all forms of business organizations, including, but not limited to, corporations and partnerships, publicly-owned corporations, limited partnerships, limited liability corporations, limited liability partnerships, sole proprietorship, and Subchapter S corporations. **Failure to submit a disclosure document shall result in rejection of the bid as it cannot be remedied after bids have been opened.**

Not-for-profit entities should fill in their name, check the not-for-profit box, and certify the form. No other information is required.

AFFIRMATIVE ACTION QUESTIONNAIRE

1. Our company has a federal Affirmative Action Plan approval. ○ Yes ○ No

If yes, please attach a copy of the plan to this questionnaire.

2. Our company has a New Jersey State Certificate of Employee Information Report. ○ Yes ○ No

If yes, please attach a copy of the certificate to this questionnaire.

3. If you answered "***NO"*** to both questions above, No. 1 and 2, you must apply for an Affirmative Action Employee Information Report – Form AA302.

Please visit the New Jersey Department of Treasury website for the Division of Public Contracts Equal Employment Opportunity Compliance:

https://www.nj.gov/treasury/contract_compliance/

a. Click on "Employee Information Report"
b. Complete and submit the form with the *appropriate payment* to:

Department of Treasury
Division of Purchase and Property
Contract Compliance and Audit Unit
EEO Monitoring P.O. Box 206
Trenton, New Jersey 08625-0206

All fees for this application are to be paid directly to the State of New Jersey. A copy shall be submitted to the ESCNJ prior to the execution or award of contract.

I certify that the above information is correct to the best of my knowledge.

Name of Company/Firm _____

Address _____
City, State, Zip _____

Name of Authorized Agent _____Title _____
SIGNATURE _____ Date _____

APPENDIX A
AMERICANS WITH DISABILITIES ACT OF 1990
Equal Opportunity for Individuals with Disability

The contractor and the Educational Services Commission of New Jersey (hereafter "owner") do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. S121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, If any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the *owner shall* expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Company _____ Name _____

Signature _____ Title _____

Date: _____

ASSURANCE OF COMPLIANCE

Contact with Students

There may be times during the performance of this contract, where a contracted service provider may come in contact with students of the school district. The district fully understands it obligation to provide to all students and staff members, a safe educational environment. To this end, the district is requiring all bidders to sign a statement of Assurance of Compliance, acknowledging the bidder's understanding of the below listed requirements and further acknowledging the bidder's assurance of compliance with those listed requirements.

Anti-Bullying Reporting--Requirement

When applicable, the contracted service provider shall comply with all applicable provisions of the New Jersey Anti-Bullying Bill of Rights Act—N.J.S.A. 18A:37-13.1 et seq., all applicable code and regulations, and the Anti-Bullying Policy of the Board of Education. In accordance with N.J.A.C. 6A:16-7.7 (c), a contracted service provider, who has witnessed, or has reliable information that a student has been subject to harassment, intimidation, or bullying shall immediately report the incident to any school administrator or safe schools resource officer, or the School Business Administrator/Board Secretary.

Criminal History Background Checks—N.J.S.A. 18A:6-7.1--Requirement

When applicable, the contracted service provider, shall provide to the school district prior to commencement of contract, evidence or proof that each employee assigned to provide services and that comes in **regular contact** with students, has had a criminal history background check, and furthermore, that said background check indicates that no criminal history record information exists on file for that worker. Failure to provide a proof of criminal history background check for any employee coming in regular contact with students, prior to commencement of contact, may be cause for breach of contract. See NJDOE Broadcast 9/9/19.

Pre-Employment Requirements

When applicable, all contracted service providers, whose employees have **regular contact with students**, shall comply with the Pre-Employment Requirements in accordance with New Jersey P.L. 2018 c.5, N.J.S.A. 18A:6-7.6 et seq. Contracted service providers are to review the following New Jersey Department of Education Office of Student Protection—Pre-Employment Resource P.L. 2018 c.5 link below for guidance and compliance procedures.

https://www.nj.gov/education/crimhist/preemployment/

Name of Company _____

Name of Authorized Representative _____

Signature _____ Date _____

(Revised: January, 2016)

EXHIBIT A
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C. 17:27
GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval
- Certificate of Employee Information Report
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at https://www.nj.gov/treasury/contract_compliance/

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting an investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

Company _____ Name _____

Signature _____ Title _____

Date: _____

Form AA302
Rev. 11/11

STATE OF NEW JERSEY

Division of Purchase & Property
Contract Compliance Audit Unit
EEO Monitoring Program

EMPLOYEE INFORMATION REPORT

IMPORTANT-READ INSTRUCTIONS CAREFULLY BEFORE COMPLETING FORM. FAILURE TO PROPERLY COMPLETE THE ENTIRE FORM AND TO SUBMIT THE REQUIRED $150.00 FEE MAY DELAY ISSUANCE OF YOUR CERTIFICATE. DO NOT SUBMIT EEO-1 REPORT FOR SECTION B, ITEM 11. For Instructions on completing the form, go to: http://www.state.nj.us/treasury/contract_compliance/pdf/aa302ins.pdf

SECTION A - COMPANY IDENTIFICATION

1. FID. NO. OR SOCIAL SECURITY
2. TYPE OF BUSINESS ☐ 1. MFG ☐ 2. SERVICE ☐ 3. WHOLESALE ☐ 4. RETAIL ☐ 5. OTHER
3. TOTAL NO. EMPLOYEES IN THE ENTIRE COMPANY
4. COMPANY NAME
5. STREET CITY COUNTY STATE ZIP CODE
6. NAME OF PARENT OR AFFILIATED COMPANY (IF NONE, SO INDICATE) CITY STATE ZIP CODE
7. CHECK ONE: IS THE COMPANY: ☐ SINGLE-ESTABLISHMENT EMPLOYER ☐ MULTI-ESTABLISHMENT EMPLOYER
8. IF MULTI-ESTABLISHMENT EMPLOYER, STATE THE NUMBER OF ESTABLISHMENTS IN NJ
9. TOTAL NUMBER OF EMPLOYEES AT ESTABLISHMENT WHICH HAS BEEN AWARDED THE CONTRACT
10. PUBLIC AGENCY AWARDING CONTRACT CITY COUNTY STATE ZIP CODE

Official Use Only	DATE RECEIVED	INAUG.DATE	ASSIGNED CERTIFICATION NUMBER

SECTION B - EMPLOYMENT DATA

11. Report all permanent, temporary and part-time employees ON YOUR OWN PAYROLL. Enter the appropriate figures on all lines and in all columns. Where there are no employees in a particular category, enter a zero. Include ALL employees, not just those in minority/female categories, in columns 1, 2, & 3. *DO NOT SUBMIT AN EEO-1 REPORT.*

JOB CATEGORIES	ALL EMPLOYEES COL. 1 TOTAL (Cols.2 &3)	COL. 2 MALE	COL. 3 FEMALE	PERMANENT MINORITY/FEMALE EMPLOYEE BREAKDOWN MALE: BLACK	HISPANIC	AMER. INDIAN	ASIAN	NON MIN.	FEMALE: BLACK	HISPANIC	AMER. INDIAN	ASIAN	NON MIN.
Officials/Managers													
Professionals													
Technicians													
Sales Workers													
Office & Clerical													
Craftworkers (Skilled)													
Operatives (Semi-skilled)													
Laborers (Unskilled)													
Service Workers													
TOTAL													
Total employment From previous Report (if any)													
Temporary & Part-Time Employees	The data below shall NOT be included in the figures for the appropriate categories above.												

12. HOW WAS INFORMATION AS TO RACE OR ETHNIC GROUP IN SECTION B OBTAINED? ☐ 1. Visual Survey ☐ 2. Employment Record ☐ 3. Other (Specify)

13. DATES OF PAYROLL PERIOD USED From: To:

14. IS THIS THE FIRST Employee Information Report Submitted? 1. YES ☐ 2. NO ☐

15. IF NO, DATE LAST REPORT SUBMITTED MO. DAY YEAR

SECTION C - SIGNATURE AND IDENTIFICATION

16. NAME OF PERSON COMPLETING FORM (Print or Type) SIGNATURE TITLE DATE MO DAY YEAR

17. ADDRESS NO. & STREET CITY COUNTY STATE ZIP CODE PHONE (AREA CODE, NO.,EXTENSION) - -

SAMPLE

To download the AA-302 form, click this link:
https://www.nj.gov/treasury/contract_compliance/documents/pdf/forms/aa302.pdf

INSTRUCTIONS FOR COMPLETING THE EMPLOYEE INFORMATION REPORT (FORM AA302)

IMPORTANT: READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE FORM. PRINT OR TYPE ALL INFORMATION. FAILURE TO PROPERLY COMPLETE THE ENTIRE FORM **AND TO SUBMIT THE REQUIRED $150.00 NON-REFUNDABLE FEE MAY DELAY ISSUANCE OF YOUR CERTIFICATE**. **IF YOU HAVE A CURRENT CERTIFICATE OF EMPLOYEE INFORMATION REPORT, DO NOT COMPLETE THIS FORM UNLESS YOUR ARE RENEWING A CERTIFICATE THAT IS DUE FOR EXPIRATION. DO NOT COMPLETE THIS FORM FOR CONSTRUCTION CONTRACT AWARDS.**

ITEM 1 - Enter the Federal Identification Number assigned by the Internal Revenue Service, or if a Federal Employer Identification Number has been applied for, or if your business is such that you have not or will not receive a Federal Employer Identification Number, enter the Social Security Number of the owner or of one partner, in the case of a partnership.

ITEM 2 - Check the box appropriate to your TYPE OF BUSINESS. If you are engaged in more than one type of business check the predominate one. If you are a manufacturer deriving more than 50% of your receipts from your own retail outlets, check "Retail".

ITEM 3 - Enter the total "number" of employees in the entire company, including part-time employees. This number shall include all facilities in the entire firm or corporation.

ITEM 4 - Enter the name by which the company is identified. If there is more than one company name, enter the predominate one.

ITEM 5 - Enter the physical location of the company. Include City, County, State and Zip Code.

ITEM 6 - Enter the name of any parent or affiliated company including the City, County, State and Zip Code. If there is none, so indicate by entering "None" or N/A.

ITEM 7 - Check the box appropriate to your type of company establishment. "Single-establishment Employer" shall include an employer whose business is conducted at only one physical location. "Multi-establishment Employer" shall include an employer whose business is conducted at more than one location.

ITEM 8 - If "Multi-establishment" was entered in item 8, enter the number of establishments within the State of New Jersey.

ITEM 9 - Enter the total number of employees at the establishment being awarded the contract.

ITEM 10 - Enter the name of the Public Agency awarding the Include City, County, State and Zip Code. This is Number. not applicable if you are renewing a current certificate.

ITEM 11 - Enter the appropriate figures on all lines and in all columns. THIS SHALL ONLY INCLUDE EMPLOYMENT DATA FROM THE FACILITY THAT IS BEING AWARDED THE CONTRACT. DO NOT list the same employee in more than one job category. **DO NOT attach an EEO-1 Report.**

Racial/Ethnic Groups will be defined:
Black: Not of Hispanic origin. Persons having origin in any of the Black racial groups of Africa.
Hispanic: Persons of Mexican, Puerto Rican, Cuban, or Central or South American or other Spanish culture or origin, regardless of race.
American Indian or Alaskan Native: Persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
Asian or Pacific Islander: Persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Sub-continent or the Pacific Islands. This area includes for example, China, Japan, Korea, the Philippines Islands and Samoa.
Non-Minority: Any Persons not identified in any of the aforementioned Racial/Ethnic Groups.

ITEM 12 - Check the appropriate box. If the race or ethnic group information was not obtained by 1 or 2, specify by what other means this was done in 3.

ITEM 13 - Enter the dates of the payroll period used to prepare the employment data presented in Item 12.

ITEM 14 - If this is the first time an Employee Information Report has been submitted for this company, check block "Yes".

ITEM 15 - If the answer to Item 15 is "No", enter the date when the last Employee Information Report was submitted by this company.

ITEM 16 - Print or type the name of the person completing the form. Include the signature, title and date.

ITEM 17 - Enter the physical location where the form is being completed. Include City, State, Zip Code and Phone contact.

TYPE OR PRINT IN SHARP BALL POINT PEN

THE VENDOR IS TO COMPLETE THE EMPLOYEE INFORMATION REPORT FORM (AA302) AND RETAIN A COPY FOR THE VENDOR'S OWN FILES. THE VENDOR SHOULD ALSO SUBMIT A COPY TO THE PUBLIC AGENCY AWARDING THE CONTRACT IF THIS IS YOUR FIRST REPORT; AND FORWARD ONE COPY **WITH A CHECK IN THE AMOUNT OF $150.00 PAYABLE TO THE TREASURER, STATE OF NEW JERSEY(FEE IS NON-REFUNDABLE)** TO:

NJ Department of the Treasury
Division of Public Contracts Equal Employment Opportunity Compliance

P.O. Box 206

Trenton, New Jersey 08625-0206 Telephone No. (609) 292-5473

Educational Services Commission of New Jersey

Business Office

1660 Stelton Road, Floor 2
Piscataway, New Jersey 08854

Chapter 271
Political Contribution Disclosure Form

(Contracts that Exceed $17,500.00)
Ref. N.J.S.A. 19:44A-20.26

The undersigned, being authorized and knowledgeable of the circumstances, does hereby certify that _____(Business Entity) has made the following **reportable** political contributions to any elected official, political candidate or any political committee as defined in N.J.S.A. 19:44-20.26 during the twelve (12) months preceding this award of contract:

Reportable Contributions

Date of Contribution	Amount of Contribution	Name of Recipient Elected Official/ Committee/Candidate	Name of Contributor

The Business Entity may attach additional pages if needed.

_____

○ **No Reportable Contributions** (Please check (☐) if applicable.)

I certify that _____ (Business Entity) made no reportable contributions to any elected official, political candidate or any political committee as defined in N.J.S.A. 19:44-20.26.

Certification

I certify that the information provided above is in full compliance with Public law 2005 – Chapter 271.

Name of Authorized Agent _____

Signature _____ Title _____

Business Entity _____

C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s. 2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee*[1]
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
    - of the public entity awarding the contract
    - of that county in which that public entity is located
    - of another public entity within that county
    - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed $300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs)

When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." [N.J.S.A. 19:44A-20.26(b)]. The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed over sheet) may be used as the contractor's submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

[1] N.J.S.A. 19:44A-3(s): "The term "legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L. 1993, c. 65 (C. 19:44A-10.1) for the purpose of receiving contributions and making expenditures."

P.L. 2005, c. 271

(Unofficial version, Assembly Committee Substitute to A-3013, First Reprint*)

AN ACT authorizing units of local government to impose limits on political contributions by contractors and supplementing Title 40A of the New Jersey Statutes and Title 19 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

40A:11-51 1. a. A county, municipality, independent authority, board of education, or fire district is hereby authorized to establish by ordinance, resolution or regulation, as may be appropriate, measures limiting the awarding of public contracts there from to business entities that have made a contribution pursuant to P.L. 1973, c. 83 (C. 19:44A-1 et seq.) and limiting the contributions that the holders of a contract can make during the term of a contract, notwithstanding the provisions and parameters of sections 1 through 12 of P.L. 2004, c. 19 (C. 19:44A-20.2 et al.) and section 22 of P.L. 1973, c. 83 (C. 19:44A-22).

b. The provisions of P.L. 2004, c. 19 shall not be construed to supersede or preempt any ordinance, resolution or regulation of a unit of local government that limits political contributions by business entities performing or seeking to perform government contracts. Any ordinance, resolution or regulation in effect on the effective date of P.L. 2004, c. 19 shall remain in effect and those adopted after that effective date shall be valid and enforceable.

c. An ordinance, resolution or regulation adopted or promulgated as provided in this section shall be filed with the Secretary of State.

19:44A-20.26 2. a. Not later than 10 days prior to entering into any contract having an anticipated value in excess of $17,500, except for a contract that is required by law to be publicly advertised for bids, a State agency, county, municipality, independent authority, board of education, or fire district shall require any business entity bidding thereon or negotiating therefor, to submit along with its bid or price quote, a list of political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L. 1973, c. 83 (C.19:44A-1 et seq.) and that were made by the business entity during the preceding 12 month period, along with the date and amount of each contribution and the name of the recipient of each contribution. A business entity contracting with a State agency shall disclose contributions to any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or any continuing political committee. A business entity contracting with a county, municipality, independent authority, other than an independent authority that is a State agency, board of education, or fire district shall disclose contributions to: any State, county, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, or holder of, and elective office of that public entity, of that county in which that public entity is located, of another public entity within that county, or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county, or any continuing political committee.

The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

b. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

c. As used in this section:
"business entity" means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity of 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate; and

"State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office,

board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency.

d. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

19:44A-20.13 3. a. Any business entity making a contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind to a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee, which has received in any calendar year $50,000 or more in the aggregate through agreements or contracts with a public entity, shall file an annual disclosure statement with the New Jersey Election Law Enforcement Commission, established pursuant to section 5 of P.L. 1973, c. 83 (C. 19:44A-5), setting forth all such contributions made by the business entity during the 12 months prior to the reporting deadline.

b. The commission shall prescribe forms and procedures for the reporting required in subsection a. of this section which shall include, but not be limited to:

(1) the name and mailing address of the business entity making the contribution, and the amount contributed during the 12 months prior to the reporting deadline;

(2) the name of the candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, candidate committee, joint candidates committee, political party committee, legislative leadership committee, political committee or continuing political committee receiving the contribution; and

(3) the amount of money the business entity received from the public entity through contract or agreement, the dates, and information identifying each contract or agreement and describing the goods, services or equipment provided or property sold.

c. The commission shall maintain a list of such reports for public inspection both at its office and through its Internet site.

d. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity, or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

As used in this section:

"Business entity" means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction; and

"Interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate.

e. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

4. This act shall take effect immediately.

*Note: Bold italicized statutory references of new sections are anticipated and not final as of the time this document was prepared. Statutory compilations of N.J.S.A. 18A:18A-51 is anticipated to show a reference to N.J.S.A. 40:11-51 and to N.J.S.A. 19:44A-20.26.

Prohibited Russia-Belarus Activities & Iran Investment Activities

Person or Entity	

Part 1: Certification

COMPLETE PART 1 BY CHECKING **ONE OF THE THREE BOXES BELOW**

Pursuant to law, any person or entity that is a successful bidder or proposer, or otherwise proposes to enter into or renew a contract, for goods or services must complete the certification below prior to contract award to attest, under penalty of perjury, that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list or Chapter 25 list as a person or entity engaging in prohibited activities in Russia, Belarus or Iran. Before a contract for goods or services can be amended or extended, a person or entity must certify that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list. Both lists are found on Treasury's website at the following web addresses:

https://www.nj.gov/treasury/administration/pdf/RussiaBelarusEntityList.pdf
www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf.

As applicable to the type of contract, the above-referenced lists must be reviewed prior to completing the below certification.

A person or entity unable to make the certification must provide a detailed, accurate, and precise description of the activities of the person or entity, or of a parent entity, subsidiary, or affiliate, engaging in prohibited activities in Russia or Belarus and/or investment activities in Iran. The person or entity must cease engaging in any prohibited activities and provide an updated certification before the contract can be entered into.

If a vendor or contractor is found to be in violation of law, action may be taken as appropriate and as may be provided by law, rule, or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages, declaring the party in default, and seeking debarment or suspension of the party.

CONTRACT AWARDS AND RENEWALS

☐	*I certify, pursuant to law, that neither the person or entity listed above, nor any parent entity, subsidiary, or affiliate appears on the N.J. Department of Treasury's lists of entities engaged in prohibited activities in Russia or Belarus pursuant to P.L. 2022, c. 3 or in investment activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf.* (Skip Part 2 and sign and complete the Certification below.)
CONTRACT AMENDMENTS AND EXTENSIONS	
☐	*I certify, pursuant to law, that neither the person or entity listed above, nor any parent entity, subsidiary, or affiliate is listed on the N.J. Department of the Treasury's lists of entities determined to be engaged in prohibited activities in Russia or Belarus pursuant to P.L. 2022, c. 3. I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf.* (Skip Part 2 and sign and complete the Certification below.)
IF UNABLE TO CERTIFY	
☐	*I am unable to certify as above because the person or entity and/or a parent entity, subsidiary, or affiliate is listed on the Department's Russia-Belarus list and/or Chapter 25 Iran list. I will provide a detailed, accurate, and precise description of the activities as directed in Part 2 below, and sign and complete the Certification below. Failure to provide such will prevent the award of the contract to the person or entity, and appropriate penalties, fines, and/or sanctions will be assessed as provided by law.*

Part 2: Additional Information

PLEASE PROVIDE FURTHER INFORMATION RELATED TO PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS AND/OR INVESTMENT ACTIVITIES IN IRAN.

You must provide a detailed, accurate, and precise description of the activities of the person or entity, or of a parent entity, subsidiary, or affiliate, engaging in prohibited activities in Russia or Belarus and/or investment activities in Iran in the space below and, if needed, on additional sheets provided by you.

Part 3: Certification of True and Complete Information

I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments there, to the best of my knowledge, are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity.

*I acknowledge that the <**Name of Contracting Unit**> is relying on the information contained herein and hereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the <**Name of Contracting Unit**> to notify the <**Name of Contracting Unit**> in writing of any changes to the answers of information contained herein.*

*I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the <**Name of Contracting Unit**> and that the <**Name of Contracting Unit**> at its option may declare any contract(s) resulting from this certification void and unenforceable.*

Full Name (Print)		**Title**	
Signature		**Date**	

Statement of Suspension or Debarment

STATE OF NEW JERSEY/ _____
Specify, of other

COUNTY OF _____

I, _____ of the (City, Town, Borough)

of _____ State of _____ of full age,

being duly sworn according to law on my oath depose and say that:

I am _____ of the firm

of _____ the Bidder

making the Proposal for the above named projects, and that I executed the said Proposal with full authority to do so; that said Bidder is not at the time of the making this bid included on the New Jersey State Treasurer's or the Federal Government's List of Debarred, Suspended or Disqualified Bidders or the State Department of Labor and Workforce Development; Prevailing Wage Debarment List as a result of action taken by any State or Federal Agency.

Name of Contractor: _____
(Company Name)

By: _____
(Signature of authorized representative)

Subscribed and sworn to before me

This_____ day of _____, 20 ____

_____
(Seal) Notary Public of New Jersey/
Specify Other State

My Commission expires_____ 20 ___

STATEMENT OF OWNERSHIP DISCLOSURE

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

Name of Organization: _____
Organization Address: _____
City, State, ZIP: _____

Part I Check the box that represents the type of business organization:

☐ Sole Proprietorship (skip Parts II and III, execute certification in Part IV)

☐ Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)

☐ For-Profit Corporation (any type) ☐ Limited Liability Company (LLC)

☐ Partnership ☐ Limited Partnership ☐ Limited Liability Partnership (LLP)

☐ Other (be specific): _____

Part II Check the appropriate box

☐ The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. (**COMPLETE THE LIST BELOW IN THIS SECTION**)

OR

☐ No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. (**SKIP TO PART IV**)

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed**.

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

Please list the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II **other than for any publicly traded parent entities referenced above**. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address

Part IV Certification

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the ***ESCNJ and/or its members*** is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with the ***ESCNJ and/or its members*** to notify the ***ESCNJ and/or its members*** in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the ***ESCNJ and/or its members*** to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

NEW JERSEY REQUIRED DOCUMENTS FOR PUBLIC WORKS BIDS

BUSINESS REGISTRATION CERTIFICATE (N.J.S.A. 52:32-44)

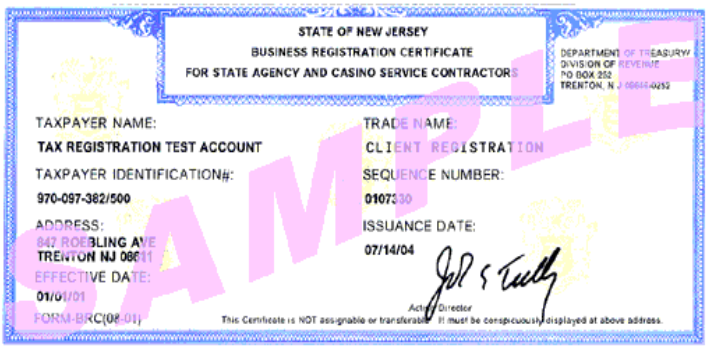
Pursuant to N.J.S.A. 52:32-44, all respondents shall submit prior to award of bid, a copy of their "New Jersey Business Registration Certificate" as issued by the Department of Treasury of the State of New Jersey. The ESCNJ requests that all respondents for this bid/proposal submit a current New Jersey Business Registration Certificate with the bid/proposal but no later than date of award.

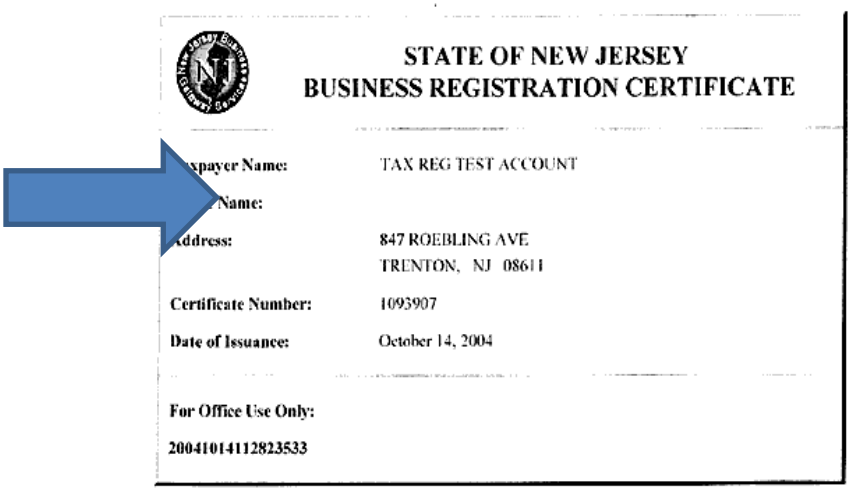
Goods and Services Contracts

N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that knowingly provide goods or perform services for a contractor fulfilling this contract:

3. The contractor shall not enter into a contract with a subcontractor unless the subcontractor first provides the contractor with a valid proof of business registration.
4. The contractor shall maintain and submit to the Contracting Agency a list of subcontractors and their addresses that may be updated from time to time.
3. Prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors or attest that none was used.
4. The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609) 292-6400.

For more information on how to obtain a Business Registration Certificate, please visit the State of New Jersey, Department of Treasury, Division of Revenue and Enterprise Services website at:
http://www.state.nj.us/treasury/revenue/busregcert.shtml


STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE
FOR STATE AGENCY AND CASINO SERVICE CONTRACTORS
DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 252
TRENTON, NJ 08646-0252
TAXPAYER NAME:
TAX REGISTRATION TEST ACCOUNT
TRADE NAME:
CLIENT REGISTRATION
TAXPAYER IDENTIFICATION#:
970-097-382/500
SEQUENCE NUMBER:
0107330
ADDRESS:
842 ROEBLING AVE
TRENTON NJ 08611
ISSUANCE DATE:
07/14/04
EFFECTIVE DATE:
01/01/01
Acting Director
FORM BRC(08-01)
This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.
SAMPLE


STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE
Taxpayer Name: TAX REG TEST ACCOUNT
Trade Name:
Address: 847 ROEBLING AVE
TRENTON, NJ 08611
Certificate Number: 1093907
Date of Issuance: October 14, 2004
For Office Use Only:
20041014112823533

RETURN PRIOR TO BID AWARD

N.J.S.A. 54:49-4.1: Violations of Registration Requirements; Penalties.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false information of business registration under the requirements of either of those sections, shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration copy not properly provided under a contract with a contracting agency.

All respondents are urged to submit with their response, a copy of their firm's New Jersey Business Registration Certificate. Failure to submit the Certificate to the ESCNJ prior to the award of contract will result in the rejection of the entire bid or proposal.

CONTRACTOR/VENDOR REQUIREMENTS—OFFICE OF THE NEW JERSEY STATE COMPTROLLER

Contractors/vendors doing business with the ESCNJ are reminded of the following legal requirements pertaining to the Office of the New Jersey State Comptroller:

C. Access to Relevant Documents and Information—N.J.S.A. 52:15C-14 (d)

Private vendors or other persons contracting with or receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education shall upon request by the State Comptroller provide the State Comptroller with prompt access to all relevant documents and information as a condition of the contract and

receipt of public monies. The State Comptroller shall not disclose any document or information to which access is provided that is confidential or proprietary. If the State Comptroller finds that any person receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education refuses to provide information upon the request of the State Comptroller, or otherwise impedes or fails to cooperate with any audit or performance review, the State Comptroller may recommend to the contracting unit that the person be subject to termination of their contract, or temporarily or permanently debarred from contracting with the contracting unit.

D. Maintenance of Contract Records—N.J.A.C. 17:44-2.2

Relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).

The contractor/vendor to whom a contract has been awarded shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

D. Renewal of Contract; Services

The ESCNJ may, at its discretion, request that a contract for services be renewed in full accordance with N.J.S.A. 18A:18A-42. The ESCNJ may negotiate terms for a renewal of contract proposal and present such negotiated proposal to the Board. All multi-year contracts and renewals are subject to the availability and appropriation annually of sufficient funds as may be needed to meet the extended obligation.

The ESCNJ is the final authority in awarding renewals of contracts.

DEBARMENT, SUSPENSION, OR DISQUALIFICATION

The ESCNJ will not enter into a contract for work with any person, company or firm that is on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List, or the State of New Jersey Consolidated Debarment Report (https://www.state.nj.us/treasury/revenue/debarment/index.shtml).

All bidders are required to submit a sworn statement indicating whether or not the bidder is, at the time of the bid, included on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List or the State of New Jersey Consolidated Debarment Report, or the Federal Debarred Vendor List—Excluded Parties List System—System for Award Management—SAM.gov

PROHIBITED ACTIVITIES IN RUSSIA AND BELARUS & INVESTMENT ACTIVITIES IN IRAN N.J.S.A. (18A:18A-49.4)

The ESCNJ, pursuant to N.J.S.A. 18A:18A-49.4, shall implement and comply with Public Law 2012, c.25, Disclosure of Investment Activities in Iran and Public Law 2022, c.3, Prohibited Russia-Belarus Activities —N.J.S.A. 52:32-55 et seq.

Pursuant to N.J.S.A. 52:32-57, et seq. (P.L. 2012, c.25, P.L. 2021, c.4 and P.L. 2022, c.3), any person or entity that is a successful bidder or proposer, or otherwise proposes to enter into or renew a contract, for goods or services must complete the certification below prior to contract award to attest, under penalty of perjury, that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list or Chapter 25 list as a person or entity engaging in prohibited activities in Russia, Belarus or Iran. Before a contract for goods or services can be amended or extended, a person or entity must certify that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list. Both lists are found on Treasury's website at the following web addresses:
https://www.nj.gov/treasury/administration/pdf/RussiaBelarusEntityList.pdf
www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf . Bidders must review this list prior to completing the certification. If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

In addition, bidders must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in Russia or Belarus and/or investment activities in Iran outlined above by completing the boxes on the lower portion of the enclosed form. The person or entity must cease engaging in any prohibited activities and provide an updated certification before the contract can be entered into. If a vendor or contractor is found to be in violation of law, action may be taken as appropriate and as may be provided by law, rule, or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages, declaring the party in default, and seeking debarment or suspension of the party.

The ESCNJ has provided within these specifications, a Prohibited Russia-Belarus Activities & Iran Investment Activities certification form for all persons or entities, that plan to submit a bid, respond to a proposal, or renew a contract with the ESCNJ, to complete, sign and submit with the proposal. The Prohibited Russia-Belarus Activities & Iran Investment Activities Form is to be completed, certified and submitted prior to the award of contract, preferably with the bid submittal.
Please sign and submit the Disclosure of Investment Activities in Iran form and include with your bid package. This form must be submitted no later than the time of the award of a contact.

PREVAILING WAGES

Where applicable, all vendors must adhere to NJ State Prevailing Wage laws; All subcontractors named in this bid understand the requirements of the subcontractor to pay prevailing wages in full accordance with the law, where applicable**.**

STATEMENT OF OWNERSHIP N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

No business organization, regardless of form of ownership, shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, prior to the receipt of the bid or accompanying the bid of said business organization, bidders shall submit a statement setting forth the names and addresses of all persons and entities that own ten percent or more of its stock or interest of any type at all levels of ownership.

The included Statement of Ownership shall be completed and attached to the bid proposal. This requirement applies to all forms of business organizations, including, but not limited to, corporations and partnerships, publicly-owned corporations, limited partnerships, limited liability corporations, limited liability partnerships, sole proprietorship, and Subchapter S corporations. **Failure to submit a disclosure document shall result in rejection of the bid as it cannot be remedied after bids have been opened.**

Not-for-profit entities should fill in their name, check the not-for-profit box, and certify the form. No other information is required.

APPENDIX A RETURN WITH BID
AMERICANS WITH DISABILITIES ACT OF 1990
Equal Opportunity for Individuals with Disability

The contractor and the Educational Services Commission of New Jersey (hereafter "owner") do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. S121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, If any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the *owner shall* expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Company _____ Name _____

Signature _____ Title _____

ASSURANCE OF COMPLIANCE – RETURN WITH BID

Contact with Students
There may be times during the performance of this contract, where a contracted service provider may come in contact with students of the school district. The district fully understands it obligation to provide to all students and staff members, a safe educational environment. To this end, the district is requiring all bidders to sign a statement of Assurance of Compliance, acknowledging the bidder's understanding of the below listed requirements and further acknowledging the bidder's assurance of compliance with those listed requirements.

Anti-Bullying Reporting--Requirement
When applicable, the contracted service provider shall comply with all applicable provisions of the New Jersey Anti-Bullying Bill of Rights Act—N.J.S.A. 18A:37-13.1 et seq., all applicable code and regulations, and the Anti-Bullying Policy of the Board of Education. In accordance with N.J.A.C. 6A:16-7.7 (c), a contracted service provider, who has witnessed, or has reliable information that a student has been subject to harassment, intimidation, or bullying shall immediately report the incident to any school administrator or safe schools resource officer, or the School Business Administrator/Board Secretary.

Criminal History Background Checks—N.J.S.A. 18A:6-7.1--Requirement
When applicable, the contracted service provider, shall provide to the school district prior to commencement of contract, evidence or proof that each employee assigned to provide services and that comes in **regular contact** with students, has had a criminal history background check, and furthermore, that said background check indicates that no criminal history record information exists on file for that worker. Failure to provide a proof of criminal history background check for any employee coming in regular contact with students, prior to commencement of contact, may be cause for breach of contract. See NJDOE Broadcast 9/9/19.

Pre-Employment Requirements
When applicable, all contracted service providers, whose employees have **regular contact with students**, shall comply with the Pre-Employment Requirements in accordance with New Jersey P.L. 2018 c.5, N.J.S.A. 18A:6-7.6 et seq. Contracted service providers are to review the following New Jersey Department of Education Office of Student Protection—Pre-Employment Resource P.L. 2018 c.5 link below for guidance and compliance procedures.

https://www.nj.gov/education/crimhist/preemployment/

Name of Company _____

Name of Authorized Representative _____
Signature _____ Date _____

RETURN WITH BID

Educational Services Commission of New Jersey
Business Office
1660 Stelton Road, Floor 2
Piscataway, New Jersey 08854

Chapter 271
Political Contribution Disclosure Form

(Contracts that Exceed $17,500.00)
Ref. N.J.S.A. 19:44A-20.26

The undersigned, being authorized and knowledgeable of the circumstances, does hereby certify that _____(Business Entity) has made the following **reportable** political contributions to any elected official, political candidate or any political committee as defined in N.J.S.A. 19:44-20.26 during the twelve (12) months preceding this award of contract:

Reportable Contributions

Date of Contribution	Amount of Contribution	Name of Recipient Elected Official/ Committee/Candidate	Name of Contributor

The Business Entity may attach additional pages if needed.

_____

○ **No Reportable Contributions** (Please check (☐) if applicable.)

I certify that _____ (Business Entity) made no reportable contributions to any elected official, political candidate or any political committee as defined in N.J.S.A. 19:44-20.26.

Certification

I certify that the information provided above is in full compliance with Public law 2005 – Chapter 271.

Name of Authorized Agent _____

Signature _____ Title _____

Business Entity _____

C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s. 2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee*[2]
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
    - of the public entity awarding the contract
    - of that county in which that public entity is located
    - of another public entity within that county
    - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed $300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs)

When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." [N.J.S.A. 19:44A-20.26(b)]. The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed over sheet) may be used as the contractor's submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

[2] N.J.S.A. 19:44A-3(s): "The term "legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L. 1993, c. 65 (C. 19:44A-10.1) for the purpose of receiving contributions and making expenditures."

P.L. 2005, c. 271

(Unofficial version, Assembly Committee Substitute to A-3013, First Reprint*)

AN ACT authorizing units of local government to impose limits on political contributions by contractors and supplementing Title 40A of the New Jersey Statutes and Title 19 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

40A:11-51 1. a. A county, municipality, independent authority, board of education, or fire district is hereby authorized to establish by ordinance, resolution or regulation, as may be appropriate, measures limiting the awarding of public contracts there from to business entities that have made a contribution pursuant to P.L. 1973, c. 83 (C. 19:44A-1 et seq.) and limiting the contributions that the holders of a contract can make during the term of a contract, notwithstanding the provisions and parameters of sections 1 through 12 of P.L. 2004, c. 19 (C. 19:44A-20.2 et al.) and section 22 of P.L. 1973, c. 83 (C. 19:44A-22).

b. The provisions of P.L. 2004, c. 19 shall not be construed to supersede or preempt any ordinance, resolution or regulation of a unit of local government that limits political contributions by business entities performing or seeking to perform government contracts. Any ordinance, resolution or regulation in effect on the effective date of P.L. 2004, c. 19 shall remain in effect and those adopted after that effective date shall be valid and enforceable.

c. An ordinance, resolution or regulation adopted or promulgated as provided in this section shall be filed with the Secretary of State.

19:44A-20.26 2. a. Not later than 10 days prior to entering into any contract having an anticipated value in excess of $17,500, except for a contract that is required by law to be publicly advertised for bids, a State agency, county, municipality, independent authority, board of education, or fire district shall require any business entity bidding thereon or negotiating therefor, to submit along with its bid or price quote, a list of political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L. 1973, c. 83 (C.19:44A-1 et seq.) and that were made by the business entity during the preceding 12 month period, along with the date and amount of each contribution and the name of the recipient of each contribution. A business entity contracting with a State agency shall disclose contributions to any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or any continuing political committee. A business entity contracting with a county, municipality, independent authority, other than an independent authority that is a State agency, board of education, or fire district shall disclose contributions to: any State, county, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, or holder of, and elective office of that public entity, of that county in which that public entity is located, of another public entity within that county, or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county, or any continuing political committee.

The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

b. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

c. As used in this section:
"business entity" means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity of 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate; and

"State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office,

board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency.

d. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

19:44A-20.13 3. a. Any business entity making a contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind to a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee, which has received in any calendar year $50,000 or more in the aggregate through agreements or contracts with a public entity, shall file an annual disclosure statement with the New Jersey Election Law Enforcement Commission, established pursuant to section 5 of P.L. 1973, c. 83 (C. 19:44A-5), setting forth all such contributions made by the business entity during the 12 months prior to the reporting deadline.

b. The commission shall prescribe forms and procedures for the reporting required in subsection a. of this section which shall include, but not be limited to:

(3) the name and mailing address of the business entity making the contribution, and the amount contributed during the 12 months prior to the reporting deadline;

(4) the name of the candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, candidate committee, joint candidates committee, political party committee, legislative leadership committee, political committee or continuing political committee receiving the contribution; and

(4) the amount of money the business entity received from the public entity through contract or agreement, the dates, and information identifying each contract or agreement and describing the goods, services or equipment provided or property sold.

c. The commission shall maintain a list of such reports for public inspection both at its office and through its Internet site.

d. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity, or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

As used in this section:

"Business entity" means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction; and

"Interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate.

e. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

4. This act shall take effect immediately.

*Note: Bold italicized statutory references of new sections are anticipated and not final as of the time this document was prepared. Statutory compilations of N.J.S.A. 18A:18A-51 is anticipated to show a reference to N.J.S.A. 40:11-51 and to N.J.S.A. 19:44A-20.26.

Prohibited Russia-Belarus Activities & Iran Investment Activities

Person or Entity	

Part 1: Certification

COMPLETE PART 1 BY CHECKING **ONE OF THE THREE BOXES BELOW**

Pursuant to law, any person or entity that is a successful bidder or proposer, or otherwise proposes to enter into or renew a contract, for goods or services must complete the certification below prior to contract award to attest, under penalty of perjury, that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list or Chapter 25 list as a person or entity engaging in prohibited activities in Russia, Belarus or Iran. Before a contract for goods or services can be amended or extended, a person or entity must certify that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list. Both lists are found on Treasury's website at the following web addresses:

https://www.nj.gov/treasury/administration/pdf/RussiaBelarusEntityList.pdf
www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf.

As applicable to the type of contract, the above-referenced lists must be reviewed prior to completing the below certification.

A person or entity unable to make the certification must provide a detailed, accurate, and precise description of the activities of the person or entity, or of a parent entity, subsidiary, or affiliate, engaging in prohibited activities in Russia or Belarus and/or investment activities in Iran. The person or entity must cease engaging in any prohibited activities and provide an updated certification before the contract can be entered into.

If a vendor or contractor is found to be in violation of law, action may be taken as appropriate and as may be provided by law, rule, or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages, declaring the party in default, and seeking debarment or suspension of the party.

CONTRACT AWARDS AND RENEWALS

☐	*I certify, pursuant to law, that neither the person or entity listed above, nor any parent entity, subsidiary, or affiliate appears on the N.J. Department of Treasury's lists of entities engaged in prohibited activities in Russia or Belarus pursuant to P.L. 2022, c. 3 or in investment activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf.* (Skip Part 2 and sign and complete the Certification below.)
CONTRACT AMENDMENTS AND EXTENSIONS	
☐	*I certify, pursuant to law, that neither the person or entity listed above, nor any parent entity, subsidiary, or affiliate is listed on the N.J. Department of the Treasury's lists of entities determined to be engaged in prohibited activities in Russia or Belarus pursuant to P.L. 2022, c. 3. I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf.* (Skip Part 2 and sign and complete the Certification below.)
IF UNABLE TO CERTIFY	
☐	*I am unable to certify as above because the person or entity and/or a parent entity, subsidiary, or affiliate is listed on the Department's Russia-Belarus list and/or Chapter 25 Iran list. I will provide a detailed, accurate, and precise description of the activities as directed in Part 2 below, and sign and complete the Certification below. Failure to provide such will prevent the award of the contract to the person or entity, and appropriate penalties, fines, and/or sanctions will be assessed as provided by law.*

Part 2: Additional Information

PLEASE PROVIDE FURTHER INFORMATION RELATED TO PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS AND/OR INVESTMENT ACTIVITIES IN IRAN.

You must provide a detailed, accurate, and precise description of the activities of the person or entity, or of a parent entity, subsidiary, or affiliate, engaging in prohibited activities in Russia or Belarus and/or investment activities in Iran in the space below and, if needed, on additional sheets provided by you.

Part 3: Certification of True and Complete Information

I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments there, to the best of my knowledge, are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity.

*I acknowledge that the <**Name of Contracting Unit**> is relying on the information contained herein and hereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the <**Name of Contracting Unit**> to notify the <**Name of Contracting Unit**> in writing of any changes to the answers of information contained herein.*

*I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the <**Name of Contracting Unit**> and that the <**Name of Contracting Unit**> at its option may declare any contract(s) resulting from this certification void and unenforceable.*

Full Name (Print)		**Title**	
Signature		**Date**	

Statement of Suspension or Debarment - RETURN WITH BID

STATE OF NEW JERSEY/ _____
Specify, of other

COUNTY OF _____

I, _____ of the (City, Town, Borough)

of _____ State of _____ of full age,

being duly sworn according to law on my oath depose and say that:

I am _____ of the firm

of _____ the Bidder

making the Proposal for the above named projects, and that I executed the said Proposal with full authority to do so; that said Bidder is not at the time of the making this bid included on the New Jersey State Treasurer's or the Federal Government's List of Debarred, Suspended or Disqualified Bidders or the State Department of Labor and Workforce Development; Prevailing Wage Debarment List as a result of action taken by any State or Federal Agency.

Name of Contractor: _____
(Company Name)

By: _____
(Signature of authorized representative)

Subscribed and sworn to before me

This_____ day of _____, 20 ____

_____
(Seal) Notary Public of New Jersey/
Specify Other State

My Commission expires_____ 20 ___

STATEMENT OF OWNERSHIP DISCLOSURE - RETURN WITH BID

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

Name of Organization: _____
Organization Address: _____
City, State, ZIP: _____

Part I Check the box that represents the type of business organization:

☐ Sole Proprietorship (skip Parts II and III, execute certification in Part IV)

☐ Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)

☐ For-Profit Corporation (any type) ☐ Limited Liability Company (LLC)

☐ Partnership ☐ Limited Partnership ☐ Limited Liability Partnership (LLP)

☐ Other (be specific): _____

Part II Check the appropriate box

☐ The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. (**COMPLETE THE LIST BELOW IN THIS SECTION**)

OR

☐ No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. (**SKIP TO PART IV**)

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed**.

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

Please list the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II **other than for any publicly traded parent entities referenced above**. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address

STATEMENT OF OWNERSHIP DISCLOSURE – continued - RETURN WITH BID

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

Part IV Certification

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the ***ESCNJ and/or its members*** is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with the ***ESCNJ and/or its members*** to notify the ***ESCNJ and/or its members*** in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the ***ESCNJ and/or its members*** to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

CERTIFICATE OF AUTHORITY - RETURN WITH BID

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

Sample Certificate of Authority


STATE OF NEW JERSEY
Certificate of Authority
DIVISION OF TAXATION
TRENTON, N.J. 06695
The person, partnership or corporation named below is hereby authorized to collect
NEW JERSEY SALES & USE TAX
pursuant to N.J.S.A. [redacted]
This authorization is good ONLY for the named person at the location specified herein.
This authorization is null and void if any change of ownership or address is effected.
Acting Director, Division of Taxation
[redacted]
Tax Registration No. [redacted]
Tax Effective Date 10-15-10
Document Locator No. [redacted]
Date Issued 10-14-10
This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

CHANGE ORDERS (N.J.A.C. 6A:26-4.9, 4.10 et seq.) (N.J.A.C. 5:30-11.1 et seq.)

Co-op member Approval Required; Prior to Issuance of Change Order (N.J.A.C. 5:30-11.2)

Change orders may be approved by the Co-op member in an amount up to twenty percent (20%) when necessitated by one of the following:

- Emergencies consistent with N.J.S.A. 18A:18A-7;
- Unforeseeable physical conditions; or
- Minor modifications to the project/scope that achieve cost savings, improve service or resolve construction conditions.

Division of Finance (NJDOE) Approval

All other change orders shall be approved by the Division of Finance (NJDOE) when extraordinary circumstances exist such as:

- Change order amounts greater than twenty percent (20%);
- Change orders that eliminate or affect the project scope; or
- Change orders that affect the number, size, configuration, location or use of co-op member spaces.

All contractors are prohibited to perform any change order unless so directed in writing by the Co-op member.

CONTRACTOR TRADE LICENSES - RETURN WITH BID

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

Sample Contractor Trade License


THIS DOCUMENT IS PRINTED ON WATERMARKED PAPER, WITH A MULTI-COLORED BACKGROUND AND MULTIPLE SECURITY FEATURES. PLEASE VERIFY AUTHENTICITY.

NOT AN ELECTRICIAN'S OR PLUMBER'S LICENSE

State Of New Jersey
New Jersey Office of the Attorney General
Division of Consumer Affairs

THIS IS TO CERTIFY THAT THE
Division of Consumer Affairs

HAS REGISTERED

ABC CONSTRUCTION
123 YOUR BLOCK
ANYTOWN USA

FOR PRACTICE IN NEW JERSEY AS A(N): Home Improvement Contractor

11/01/2013 TO 12/31/2014
VALID

1234567890123
LICENSE/REGISTRATION/CERTIFICATION #

Signature of Licensee/Registrant/Certificate Holder

DIRECTOR

CONTRACTOR'S REGISTRATION EVIDENCE —"Public Works Contractor Registration Act"

A. Valid Certificate – Receipt of Bid

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

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

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

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

For more information contact:

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

PRE-QUALIFICATION OF BIDDERS

A. **DPMC Prequalification--** Pursuant to N.J.S.A. 18A:18A-26, 27 et seq., all Bidders on any contract for public works which the entire cost of the contract exceeds $20,000, must be pre-qualified by the Department of Treasury, Division of Property Management and Construction, as to charter and amount of public work on which they may submit bids. No person shall be qualified to bid on any public work contract with the Commission if he has not submitted a statement to the Department of Treasury, Division of Property Management and Construction which fully develops the financial ability, adequacy of plant and equipment, organization and prior experience of the prospective bidder, and such other pertinent and material facts, within a period of one year preceding the date of opening of the bids for such contract.

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

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

B. **Prequalification Affidavit--No Material Adverse Change**

Every pre-qualified Bidder must submit with his proposal, a notarized affidavit setting forth the type of work and the amount of work for which he has been qualified, that there has been no material adverse change in his qualification information, the total amount of completed work on contracts at the time and date of the classification. **Any bid not including a copy of this affidavit shall be rejected as being non-responsive to bid requirements.** (N.J.S.A. 18A:18A-32)

C. Bidders shall furnish satisfactory evidence that he and his subcontractors have sufficient means and experience in the type of work to complete the project in accordance with the bid specifications. A subcontractor listing and bidder's personnel and experience sheet shall be submitted to the ESCNJ as part of the bidding documents. Where the Bidder intends to subcontract any portion of the project, the cost of which will exceed $20,000.00, the sub-contractor shall be pre-qualified to perform the work and the bidder shall submit the requisite documentation pertaining to the sub-contractor in accordance with Paragraphs A and B above. The ESCNJ may make such additional investigations as it deems necessary to determine the ability, competence and financial responsibility of the bidder to perform their work. The bidder shall furnish the ESCNJ with the information and data for this purpose upon request. The ESCNJ reserves the right to reject any bid if the information fails to establish to the ESCNJ's satisfaction that the bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated here.

D. **Notice of Classification--**(For Contracts Exceeding $20,000) N.J.S.A. 18A:18A-26 et seq., N.J.S.A. 52:35-1 et seq.
Each Bidder shall submit with his/her bid a copy of a valid and active Notice of Classification letter issued by the Department of Treasury, Division of Property Management and Construction as appropriate to the nature of the bid. **Any bid submitted to the ESCNJ under the terms of New Jersey Statutes not including a copy of a valid and active classification letter shall be rejected as being non-responsive to bid requirements.**

"The Co-op member, through its authorized agent, shall upon completion of the contract report to the State agency listed on the pre-qualification/classification letter as to the contractor's performance and shall furnish such report from time to time during performance if the contractor is then in default".

E. **Uncompleted Contracts--**(For Contracts Exceeding $20,000) - N.J.A.C. 17:19-2.13(a)
The ESCNJ also requires that each bidder submit with his bid a certified Total Amount of Uncompleted Contracts form as prescribed by code. (Form DPMC 701). **Failure to submit this document will result in the rejection of the bid as being non-responsive.**

PREVAILING WAGES: CONSTRUCTION, ALTERATIONS, REPAIRS
The State of New Jersey Prevailing Wage Act, Chapter 150 Laws of 1963 with applicable wage rates by County as published by the Department of Labor and Workforce Development in conformance with N.J.S.A. 34:11-56:25, is hereby made a part of these Contract Documents. Copies of these wage rates may be obtained from the State Department of Labor and Workforce Development, and/or viewed athttps://www.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html
http://lwd.dol.state.nj.us/http://lwd.dol.state.nj.us/, the Prevailing Wages Determination Section.

- **Compliance with New Jersey Prevailing Wage Act**

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

- **Certified Payrolls**

Contractor agrees to submit to the Co-op member a certified payroll for each payroll period within ten (10) days of the payment of wages. Contractor further agrees that no payments will be made to the Contractor if certified payrolls are not received. It is the Contractor's responsibility to insure timely receipt by the district of certified payrolls.

- **Submission of Affidavit**

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

- **Posting of Prevailing Wages**

The contractor shall post the prevailing wage rates for each craft and classification involved in the work, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work and in such place or places as used to pay workers their wages. (Reference 18A:7G-23 and N.J.S.A 34:11-56.32.)

- **Prevailing Wages Certification—Submission with Bid**

The bidder shall submit a Prevailing Wages Certification with its bid package.

- **Non-compliance Statement**

If it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the ESCNJ or co-op member may begin proceedings to terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable for any excess costs occasioned thereby to the public body.

EQUIPMENT CERTIFICATION (N.J.S.A. 18A:18A-23)

Each Bidder shall provide a certification showing that he/she owns, leases or controls all the necessary equipment required by the specifications. If the Bidder is not the actual owner or lessee of any such equipment, he/she shall submit a certificate stating the source from which the equipment will be obtained and shall obtain a certificate from the owner and person in control of the equipment, definitely granting to the bidder the control of the equipment required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.

The certificates are to be submitted with the bid. If the contract involves the installation of a manufactured system which requires the contractor to have special knowledge or training, or to be specifically certified by the manufacturer to install their system, this form is used to submit such required evidence of the bidder's approval from the manufacturer.

SUBCONTRACTING: ASSIGNMENT OF CONTRACT - RETURN WITH BID

Contractors, services providers, and all vendors with whom the ESCNJ has an executed contract, may not subcontract any part of any work done or assign any part of the contract for goods or materials for ESCNJ and Co-op members without first receiving written permission from the ESCNJ. Awarded vendors may add additional subcontractors after submitting the proper paperwork and upon approval from the ESCNJ. Under no condition will any work specified be subcontracted without the ESCNJ's prior written approval. **Failure to adhere to this requirement may result in revocation of a contract.**

Contractors, service providers, and vendors using subcontractors assume all responsibility for work performed by subcontractors. The ESCNJ must approve all subcontractors and will require the following documents to be secured from all approved subcontractors:

-Affirmative Action Evidence – Construction type contracts
-Americans with Disabilities Act of 1990
-Assurance of Compliance
-Certificate of Authority
-Certifications and Licenses as applicable
-Contractor's Registration Certificate (Public Works)
-Disclosure of Investment Activities in Iran
-Equipment Certification
-Insurance Certificate as outlined in the bid specifications;
-New Jersey Business Registration Certificate
-New Jersey School Development Authority Prequalification
-Notice of Classification Form (DPMC)
-Political Contribution Disclosure Form
- Prequalification Affidavit--No Material Adverse Change
-Prevailing Wages Compliance Certification
-Statement of Ownership (Ownership Disclosure Certification)
-Statement of Suspension or Debarment
-Subcontracting Assignments
-Sworn Contractor's Disclosure
-Total Amount of Uncompleted Contractor's Form—Certified (Form DPMC 701)
-Written certification that the subcontractor shall adhere to prevailing wages as provided through New Jersey State Law.

SUBCONTRACTING: ASSIGNMENT OF CONTRACT-continued

In cases of subcontracting, the Co-op member shall only pay the prime contractor. It is the sole responsibility of the prime contractor to ensure that all subcontractors are paid. The Co-op member shall not be responsible for payments to subcontractors and shall be held harmless against any or all claims generated against prime contractors for nonpayment to subcontractors. Transportation carriers hired by the vendor to deliver goods and materials are not considered to be subcontractors. All vendors are responsible for submitting subcontractor documentation.

Penalties – Unauthorized Subcontractors

The Co-op member may deduct the amount of $1,000.00 (one thousand dollars) per day as a penalty, for each day a prime contractor uses a subcontractor without first receiving **written** permission as required.

Subcontractor Disclosure Statement

If the bidder intends to subcontract any work, please submit the completed **Subcontractor Disclosure Statement found in this bid document.**

SWORN CONTRACTOR CERTIFICATION – (Bidder's Certification)

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

AFFIRMATIVE ACTION—Construction Contracts—Acknowledgement – RETURN WITH BID

The undersigned acknowledges and agrees to comply with the following:

AFFIRMATIVE ACTION—EQUAL EMPLOYMENT OPPORTUNITY IN PUBLIC CONTRACTS—EEO

The construction contractor shall complete and submit an Initial Project Workforce Report, **Form AA-201** listing their entire work force and all employees that may be used for any jobs under this ESCNJ Co-op contract with their bid submission. Proper completion and submission of this Report shall constitute evidence of the contractor's compliance with the regulations. Failure to submit this form may result in the contract being terminated. The awarded contractor(s) shall also complete and submit an Initial Project Workforce Report, **Form AA-201** to the owner before the start of any job entered into under this contract. The contractor also agrees to submit a copy of the Monthly Project Workforce Report, Form AA-202 once a month thereafter for the duration of the contract to the Department of Labor Workforce and Development and to the owner's Public Agency Compliance Officer.

All bidders should familiarize themselves with N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1.1 et seq. MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE—EXHIBIT B. If awarded a contract, your company/firm will be required to comply with the above requirements.

Contractors and vendors are to familiarize themselves with the following document:

Vendor/Contractor Guidelines for Awarded Public Contracts

The document may be obtained from the New Jersey Division of Purchase and Property, Contract Compliance and Audit Unit, Equal Employment Opportunity (EEO) Program website or by visiting the following link:

https://www.nj.gov/treasury/contract_compliance/https://www.state.nj.us/treasury/contract_compliance/pdf/vc.pdf

Name of Company _____

Address _____ P.O. Box _____

City, State, Zip Code _____

Name of Authorized Representative _____

Signature _____ Date _____

EXHIBIT B - RETURN WITH BID

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127)
N.J.A.C. 17:27-1.1 et seq.
CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. I7:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program, may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B, and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) EXHIBIT B - RETURN WITH BID
(C) MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
(D) N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127)
(E) N.J.A.C. 17:27-1.1 et seq.
(F) CONSTRUCTION CONTRACTS-continued

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
EXHIBIT B (Continued)

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and nondiscrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contactor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and

trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program, and to the public agency compliance officer. The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq. (Revised: January, 2016)

Company _____

Signature _____

Name _____
Title _____

Sample-AA201

FORM AA-201
Revised 11/11

STATE OF NEW JERSEY

DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
CONSTRUCTION EEO COMPLIANCE MONITORING PROGRAM

INITIAL PROJECT WORKFORCE REPORT CONSTRUCTION

Official Use Only

Assignment

Code

For instructions on completing the form, go to: http://www.state.nj.us/treasury/contract_compliance/pdf/aa201ins.pdf

1. FID NUMBER

2. CONTRACTOR ID NUMBER

3. NAME AND ADDRESS OF PRIME CONTRACTOR

(Name)

(Street Address)

(City) (State) (Zip Code)

4. IS THIS COMPANY MINORITY OWNED [ ] OR WOMAN OWNED [ ]

5. NAME AND ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT

Name:
Address:

CONTRACT NUMBER **DATE OF AWARD** **DOLLAR AMOUNT OF AWARD**

6. NAME AND ADDRESS OF PROJECT

Name:
Address:

7. PROJECT NUMBER

COUNTY

8. IS THIS PROJECT COVERED BY A PROJEC
LABOR AGREEMENT (PLA)? YES

9. TRADE OR CRAFT	PROJECTED TOTAL EMPLOYEES				PROJECTED MINORITY EMPLOYEES				PROJECTED PHASE - IN DATE	PROJECTED COMPLETION DATE
	MALE		FEMALE		MALE		FEMALE			
	J	AP	J	AP	J	AP	J	AP		
1. ASBESTOS WORKER										
2. BRICKLAYER OR MASON										
3. CARPENTER										
4. ELECTRICIAN										
5. GLAZIER										
6. HVAC MECHANIC										
7. IRONWORKER										
8. OPERATING ENGINEER										
9. PAINTER										
10. PLUMBER										
11. ROOFER										
12. SHEET METAL WORKER										
13. SPRINKLER FITTER										
14. STEAMFITTER										
15. SURVEYOR										
16. TILER										
17. TRUCK DRIVER										
18. LABORER										
19. OTHER										
20. OTHER										

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

(Signature)

10. (Please Print Your Name) (Title)

(Area Code) (Telephone Number) (Ext.) (Date)

INSTRUCTIONS FOR COMPLETING THE INITIAL PROJECT WORKFORCE REPORT – CONSTRUCTION (AA201)

DO NOT COMPLETE THIS FORM FOR GOODS AND/OR SERVICE CONTRACTS

1. **Enter the Federal Identification Number assigned to the contractor by the Internal Revenue Service, or if a Federal Employer Identification Number has been applied for but not yet issued, or if your business is such that you have not or will not receive a Federal Identification Number, enter the social security number assigned to the single owner or one partner, in the case of a partnership.**

2. **Note: The Department of Labor & Workforce Development, Construction EEO Monitoring Program will assign a contractor ID number to your company. This number will be your permanently assigned contractor ID number that must be on all correspondence and reports submitted to this office.**

3. **Enter the prime contractor's name, address and zip code number.**

4. **Check box if Company is Minority Owned or Woman Owned**

5. **Enter the complete name and address of the Public Agency awarding the contract. Include the contract number, date of award and dollar amount of the contract.**

6. **Enter the name and address of the project, including the county in which the project is located.**

7. **Note: A project contract ID number will be assigned to your firm upon receipt of the completed Initial Project Workforce Report (AA201) for this contract. This number must be indicated on all correspondence and reports submitted to this office relating to this contract.**

8. **Check "Yes" or "No" to indicate whether a Project Labor Agreement (PLA) was established with the labor organization(s) for this project.**

9. **Under the Projected Total Number of Employees in each trade or craft and at each level of classification, enter the total composite workforce of the prime contractor and all subcontractors projected to work on the project. Under Projected Employees enter total minority and female employees of the prime contractor and all subcontractors projected to work on the project. Minority employees include Black, Hispanic, American Indian and Asian, (J=Journey worker, AP=Apprentice). Include projected phase-in and completion dates.**

10. **Print or type the name of the company official or authorized Equal Employment Opportunity (EEO) official include signature and title, phone number and date the report is submitted.**

This report must be submitted to the Public Agency that awards the contract and the Department of Labor & Workforce Development, Construction EEO Compliance Monitoring Program after notification of award, but prior to signing the contract.

THE CONTRACTOR IS TO RETAIN A COPY AND SUBMIT COPY TO THE PUBLIC AGENCY AWARDING THE CONTRACT AND FORWARD A COPY TO:

NEW JERSEY DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
CONSTRUCTION EEO COMPLIANCE MONITORING UNIT
P.O. BOX 209
TRENTON, NJ 08625-0209
(609) 292-9550

EQUIPMENT CERTIFICATION - RETURN WITH BID

In accordance with N.J.S.A. 18A:18A-23, I hereby certify that

A) _____owns all the necessary equipment as required by the
Name of Company
specifications and to complete the specified public work project.

or

B) _____leases or controls all the necessary equipment as required
Name of Company
by the specifications and to complete the specified public work project.

PLEASE NOTE: If your company is not the actual owner of the equipment, **you shall submit with the bid:**

1. A certificate stating the source from which the equipment will be obtained and

2. Obtain and submit with the bid a certificate from the owner and person in control of the equipment, definitely granting to the bidder the control of the equipment required during such time it may be necessary for the completion of that portion of the contract for which said equipment will be necessary.

Name of Company_____

Authorized Agent

Title_____

Authorized Signature_____

PRE-QUALIFICATION AFFIDAVIT—NO MATERIAL ADVERSE CHANGE - RETURN WITH BID

The below affidavit must be submitted with your bid for projects over $20,000.00 pursuant to N.J.S.A. 18A:18A-32:

I, _____ of the City of _____
in the County of _____ and the State of _____

of full age, being duly sworn according to law on my oath depose and say that:

No Material Adverse Change in Qualification

I am_____ *(Position in Company)*, and the bidder for the above named project. The answers to the following statements are true and correct and that there has been no material adverse change in the qualification information subsequent to the latest statement submitted as required (N.J.S.A. 18A:18A-32 et seq.) as amended, except as set forth herewith. I further certify that there is not now pending any litigation or other action that may jeopardize my rating, status or contract limits from their current limits.

Notice of Classification (DPMC 27)

_____ *(Name of Company)* is classified by the State of New Jersey pursuant to N.J.S.A. 52:35-1 et seq. This Classification became effective (Date).
Type of Contract/Trade Classified: _____

_____

Classification Approved Amount $_____
A copy of my valid and active prequalification/classification certificate from the Department of Treasury, Division of Property Management and Construction has been submitted with this bid.

Total Amount of Uncompleted Contracts (DPMC 701)

The total amount of uncompleted work is $_____ as of _____(Date).
A copy of the company's Total Amount of Uncompleted Contracts form is required to be submitted with the bid.

NJSDA Prequalification

The _____ (Name of Company), pursuant to N.J.S.A.18A:7G-33, is prequalified with the NJSDA on contracts for "school facilities" projects as defined by code. NJSDA prequalification is not a requirement for maintenance projects.

_____ _____
Signature of Authorized Representative **Date**

Sworn and subscribed to before me this _____ day of _____ in the Year __

_____ _____Notary Public of _____
Signature of Notary **Print Name of Notary**

My Commission Expires:_____ _____ _____ **SEAL**
Month Day Year

PREVAILING WAGES COMPLIANCE CERTIFICATION - RETURN WITH BID

It is the determination of the ESCNJ that this is a public works project that in total will exceed $2,000.00 (two thousand dollars), therefore prevailing wages rules and regulations apply as promulgated by the New Jersey Prevailing Wage Act and in conformance with N.J.S.A. 34:11-56:25 et seq.

CERTIFICATION

1. I certify that our company understands that this project of the ESCNJ or its Co-op members requires prevailing wages to be paid in full accordance with the law.

2. I further certify that all subcontractors named in this bid understand that this project requires the subcontractor to pay prevailing wages in full accordance with the law.

Non-compliance Statement

If it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the ESCNJ or its members may begin proceedings to terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable for any excess costs occasioned thereby to the public body.

NOTIFICATION OF VIOLATIONS – New Jersey Department of Labor and Workforce Development

Has the bidder or any person having an "interest" with the bidder, been notified by the New Jersey Department of Labor and Workforce Development by notice issued pursuant to N.J.S.A. 34:11-56:37 that he/she has been in violation for failure to pay prevailing wages as required by the New Jersey Prevailing Wage Act within the last five (5) years?

* Yes _____ No _____

*If yes, please attach a signed document explaining any/or all administrative proceedings with the Department within the last five (5) years. Please include any pending administrative proceedings with the Department if any.

Submission of Certified Payroll Records

All certified payroll records are to be submitted to the member/person who is coordinating the activities for the project.

Name of Company: _____

Authorized Agent: _____

Title of Authorized Agent: _____

Authorized Signature: _____

SUBCONTRACTOR'S DISCLOSURE FORM - RETURN WITH BID

If the bidder **will** subcontract any part of their services /installation award, the bidder ***must*** do the following:

Provide the name, address and other pertinent information about the subcontractor;*

Please list subcontractor(s) here.

**Failure to identify the names and addresses of any subcontractors required to be named in the bid, or to submit the appropriate documents for each such subcontractor, may be cause for the bid to be rejected as being non-responsive.*

1. Sub-Contractor for _____

Name of Subcontracting Company_____

Address_____

City, State, Zip_____

Telephone_____Fax_____

E-Mail _____FEIN No_____

Authorized Agent _____ Title _____

Certification of Equipment

The_____hereby certifies the above named
Name of Bidding Company

subcontractor has the personnel, equipment, experience, financial and sufficient means to complete their portion of the contract in full accordance with the bid specifications.

_____ _____

Authorized Agent (Print)—Bidder ***Signature of Authorized Agent—Bidder***

Bidders may make extra copies of this page to list additional subcontractors and subcontractors may be added throughout the life of the bid after receiving approval from the ESCNJ.

SUBCONTRACTOR'S DISCLOSURE FORM *(Continued)* - **RETURN WITH BID**

If the bidder **will** subcontract any part of their services /installation award, the bidder ***must*** do the following:

Provide the name, address and other pertinent information about the subcontractor;*

Please list subcontractor(s) here.

**Failure to identify the names and addresses of any subcontractors required to be named in the bid, or to submit the appropriate documents for each such subcontractor, may be cause for the bid to be rejected as being non-responsive.*

1. Sub-Contractor for Other _____

Name of Subcontracting Company_____

Address_____

City, State, Zip_____

Telephone_____Fax_____

E-Mail _____FEIN No_____

Authorized Agent _____ Title _____

Certification of Equipment

The_____hereby certifies the above named

Name of Bidding Company

subcontractor has the personnel, equipment, experience, financial and sufficient means to complete their portion of the contract in full accordance with the bid specifications.

_____ _____

Authorized Agent (Print)—Bidder ***Signature of Authorized Agent—Bidder***

Bidders may make extra copies of this page to list additional subcontractors and subcontractors may be added throughout the life of the bid after receiving approval from the ESCNJ.

Sworn Contractor Certification; Qualifications and Credentials
(Bidder's Certification) - RETURN WITH BID

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

I_____ the principal owner or officer of the company certify that the forgoing statements are true and our firm has the following qualifications and credentials:

1. A current, valid certificate of registration issued pursuant to "The Public Works Contractor Registration Act," N.J.S.A. 34:11-56:48 et seq. A copy of which is submitted with its bid;

2. A current, valid Certificate of Authority to perform work in New Jersey issued by the Department of Treasury, a copy of which is submitted with its bid;

3. A current valid contractor trade license required under applicable New Jersey Law for any specialty trade or specialty area in which the firm seeks to perform work, a copy of which is submitted with its bid;

4. During the term of the project, I as principal owner or officer of the company or corporation, as contractor, will have in place a suitable quality control and quality assurance program and appropriate safety and health plan.

5. Certify that, at the time of bidding, the amount of the bid proposal and value of all of its outstanding incomplete contracts does not exceed the firm's existing aggregate rating limit.

Name of Company_____

Name of Owner or Officer_____

Signature of Owner or Officer_____

Notarized before me this _____ day of _____, _____
Month Year

_____ _____
NOTARY PUBLIC SIGNATURE **Print Name of Notary Public**

My commission expires _____ _____, _____
Month Day Year

-SEAL-

RETURN WITH BID

State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION
33 W. STATE STREET
PO BOX 034
TRENTON, NEW JERSEY 08625-0034

REPLY TO:
TEL: (609) 943-3400
FAX: (609) 292-7651

TOTAL AMOUNT OF UNCOMPLETED CONTRACTS

(This form is to be used with the NOTICE OF CLASSIFICATION when submitting bids to the ESCNJ.) I certify that the amount of uncompleted work on contracts is $_____.

The amount claimed includes uncompleted portions of all currently held contracts from all sources (public and private) in accordance with N.J.A.C. 1 7:19-2.13.

I further certify that the amount of this bid proposal, including all outstanding incomplete contracts does not exceed my prequalification dollar limit.

Affix corporate seal here

_____
Name of Firm

_____
Signature

_____
Title

_____
_____
Address

_____
Phone

Sworn to and Subscribed before me

This day ____ of _____ 20___
Notary Public

DPMC 701 (3/15)

Vendor Contact Form - RETURN WITH BID

This page should be included in your electronic file in Word format
so that we can copy and paste into our website.
Please do not handwrite the information; type it in.

If you are awarded a contract with the ESCNJ, we will post this contact sheet on our website for members to contact. Please complete and include with your bid package. List the individual(s) who will be best equipped to handle calls from our 1,300+ members and have knowledge of your award.

Bid	**Title of Bid: _____** **Bid #_____**
Vendor	
Representative	
Address	
Telephone #	
Fax #	
Email	
Website	

NEW JERSEY REQUIRED DOCUMENTS CHECKLIST – RETURN WITH BID			
1.	Affirmative Action Construction Contracts Acknowledgement **and** Total Work Force/Employee AA201 (for Public Works contracts)	16.	NJ School Development Authority Prequalification (for Public Works contracts)
2.	Affirmative Action Questionnaire and supported documentation (current CEIR)	17.	Non-Collusion Affidavit **Notarized and Sealed**
3.	Americans with Disabilities Act of 1990	18.	Pre-Qualification Affidavit (Projects over $20,000 in accordance with N.J.S.A. 18A:18A-26 et. seq.)
4.	Assurance of Compliance	19.	Prevailing Wage Certification (for Public Works contracts)
5.	Certificate of Authority	20.	Request for Clarifications Form
6.	Certificate of Insurance with the Educational Services Commission of New Jersey named as the certificate holder with Bid Title and Bid # **(Upon award)**	21.	Respondent Comment Form – Optional
7.	Chapter 271 Political Contribution Disclosure Form	22.	Statement of Ownership (Ownership Disclosure Certification)
8.	Dealer/Subcontractor Documents if applicable	23.	Statement of Suspension or Debarment **Notarized & Sealed**
9.	Disclosure of Investment Activities in Iran Form (for Public Works contracts)	24.	Sub-contractor's Disclosure Form(s)
10.	DPMC Notice of Classification Form	25.	Sworn Contractor Certification; Qualifications and Credentials (for Public Works contracts)
11.	Equipment Certification	26.	Total Amount of Uncompleted Contracts Form-Certified (DPMC Form 701) (for Public Works contracts)
12.	Exhibit B Mandatory Equal Employment Opportunity Language Construction Contracts	27.	Vendor Contact Form
13.	Licenses	28.	W-9 Form
14.	New Jersey Business Registration Certificate **(Received no later than the time of award)		
15.	New Jersey Public Works Contractor Certificate (for Public Works contracts)		

Signature: _____

Please sign above indicating that you have included all of the required New Jersey documents on this checklist and return this checklist with your bid package.

West Virginia Agreement and Affidavit Required forms:

AFFIDAVIT

West Virginia Code §5A-3-10a states:

No contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a *related party to the vendor or prospective vendor is* a *debtor* as *defined in this section and the debt owed is an amount greater than five thousand dollars in the aggregate.*

Definitions:

"Debt" means any assessment, penalty, fine, tax or other amount of money owed to the state because of a judgment, fine, permit violation, license assessment, penalty or other assessment presently due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions;

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

Exception:

The prohibition does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the West Virginia Code, worker's compensation premium, permit fee or environmental fee or assessment, and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (West Virginia Code §61-5-3), it is hereby certified that the bidder and all related parties do not owe any debts or, if a debt is owed, that the provisions of the exception clause (above) apply.

Vendor's Name: _____

Authorized Signature: _____ Date: _____

AGREEMENTADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to jurisdiction of any court other than the Circuit Court of the county in which the Agency is located are hereby deleted. The parties may agree to nonbinding mediation prior to litigation.

2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.

3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.

4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. k?. a political subdivision of the State of West Virginia, the Agency is generally exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.

5. **PAYMENT** - Any references to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.

6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.

7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.

8. FISCAL YEAR FUNDING - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.

10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.

11. ATTORNEY FEES - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.

12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to a State agency or another local governmental agency, board or commission of the State of West Virginia upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.

13. **LIMITATION OF LIABILITY** - The Agency, as a political subcivision of the State, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addion, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such 2vent, the Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.

15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.

16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The Agency is insured through the Board of Risk and Insurance Management and will provide a certificate of property insurance upon request.

18. RIGHT TO NOTICE - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.

19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.

20. CONFIDENTIALITY-Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. Governmental contracts are public records under the West Virginia Freedom of Information Act.

21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Agency.

ACCEPTED BY:

Local Education Agency: _____

Signed: _____

Title: _____

VENDOR:

Company Name: _____

Signed: _____

Title: _____