

**COOPERATIVE EDUCATIONAL SERVICES  
(CES)  
4216 Balloon Park Road NE • Albuquerque, New Mexico 87109-5801  
Phone (505) 344-5470 • Fax (505) 344-9343**

**REQUEST FOR BID**

**RFB Date** **Monday, March 14, 2005**

RFB Number: RFB 2005-012

Issue Date: Monday, March 14, 2005

Commodity Titles:

914	Category 1:	GB98 Construction Services
914	Category 2:	Paving, Concrete and Other Related Services
914	Category 3:	EE98 Electrical Construction Services
914	Category 4:	Installation of Windows and Doors
914	Category 5:	MM98 HVAC Services (Heating, Cooling, Air Conditioning and Radiant Heat), Including Design, Installation and Servicing
914, 770	Category 6:	Roofing Maintenance, Repair and Replacement Services
911	Category 7:	Construction Management Services

**Pre-Bid Conference Date** **Wednesday, March 30, 2005**

**While attendance at this Pre-Bid Conference is not mandatory, those firms planning to submit bids for this solicitation are encouraged to attend.**

Day / Date: Wednesday, March 30, 2005

Time: 9:00 a.m. local time

Location/Mail Address: Cooperative Educational Services  
4216 Balloon Park Road N.E.  
Albuquerque, NM 87109-5801

Directions: In Albuquerque, take I-25 Northbound. Take Exit 229, Jefferson and proceed 4/10<sup>th</sup> of a mile west. Turn left on Balloon Park Road N.E. The CES offices are the third building on the left.

**RFB Due Date****Friday, April 22, 2005**

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Day / Date: Friday, April 22, 2005

Time: 1:30 p.m. local time

Location/Mail Address: Cooperative Educational Services  
4216 Balloon Park Road N.E.  
Albuquerque, NM 87109-5801Directions: In Albuquerque, take I-25 Northbound. Take Exit 229, Jefferson and proceed 4/10<sup>th</sup> of a mile west. Turn left on Balloon Park Road N.E. The CES offices are the third building on the left. The office manager will receive bids.

## **RFB Contents Overview**

- I. Instruction of Offerors
- II. Scope of Work and Specifications
- III. Conditions Leading to and Including Contract Award
- IV. Bid Forms

Note: The RFB has been divided into four (4) sections.

**Section I** outlines the RFB, indicates how to prepare a response, and states the General Terms and Conditions.

**Section II** lists the various commodity titles and, for each, states the Special Terms and Conditions, the Scope of Work and Required Additional Responses.

**Section III** indicates how the bids will be evaluated and how the awards will be made.

**Section IV** incorporates the forms used in the bid response.

**Legal Advertisement**

**ADVERTISEMENT FOR BID**

Cooperative Educational Services, 4216 Balloon Park Rd NE, Albuquerque, NM 87109, will receive sealed bids until Friday, April 22, 2005 at 1:30 p.m. local time for: 1. GB98 Construction Services; 2. Paving, Concrete and Other Related Services; 3. EE98 Electrical Construction Services; 4 Installation of Windows and Doors; 5. MM98 HVAC Services (Heating, Cooling, Air Conditioning and Radiant Heat), Including Design, Installation and Servicing; 6. Roofing Maintenance, Repair and Replacement; and 7. Construction Management Services.

A Pre-Bid Conference will be held at the offices of Cooperative Educational Services on Wednesday, March 30, 2005, at 9:00 a.m. local time. While attendance at this Pre-Bid Conference is not mandatory, firms planning to submit bids for this solicitation are encouraged to attend.

All bids must be submitted in a sealed envelope marked "SEALED BID – RFB 2005-012" on the front of the envelope. A list of qualifications and specifications, instructions to bidders and bid forms can be obtained upon request by fax (505-344-9343), mail, e-mail (bids@nmedu.org) or by telephone (505 344-5470) from 8:30 a.m. to 4:30 p.m., Monday-Friday, except holidays.

Cooperative Educational Services reserves the express right to accept or reject any or all bids.

/s/ Max Luft,  
Executive Director

**PUBLISH:** Sunday, March 13, 2005  
Sunday, March 20, 2005

Albuquerque Journal  
Farmington Daily Times  
Las Cruces Sun  
Roswell Daily Record  
Santa Fe New Mexican

**COOPERATIVE EDUCATIONAL SERVICES (CES)**  
**4216 Balloon Park Road N.E. • Albuquerque, New Mexico 87109-5801**  
**Phone (505) 344-5470 • Fax (505) 344-9343**

**RFB 2005-012**

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## **SECTION I: INSTRUCTIONS TO OFFERORS**

### **A. INTRODUCTION**

Parties to the Joint Powers Agreement to Establish an Educational Cooperative through its administering agency, Cooperative Educational Services (CES), invite experienced vendors to submit bids in accordance with the outlines and specifications contained herein. Bids are requested from qualified respondents to provide products and services for one or more members in the state. Selection for award will go to the responsive offeror whose bid is most advantageous to CES. The method by which the offeror will be selected is detailed further in the evaluation section.

### **B. EXAMINATION OF DOCUMENTS**

Offerors will carefully examine the REQUEST FOR BID (RFB), which includes Instructions to Offerors, Scope of Work and Specifications, Conditions Leading To and Including Contract Award and Bid Forms.

### **C. QUESTIONS**

Submit all questions about the RFB in writing to Cooperative Educational Services (email to [bids@nmedu.org](mailto:bids@nmedu.org), fax 505-344-9343), or mail to Max Luft, Executive Director.

Replies will be made via the website ([www.ces.org//ces/jobrfp/rfprfb\\_1st.asp](http://www.ces.org//ces/jobrfp/rfprfb_1st.asp)) as addenda and will become part of the bid documents. Those not having access to the Internet may call CES either to determine if addenda have been issued or to request to CES by phone or fax that copies of the addenda be mailed. Questions received less than seven (7) days prior to bid due date will not be answered.

### **D. PRE-BID CONFERENCE**

In order to provide guidance, assistance and resolve issues that potential bidders may have, there will be a Pre-Bid Conference held on Wednesday, March 30, 2005 at 9:00 a.m. at the CES offices located at 4216 Balloon Park Road N.E. Albuquerque, NM. The conference agenda will cover:

1. General Overview of CES and its Procurement Program
2. Bid Solicitation Content and Documents
  - a. Scope of Work
  - b. Vendor Qualifications
  - c. General Terms and Conditions
  - d. Price Submittals
  - e. Questions and Comments

Attendance at the Pre-Bid Conference is not mandatory; however, firms planning to submit bids for this solicitation are encouraged to attend.

## E. BID SUBMISSION

### 1. Preparation of the Bid

- a. Bids will be submitted on either unaltered bid forms furnished by CES or a reasonable facsimile thereof. Telegraphic offers, electronic mailgrams, or facsimile machine offers will not be considered.
- b. The Offer, Acceptance of Offer and Contract Award document must be submitted with original ink signature by the person authorized to sign the Offer. If a company or corporation submits the bid, an official or duly authorized agent will sign the bid documents. Powers of Attorney, which authorize agents or others to sign bid forms, must be properly certified by resolution of the Board of Directors, attested to by the secretary of the corporation, and attached to the bid document. Mistakes can be corrected prior to opening but must be initialed by the person signing the bid documents. Corrections and/or modifications received after the opening time will not be accepted. In case of an error in extension of prices in the offer, unit prices will govern.
- c. Periods of time stated as a number of days will be in calendar days, not business days.
- d. It is the responsibility of the offeror to examine the entire RFB package and seek clarification of any item or requirement that is not clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due time and date.
- e. The offeror's ability to follow the bid preparation instructions set forth in this solicitation will also be considered to be an indicator of the offeror's ability to follow instructions, should it receive an award as a result of this solicitation. Any contract between CES and an offeror requires the delivery of information and data. The quality of organization and writing reflected in the bid will be considered to be an indication of the quality of organization and writing which would be prevalent if a contract is awarded. As a result, the bid will be evaluated as a sample of data submission.

### 2. Format of the Bid

- a. One (1) original of the bid must be submitted on the forms and in the format contained in the RFB. If you choose to extend your offer to schools in Colorado and Texas, include an additional original bid, with original signatures for each state selected. The bids will contain all descriptive literature, specifications, samples, etc. All bids will be submitted in three-ring binders.
- b. The forms and format as contained in the RFB will be used. Offerors can reproduce the forms and retype the information, but all of the required information must be presented in the order requested. All bids must be completed in ink, on a computer or typewritten. Forms can be filled in by hand, but must be printed.
- c. In preparing a bid, the bid may require the offeror to present a point-by-point response to relevant terms, special considerations and specifications. A bid response that says "See Appendix," "Acknowledge," or "Understood" is not acceptable and may be sufficient to render the bid as non-responsive. Usually, on a term or condition, either the word "accept" is appropriate or the word "exception" with a clarification. Should the offeror take any "exceptions" to this RFB, a summary of those items must be included in the response to be considered valid. Exceptions can be accepted, negotiated, or rejected by CES. Other written responses to questions or request for information must be clearly stated and identified and placed behind the appropriate tab.

3. Contents of the Bid

**In order to insure that every bid receives a fair evaluation, it is required that each vendor organize its bid in the following manner:**

Step One: Obtain a three-ring binder and a set of 10 index dividers.

Step Two: Prepare the Table of Contents with the tabs in this order:

- Tab 1: The Offer
- Bidders Declaration Form (page 230) **Form A**
  - \$25,000 Special Security Bid Bond (page 38)
  - Signed Acceptance of Offer (page 231) **Form B**
  - The RFB Affidavit page, notarized signature required (page 232) **Form C**
- Tab 2: Introduction
- Executive Summary (a one page description of what you are proposing on this contract)
- Tab 3: General Terms and Conditions
- Terms and Conditions (copy of each page in order)
  - Acceptance of all General Terms and Conditions (first line must be signed (page 277) **Form E**
  - Listing of any exceptions to General Terms and Conditions
- Tab 4: Vendor Qualifications
- Answers as requested
  - Sub-Contractors List
  - Copies of Contractor's NMCID Licenses
  - Confirmation of NMDOL Registration
  - Copy of New Mexico Preference Certificate
  - Documentation from offeror's security company
  - Certificate of Insurance (page 17)
- Tab 5: Category
- Acceptance of Categorical Terms and Conditions (page 277) **Form E**
  - Listing of any exceptions to the Categorical Terms and Conditions
  - Categorical Required Responses and documentation
- Tab 6: Cost Quotation
- Price information, price sheets from RFB (page 233) **Form D**
- Tab 7: Required Forms
- Offeror's Support for CES Prices (page 279) **Form G**
  - Questionnaire for Offeror (page 280) **Form H**
  - Support and Maintenance Plans (page 278) **Form F**
  - Manufacturer's documents indicating authorized representative, distributor, dealer and/or installer form (page 282) **Form I**
- Tab 8: Additional Information
- Additional information that you wish to include

- Tab 9: Offeror's Checklist
- Make certain everything is included, and then sign form (page 285) **Form L**
- Tab 10: Literature, slicks, samples and supporting printed material

Step Three: **Go to the last page of this RFB and prepare the Submission Check-off Form. Sign it and place it after Tab 9. Send your bid to CES so that it arrives on or before Friday, April 22, 2005, at 1:30 p.m. local time.**

**Bids must be submitted in a sealed envelope/package with the bid number, date and time of bid opening clearly marked on the outside.**

Step Four: Before you seal your bid, ask yourself this question, "Did I really give my best prices to the schools?" Be sure the offer is signed and that all forms are enclosed. After verifying this has been done, make a copy of the bid for yourself. Submit your bid to CES.

#### 4. Vendor Qualifications

All bids must contain answers or responses to the requests listed below. Any offeror failing to respond completely may be considered non-responsive. Please arrange responses by placing them after Tab 4. One essential part of the evaluation process is for the evaluator(s) to have some information about the company being evaluated. For the evaluator(s) to know if the bid being read is within the capability of the offeror, factual information about the offeror is vital. After the evaluation process is finished and a contract is awarded, the information may be provided to the CES member considering the purchase. This is your opportunity to present your company to those interested evaluator(s) or, if awarded, member staff.

- a. Write a brief history of your company that includes its' philosophy of doing business, its' background, expertise, experience and ability to provide the services proposed herein. Generally, CES will not accept an offer from a business less than three (3) years old or which has failed to establish a proven record of business. If the offeror has recently purchased an established business or has proof of prior success in either this business or a closely related business, provide written documentation and verification. CES reserves the right to accept or reject newly formed companies solely based on information provided in this response and from its own investigation of the company. Since any contract awarded by CES is a recommendation to its members to do business with the vendor, organizations with little or no demonstrated ability to perform could place the Members and itself at risk.
- b. Where are the headquarters of the company located? Provide address, city, state and zip code. Provide information on any branch offices in New Mexico. How long has your company resided at these locations? For what period of time and in what parts of New Mexico has your company provided the services/products requested in this solicitation? For the before, during and after-sales services, warranty, maintenance, support services offered to Members in your response, what are the qualifications of your project managers and site supervisors? Provide the name, title, qualifications

- and experience of the firm's individuals who will be performing and coordinating construction activities under this solicitation. Describe your firm's current in-house workforce, equipment and facilities available to perform under this solicitation. Provide all current applicable NMCID licenses and NMDOL registration information. If you are requesting the in-state five percent (5%) preference, provide a copy of the certificate acquired from the New Mexico State Procurement Office.
- c. Almost every construction area has professional organizations and associations, as well as oversight agencies that provide standards, certifications and/or product and track qualifications, accomplishments and past performance for end users and other governing agencies to evaluate and assess the firm's capacity and performance. Has your firm or any of your licensed staff or subcontractors or projects performed within the last five (5) received any awards, commendations, citations for violations, or complaints filed with oversight agencies? If so, is there a written report or printed documentation/article of these awards or nominations for excellence or statement of findings or resolution of violations and complaints? Does your firm have a quality control process in place to ensure that products/services offered under this solicitation meets or exceeds industry standards? If so, submit copies of the policies, procedures and a written narrative describing the standards and evaluation methods used in your quality control program. Also, place copies of articles, news clippings or news bulletins or other reports or documentation that will support your response to this item. (Place after Tab 4)
  - d. Offeror must demonstrate its certification with any manufacturers as a factory authorized certified dealer, distributor and/or installer of the products and offer the products and services in New Mexico. Include written evidence and documentation of factory authorization and certification for all product lines offered from the manufacturer stating the terms, conditions and authority to offer, install their product(s) and provide warranty and repair services if required. If you are a manufacturer, describe from whom, from where, how you will provide and install your product line, by listing all of your licensed distributors and installers in New Mexico.
  - e. A major problem often facing companies awarded a CES contract is rapid growth, followed by cash flow difficulties. For purposes of determining a bidder's capacity and ability to perform financially, attach a letter or other documentation from your financial institution that indicates the line of credit available to you and evidence of financial stability over the past five (5) years. This letter does not need to identify a dollar amount. Instead, a credit range should be indicated, that is, "credit in the low six figures" or "a credit line exceeding five figures". Will it be necessary for your firm to assign payments to a financial institution in order to perform under this contract? If so, please name any financial institutions that you may use for assignments or for factoring. If you enter into any assignment agreements, will you sign a notarized power of attorney that grants the company receiving the assignment the right to endorse payments from CES? Please attach a sample assignment or factoring agreement with your bid if you intend to use these financial services. The fact that a company uses these services will not reflect on the credit stature of the CES vendor. Since CES requires a 45-day term rather than the more traditional 30 days, such payment arrangements may be necessary. Please provide written evidence from your security company stating your firm's current bonding rate and bonding capacity.

- f. Describe your company's policies and procedures in regards to complying with the New Mexico Public Education Department (NMPED) mandate regarding security and background checks for individuals working and/or providing services within public school buildings. Please describe or provide a sample of the type of background check that you are willing and able to perform on your providers in order to comply with this requirement.
- g. Unfortunately, the United States of America is now a very litigious society. Provide with this RFB a Certificate of Insurance listing the minimum and maximum coverage for liability, vehicle and property damage. CES is not asking you to acquire additional or special insurance for this contract. CES needs proof that you are insured. Before any work can commence, you must provide a certificate that names CES as a certificate holder. Normally, this is a free service provided by an insurance company. Payment and performance bonds may be required for construction projects. Please provide documentation giving the name, address, telephone number and contact person of the bonding company you intend to use for this contract. Provide documented evidence of your bonding capacity and current bonding rate.
- h. CES is the administrative agency of the Joint Powers Agreement to Establish an Educational Cooperative and its members are the public educational institutions in New Mexico. The sole purpose of CES is to support these institutions in their day-to-day procurement. Describe in writing, your company's ability, willingness and means to sell, deliver, provide and support the proposed products/services to New Mexico educational agencies under the most advantageous conditions including price. No offeror will be denied a contract simply because sales are limited to New Mexico. However, CES, as an agent of the public educational institutions, will not enter into a contract with an offeror that has an existing contract that would be more advantageous than a CES contract to sell and provide products and services to New Mexico agencies. Do you currently have or plan to have such state or other contracts, such as a State Procurement Division Agreement or Albuquerque Public Schools? If so, why do you wish to secure a CES contract and how would the CES contract be more advantageous in pricing of other services over other cooperative contracts?
- i. Through experience, CES knows that a gap exists between the management (those who respond to RFB) and the staff (those who contact and work with the individual CES member and other political subdivisions) that results in miscommunication and problems. Will each of your staff, who will be promoting, executing and providing products/services to individual Members, be provided with or access to a copy of your response; trained and advised of how the contract is to be administered, implemented and performed; and supervised to ensure quality control and project success? What training does your staff have that gives you confidence in their ability to serve the needs identified in RFB 2005-012? Name your key people who will be assigned to this contract; provide a brief description of each person's qualifications including title, work experience, educational background and related skills.
- j. This is an RFB and while CES is required to base an award strictly on the lowest price, any time a vendor charges more than another for a product or service, justification is needed. Every CES contract must be for the public good, not for the benefit of a vendor. However, having said that, CES is totally committed to two basics in the American way of business – profit and competition. Products and services offered herein must be of good sound quality, have good durability/

performance life and stand up to public use. Please provide in writing, reasons why your products and services meet or exceed the minimum specifications and are worth the prices or fees you are charging. Is there “added value” received by the customer when purchasing through you rather than a competitor, or is your major benefit price alone?

#### F. LISTING OF GENERAL TERMS AND CONDITIONS

**For the purpose of this RFB, the following terms will be defined as indicated below.**

**Acceptable Quality Level (AQL):** CES expects that manufacturers in today’s competitive market strive for zero (0) defects per hundred (100) units delivered. The AQL for this contract is zero (0) defects per hundred (100) units. If the quality level falls below three (3) defective units per hundred (100) delivered/installed, CES reserves the right to cancel the contract following the procedures described in this RFB (*caveat venditor*).

**Acceptance of Delivered Services:** CES will be the sole determining judge of whether products and services delivered under the contract satisfy the requirements as identified in the contract order.

**Accounts Payable:** This is the amount owed to a contractor by CES due to an acceptable delivery of products or services to a member or agency as a result of a contract through this RFB. The contractor agrees not to contact the accounts payable department, business manager or executive officer of a CES member or agency, which owes CES payment for a product or service delivered, unless CES has specifically requested assistance in collecting a past due payment.

**Administrative Fee:** CES’ one percent (1%) administrative fee must be included in offeror’s net price for construction, material, equipment item’s price, labor rates, freight charges and bond costs. The CES administrative fee will be taken as a deduction off each line-item’s cost when CES prepares its’ purchase order to the contractor, unless an alternative pricing method has been approved by CES.

**Advertising:** Contractor will not advertise or publish information concerning this contract prior to the award being announced by CES. Once the award is made, CES encourages the contractor to advertise to Members that products and services are available.

**Amendment of Offer:** An offer can be amended up to the time of opening by submitting a sealed letter to the place indicated on the front of the response to this RFB.

**Announcement of Successful Vendors:** Selection will be made via written communication to successful offerors.

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

**Arbitration:** This contract is subject to arbitration to the extent required by the New Mexico Procurement Code.

**Assignment:** No right or interest in this contract will be assigned or transferred by the offeror without prior written permission by CES, and no delegation of any duty of the offeror will be made without prior written permission by CES. CES will not unreasonably withhold approval and will notify the contractor within 15 days of receipt of written notice by the contractor.

**Assignment of CES Payments:** If the offeror requests that its payment from CES be issued to a third party or that a joint check be issued to the offeror and a third party, CES will assess a special handling charge of Thirty-Five Dollars (\$35) per check. The special handling charge will be deducted from the amount of the invoice being paid. If the offeror wishes to have all payments under this contract made to a third party, offeror must state this in its response.

**Audit Rights:** In accordance with applicable New Mexico law, the contractor's books, records and documentation related to this RFB and any contract thereof may be audited at a reasonable time and place. The contractor agrees to provide CES, within a reasonable time frame, copies of requested audit information.

**Authority:** This RFB, as well as any resultant agreement, is issued under the New Mexico Procurement Code, CES Board Policies and CES Procurement Guidelines.

**Awarding of Contract:** CES reserves the right to make multiple awards, to award the entire solicitation to one responsible offeror or to reject one or all bids. A response to the RFB is an offer for an award with CES based upon the terms, conditions, scope of work and specifications contained in this Request For Bid. An RFB does not become an award until CES signs the Acceptance of Offer and Contract Award document, eliminating the need for a formal signing of a separate document.

**Billing:** All invoices will be from the contractor to CES and will be organized, detailed and contain the following: the purchase order number(s) issued by CES, the name of the CES member or agency, where the products/services were delivered, and an itemized and detailed listing of all products and services being billed for with their CES contract price. The contractor will not invoice a member directly. CES will invoice the member with payment to be made to CES. The contractor will not accept an order from or issue an invoice to any New Mexico public agency based on their contract unless authorized by CES in advance and in writing.

**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 bids 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 invitation.

**Bribes, Gratuities and Kickbacks:** Sections 13-1-191 and 13-1-198 Procurement Code, NMSA, 1978, prohibits bribes, gratuities and kickbacks and provides for criminal prosecution for the violation thereof.

**Cancellation:** CES may, by written notice stating the extent and effective date, cancel this contract for convenience in whole or in part, at any time. CES will pay offeror as full compensation for performance until such termination as follows:

1. The unit or pro-rata order price for the delivered and accepted portion; and
2. A reasonable amount, not otherwise recoverable from other sources by offeror as approved by CES with respect to the undelivered or unaccepted portion of the service; provided compensation will in no event exceed the total contract price.

CES reserves the right to cancel in whole or any part of the contract due to the failure of the contractor to carry out any obligation, term or condition of the contract. CES may issue written notice to the contractor for acting or failing to act under the following conditions:

1. The contractor provides material that does not meet the specifications of the contract.
2. The contractor fails to complete the services set forth in the specifications of the contract.
3. The contractor fails to complete the work required or to furnish the materials required within the specified time.
4. The contractor fails to make progress in the performance of the contract, and/or gives CES cause to believe that the contractor will not or cannot perform the requirements of the contract.
5. The contractor fails to observe any or all of the terms and conditions of the contract.
6. The contractor accepts purchase orders, based on this contract, directly from a CES member and then invoices them directly.
7. Any other conditions that, in the opinion of CES, warrants such action.

Upon receipt of a written Notice of Concern, the contractor will have 10 days to provide a satisfactory response in writing to CES. Failure on the part of the contractor to satisfactorily respond may result in CES canceling the contract.

Contractor can, by written notice at least 30 days in advance, terminate the contract issued as a result of this RFB for convenience in whole or in part. CES reserves the right to cancel or suspend the use thereof, of any contract resulting from this RFB if the contractor files for bankruptcy protection or is acquired by an independent third party.

**Cancellation for Non-Performance or Contractor Deficiency:** CES can terminate any contract if members have not used the contract in any 12-month period, or if purchase orders total less than \$10,000 per year. CES reserves the right to cancel the whole or any part of this contract due to failure by contractor to carry out any obligation, term or condition of the contract. CES may issue a written deficiency notice to contractor for acting or failing to act in any of the following:

1. Providing material that does not meet the specifications of the contract;
2. Failing to adequately perform the services set forth in the scope of work and specifications;
3. Failing to complete required work or furnish required materials within a reasonable amount of time; Failing to make progress in performance of the contract and/or giving CES reason to believe that contractor will not or cannot perform the requirements of the contract;

4. Performing work or providing services under the contract prior to receiving a purchase order from CES for such work; and/or
5. Accepting purchase orders based on this contract from members and/or invoicing members directly.

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

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

**Certificate of Insurance:** Prior to commencing services under this contract, the contractor must furnish CES certification from insurer(s) for minimal coverage to be maintained in full effect during the term of this contract. The certificate will be issued by the contractor's insurance company and name CES as the certificate holder. In addition, offeror must be willing to provide, upon request, certification of insurance to any CES member using this contract. If the offeror will use vehicles and workers at the member's location, evidence of workmen's compensation and auto liability insurance must be provided.

**Certification:** By signature in the offer section of the offer page, the contractor certifies:

1. The offeror has examined and understands the terms, conditions, scope of work, specifications and other documents in this RFB solicitation.
2. The submission of the offer did not involve collusion or other anti-competitive practices.
3. The contractor will not discriminate against any employee, or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246).
4. The contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
5. The contractor agrees to promote and offer to Members only those materials and/or services allowed under resultant contract(s) as CES contract items.

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

**Clarification:** As used in the RFB, clarification means communication with an offeror for the sole purpose of eliminating minor irregularities, informalities or apparent clerical mistakes in the bid. It is achieved by explanation or substantiation either in response to an inquiry by CES or as initiated by the offeror.

**Competitive Range:** CES reserves the right to establish a competitive range of acceptable bids as part of the evaluation process as defined herein. Bids not in the competitive range are unacceptable and will not receive further award consideration.

**Competitive Sealed Bid:** As required in the Procurement Code, CES has determined that competitive sealed bids are for this solicitation. These CES contracts will be awarded through competitive sealed bid with the following vendor and product requirements:

1. Offeror must be a manufacturer and/or authorized distributor/installer of the products being bid and must have current NMCID licenses that are required to perform the services offered. Offeror must provide the necessary documentation to demonstrate that it complies with these requirements.
2. Offeror must be able to provide a single source contact or turnkey operation.
3. Manufacturer must have at least five (5) years of product and service history for those types of items being bid.
4. Offeror must have a bonding capacity of:
  - b. At least Two Million Dollars (\$2,000,000), where applicable, if bidding to offer its' products and/or services throughout the State of New Mexico; or
  - c. At least Two Hundred and Fifty Thousand Dollars (\$250,000) per region, where applicable, if bidding to offer its' products and/or services to one or more of the CES regions as defined herein.
5. Offeror must have a bonding rate of not more than three percent (3%). Offeror must provide documentation from its security company to substantiate that it complies with this requirement.
6. Offeror must demonstrate the ability to control the securing of, delivery of, installation of, warranty of, and the resolution of problems with all products/services bid.
7. Products bid must meet or exceed the industry standards and guidelines established for use in public facilities and for public use.
8. Offeror must provide the necessary information and documentation to substantiate and demonstrate its ability and capacity to provide, perform and comply with all of the terms, conditions, specifications and request for information stated herein.
9. Offeror's Past Performance Information (PPI) must indicate a vendor in good standing who has performed and conducted its business affairs in an acceptable manner without improprieties.

**Confidential Information:** If an offeror believes that any part of its bid should be withheld from public inspection, a statement advising CES of this fact will accompany the submission. The CES Executive Director will review the statement, and will determine in writing whether the information will be withheld. If the Executive Director determines that the information should be disclosed, the offeror will be informed in writing of such determination and should the offeror object in writing within five (5) days after notification thereof, no disclosure will be made. The bid may be rejected.

**Construction:** As defined in the New Mexico Procurement Code Regulations under Definitions, "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:** Any agreement for the procurement of items of tangible personal property, services or construction.

**Contract Between Owner, Buyer and Contractor:** An agreement between the CES member (Owner), CES (Buyer) and the CES contractor for the procurement of goods and services in the construction and professional services areas will be signed for each contract over Fifteen Thousand Dollars (\$15,000). CES issues this agreement in order to consummate the agreement of the parties in accordance with the terms and conditions specified in the RFB, and that the owner's purchase order to the buyer is in accordance with the same terms and conditions.

**Contract Changes:** CES can make changes in the general scope of this contract by giving notice to the contractor and subsequently confirming such changes in writing. If such changes affect the cost and/or the time required for performance of this service, an equitable adjustment in the price or delivery or both will be made. No change by the contractor will be recognized without written approval of CES. Any claim of contractor for any adjustment must be made in writing within 30 days from the date of receipt by the contractor of notification of such change, unless CES waives this condition. Nothing in this section will excuse contractor from proceeding with performance of the service as changed hereunder.

**Contract Type:** Indefinite quantity with the pricing scheme identified in each of the categories of this RFB. The pricing schemes requested may include one or all of the following:

1. Fixed discount off retail or off published educational/national catalog/price lists.
2. Fixed price with economic adjustment. Offeror must identify, in writing, in this RFB any contingencies prior to approval.
3. A fixed discount off the most current years R. S. Means or similar nationally recognized publication utilized for construction or construction items.

Note: A cost-plus-a-percentage-of-cost contract is prohibited. Request for a price adjustment must be submitted 30 days prior to the anniversary date of the contract (first year) and prior to the annual renewal date (last three years). Justification for any adjustment will be in writing and be accompanied by appropriate documentation. Any escalation that exceeds the Consumer Price Index (CPI) per contract year may be rejected unless insuperable market forces can be fully documented.

**Contractor:** Offeror who has responded to this solicitation and who has been awarded a contract based on its response for providing, delivering and/or installing products and services to Members and other public agencies.

**Contractor's License:** A document issued by New Mexico Construction Industries Division (NMCID) to the contractor that authorizes offers to undertake or purports to undertake, supervise, subcontract others, to construct or to provide mechanical or structural service for a structure or improvements, will have all the New Mexico licenses to perform and provide the

services themselves or to subcontract with other qualified firm(s). Copies of licenses will be submitted by the offeror with its response. The offeror agrees to keep and ensure that any required licenses for it and subcontractor are current, and in compliance with the rules and regulations of the New Mexico CID.

**Contractor's Price List:** The contractor will furnish to and keep current with CES copies of the approved price list to facilitate eligible procurement agencies in placing orders. 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 (SRP), R. S. Means and/or other acceptable pricing document, 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.

**Contractor's Quote/Proposal to CES Member:** When preparing a quote/proposal under a CES awarded contract, the contractor must clearly identify and break out supplies, materials, equipment and services into individual line items as they appear on the contractor's awarded price schedule. Stated prices must include the CES one percent (1%) administrative fee.

**Cooperative Purchasing:** 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 agencies and other procurement units. Although offerors can restrict sales to certain public units, for example, to state agencies or local government units, any bid that restricts sales from being made to any New Mexico public educational institutions within a designated geographical area will be considered non-responsive.

**Credit Hold:** Is defined as the contractor refusing to process any CES purchase order due to CES' inability to pay an invoice because it has not received the payment from its member(s). CES will investigate, pursue and take whatever action it can to collect any outstanding payment due to contractor for acceptable products/services delivered. Offeror must agree not to place CES on "credit hold" without 10 business days advanced notice in writing, either by letter, facsimile or e-mail to the CES Director of Finance. CES believes it is better for the contractor if CES places the slow-paying agency on "credit hold". If a contractor 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.

**Current Products:** All equipment, supplies, materials and commodities proposed must be current and proven model, vintage, technology and/or solution available from the contractors' manufacturer/supplier and marketed to the general public and educational/ governmental agencies.

**Default in One Installment to Constitute Total Breach:** Contractor will deliver conforming materials in each installment of this contract and will not substitute nonconforming materials. CES reserves the right to declare a breach of contract if the contractor delivers nonconforming materials to any agency purchasing under this contract.

**Defective Goods:** Offeror agrees to pay for return shipment on goods that arrive in a defective or non-operable condition. Offeror must agree to arrange for return shipment and replacement of damaged goods.

**Delivery:** Delivery is desired to be made within 30 days of receipt of the purchase order, unless otherwise stipulated in writing and accepted by all parties (buyer, contractor and member). The contractor agrees to notify CES if an order cannot be processed and/or delivered within the 30 day period and/or the agreed upon time lines. The agency placing the order will then have the option of canceling the purchase order or invoking other options enumerated within the buyer, contractor and member agreement. Ownership of products and services happens only after acceptance of delivery by the member.

**Descriptive Literature and Brand Names:** All offers must include a complete set of the manufacturers' descriptive literature regarding the equipment and software offered. Brand names, trade names, and/or catalog numbers used in the RFB will be intended to describe and identify equipment and software.

**Deviations or Exceptions to Requirements:** Deviations or exceptions stipulated in a bid can result in rejection of the bid. CES reserves the right to determine whether the deviation or exception does or does not serve the interest of or is not advantageous or acceptable to CES or its members.

**Disclosure:** Offerors submitting a bid will disclose any and all owners, contractors or employees who are active employees of CES or are immediate relatives of an employee of CES.

**Discontinued Products:** In the event that a product or model under contract is discontinued by the manufacturer, CES will allow the contractor to substitute a new product if model is equal to and meets or exceeds the existing specifications and performance guidelines. The pricing discount must be equivalent to the discontinued product or model it is replacing under contract.

**Eligible Agencies:** Any CES member can use the services of Cooperative Educational Services, upon request. CES reserves the right to reject any purchase authorizations it receives from New Mexico educational institutions and/or agencies, without cause.

**Estimated Quantities:** CES anticipates considerable activity resulting from this solicitation. However, no commitment of any kind is made concerning quantities actually to be acquired. CES does not guarantee usage. Usage depends on the actual needs of the members and on the marketing expertise of the contractor.

**Exculpatory Provisions:** All parties to this contract agree to save harmless one another from simple negligence.

**Federal Requirements:** Contractor agrees, when working on any federally assisted projects with more than Twenty Thousand Dollars (\$20,000) in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act, and the Equal Opportunity Employment requirements of Executive Order 11375. In such projects, the contractor agrees to post wage rates at the work site, and comply with all reporting requirements. The contractor will provide CES with a copy of any required report filed. In addition, to comply with the Copeland Act, the contractor must keep records for three (3) years, and allow the federal grantor agency access to these records, upon demand. All federally assisted contracts to members that exceed Ten Thousand Dollars (\$10,000) may be terminated by the federal grantee for noncompliance by the contractor. In

projects that are not federally funded, offeror must agree to meet any federal, state or local requirements, as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed on costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee. On all other projects, the prices must agree with this contract.

**Force Majeure:** Except for payments of sums due, neither party will 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 party affected, and occurs without that party's fault or negligence, including, but not limited to, the following: acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; earthquakes; famine; volcanic eruptions; meteor strikes; lockouts; injunctions-intervention-acts or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure will be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure, and will 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 will 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 will notify the other party, in writing, of such delay within 48 hours.

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

**Gratuity:** By written notice, CES will cancel this contract if it is found that gratuities in the form of entertainment, gifts, etc. were offered or given by the contractor or any agent or representative of the contractor to any employee of CES with a view toward securing a contract or with respect to the performance of the contract. Paying the expenses of normal business meals, which are generally made available to all eligible members and government employees, will not be prohibited by this paragraph. Samples of software, equipment or hardware provided to CES for demonstration, evaluation or loan purposes are not considered gratuities.

**Improper Delivery:** Unless contrary to other parts of this solicitation, if the goods or the tender of delivery fails in any respect to conform to this contract, the purchasing agency can:

1. Reject the whole; or
2. Accept the whole; or
3. Accept any unit or units and reject the rest.

**Indemnification:** Contractor will indemnify, defend and save harmless CES from any and all claims, demands, suits, proceedings, loss, cost and damages of every kind and description, including any attorney's fees and/or litigation expenses, which might be brought or made against or incurred by CES on account of loss or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act,

omission, profession error, fault, mistake, or negligence of contractor, its employees, agents, representative, or subcontractor, their employees, agents, or representative in connection with or incident to the performance of this agreement, or arising out of worker's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of contractor, and/or its subcontractors or claims under similar such laws or obligations. Contractor's obligation under this section will not extend to any liability caused by the sole negligence of CES, its members or its employees.

**Information Systems:** All vendors of information systems must include information on the total life cycle cost and application benefit to the member or public agency. An information system is a system of hardware, software or contractor support that processes information or data by electronic data processing methods and devices.

**Inquiries:** Any question related to this RFB will be directed to CES. Submit all questions about the RFB in writing to Cooperative Educational Services, Max Luft, Executive Director. Replies will be made to all who have received this RFB as addenda and will become part of the bid documents. CES may require any and all questions to be submitted in writing. Any inquiries related to this RFB should not have the solicitation number on the envelope, since it might then be confused with a sealed bid response and not be opened until the due time and date. Inquiries can be faxed or sent by e-mail to [bids@nmedu.org](mailto:bids@nmedu.org).

**Installation:** Equipment or products that require professional installation will be installed within two (2) weeks of product delivery, unless CES or the member or agency asks that installation be delayed. If delayed, the contractor will establish and confirm in writing to both CES and the member or agency of the revised installation date.

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

**Late Offers:** Late offers will not be considered and will be returned, upon request, unopened.

**Lease and Rentals:** Contractor may allow members to enter into rent, lease or lease purchase agreements, providing such agreements are in compliance with New Mexico Statutes and Public Education Department policies, rules and regulations. CES must receive a copy of the executed leasing documents before it will process a purchase order. CES will not collect lease payments. Offeror agrees that leases will be in compliance with the Uniform Commercial Code. All terms of leasing must be included in the bid, with interest rates described as related to a government standard. Offeror must indicate in its response to this solicitation if the shipping costs for the return of leased or rented equipment is the responsibility of the procurement unit, and what that cost will be. No sale of a contract to a third party will be made without informing CES and the procurement unit 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 vendor.

**Legal Remedies:** All claims and controversies will be subject to the New Mexico Procurement Code.

**Liability:** The contractor will hold CES harmless from and will indemnify CES from and against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising out of, or in connection with the contractor's conduct of the contract awarded as a result of this procurement process, to the extent the negligent act or failure to act or willful act of the contractor, its agents, representatives or employees is deemed to be the cause of the resulting personal injury or property damage claimed. It is expressly agreed that, to the extent it is determined that the damage claimed was in part caused by the negligence of CES or other parties, the contractor's liability pursuant to this indemnification provision will not be greater than that portion of the total liability in the same proportion as vendor's negligence bears to the entire negligence giving rise to the liability.

**Licenses:** The contractor will 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 this RFB. Any offeror using subcontractors must hold a current and appropriate contractor's license, as required by NMCID and New Mexico statutes to enter into such contracts. It is the responsibility of the contractor to ensure that any subcontractors performing under this RFB hold and maintain the appropriate licenses. The contractor will submit copies of licenses with the response to the RFB (place behind Tab 4) and submit copies of any subcontractors' licenses to CES prior to the start of any work. The contractor agrees to keep and ensure that subcontractors keep any required license, permit or bond current and in compliance with the New Mexico rules, regulations and statutes.

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

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

**Maintenance:** Each potential offeror of high technology electrical/mechanical equipment must have or have access to maintenance facilities and have a maintenance support system available for servicing units in all parts of New Mexico. If a third party is used to provide maintenance or warranty work, offerors must include with the bid 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,

service in rural areas within 24 business hours. Any maintenance facility must have sufficient parts inventory to provide quality service on units sold to Members. On small pieces of equipment, out-of-state manufacturers may offer mail-in service, if normal turn around time is 48 hours.

**Manufacturer's Representative:** Dealers, distributors and installers of high technology electrical/mechanical systems and equipment, who, if permitted by the Scope of Work, submit an offer as a manufacturer's representative must be able, if required, to provide documented evidence from and/or between it and the manufacturer certifying that the offeror is a bona fide manufacturer's agent for the specific products/services proposed, the offeror is authorized to submit an offer on such products/services, and a guarantee that should the offeror 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 bona fide representatives for the balance of the contract period. Offerors of software, mechanical devices, electrical products/systems and other commodities that make up systems/networks must be able, upon request, to provide the same information from a manufacturer.

**Member of CES:** Any public educational institution in the State of New Mexico that has by their board resolution resolved to become a party of the Joint Powers Agreement to Establish an Educational Cooperative and has been approved for membership by CES' Board of Directors and the New Mexico Department of Finance and Administration.

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

**Most Favored Customer:** Although CES expects contractors to offer their very best prices to members, nothing in this contract establishes a most-favored customer relationship between CES and the contractor. The contractor can respond to any solicitation from any public procurement unit without regard to this contract. If contractor offers lower prices to any of its other customers, it can lower its prices to its CES customers at the same time by facsimile or written notice.

**Multiple Awards:** CES has determined that often contracts awarded to more than one supplier for comparable goods and services at various prices best meet the many needs of the members. Hence, when in the opinion of CES, an award to one supplier would be impractical or fail to meet the total requirements of comparison or evaluation, multiple awards can be made.

**Multi-Term Contract:** A contract having a term longer than one (1) year.

**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.

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

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

Because this solicitation is for an indefinite quantity and the amount of work to be performed on individual projects is not known, CES is requiring that all offerors be registered on or before the date of the bid opening.

**NMPED:** New Mexico Public Education Department, formerly called the New Mexico State Department of Education.

**New Technology and Products:** New products announced by the manufacturer may be added to the existing contract. Pricing will be equivalent to the percentage discount of other products. Dealers may replace or add product lines to an existing contract if the line is replacing previous products; is substantially superior to the original products offered; is discounted in a similar or to a greater degree; and the products meet the requirements of the original RFB. No products can be added to avoid competitive procurement procedures. CES can reject any additions, without cause. All items added must be submitted CES and approved in advance by CES.

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

**Non-Exclusive Contract:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of local procurement units in New Mexico. CES reserves the right to obtain like goods and services from another source when necessary.

**Non-Responsive Offer:** Any offer that does not conform to the mandatory or essential terms, conditions and/or specified bid requirements for this solicitation is considered non-responsive.

**Notation:** If the original contractor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. CES reserves the right to accept or object to the new party with the original contractor being obligated if the new party fails to perform. A simple change of name agreement will not change the contractual obligations of the contractor.

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

**Offer Acceptance Period:** In order to allow local educational agencies the opportunity to evaluate the bids offered, CES requires that an offer in response to this solicitation be valid and irrevocable for 90 days after opening time and date.

**Offeror Qualifications:** The offeror will have extensive knowledge and experience with the production, installation and maintenance of the products and service being offered and meet all other bid requirements.

**Options:** Optional products/services may be added to the contract at the time they become available under the following conditions:

1. The option is priced at a discount similar to other options, or
2. The option is an enhancement to the unit that improves performance or reliability.

**Ordering Process:** All orders accepted by the contractor must be issued by CES. Members will submit signed purchase orders to CES. CES will then issue its purchase order to the contractor. When necessary, one or more orders may be combined. The contractor must agree never to accept a purchase order based on this contract, unless the purchase order is issued by CES or a Letter of Understanding has been issued to authorize such action.

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

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

**Past Performance Information (PPI):** PPI is relevant information regarding a vendor's actions under previously awarded contracts to educational institutions, local, state or federal agencies. It includes the vendor's record of conforming to specifications and to standards of products/services; workmanship; the vendor's record of containing and forecasting costs on any previously performed cost reimbursable contract schedules, including the administrative aspects of performance; the vendor's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the vendor's business-like concern for the interests of the customer.

**Patent and Copyright Infringement:** Contractor will, at its expense, defend CES and its members against any claim that any equipment or software supplied, hereunder, even if such equipment or software is modified by CES or its members subject to the last paragraph of this section, infringe a patent or copyright in the United States, Puerto Rico 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 must:

1. Give contractor prompt written notice of any such claim after becoming aware of such claim.

2. Allow contractor to control and fully cooperate with contractor in the defense and all related settlement negotiations.

CES will be reimbursed for all expenses incurred by CES in fully cooperating with contractor as specifically requested by contract. CES is not required to incur any expenses specified in this paragraph that are not reimbursable by the contractor. If any party in any way involves any CES member, the same provisions that apply to CES in this paragraph will apply to the member. Contractor's obligation under this section is conditioned on CES' agreement that if the subject of such a claim, CES will permit the contractor, at its expense and option, either to procure the right for CES and its members to continue using the equipment and/or software, or to replace or so modify them with 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 contractor's judgment and satisfactory to CES, CES will request its members to return the equipment or software on written request by contractor at contractor's expense.

Contractor agrees to refund CES and/or its members a refund for returned equipment as depreciated. The depreciation will be an equal amount per year over six (6) years. In the event that contractor's written request for return is made after full depreciation, the contractor will pay CES, or its members who purchased the equipment, an amount equivalent to the fair market value of the returned equipment. If CES, or any of its members, fails to return the equipment, the contractor is not obligated to that member under this clause.

Contractor will have no obligation with respect to any such claim based upon a member's modification of the equipment or software or combination, operation or use with apparatus, data or programs not furnished by contractor. However, one school's or procurement unit's action will not preclude contractor's obligation to others not having modified their equipment or software.

**Payment:** CES will make every effort to collect payment from its members for the purchase of services, construction or items of tangible personal property within 30 days after the acceptable delivery and receipt of products or services has been obtained, the offeror has obtained and provided CES with all copies of forms and documents required herein, and a correct billing/invoice of amount due has been delivered to CES. Payment will not be made if any of the above criteria is not met or a good faith dispute exists as to any obligation to pay all or a portion of the account. *Any offer that requires payment in less than 45 days may not be considered.* CES must first receive payment from the member in order to process payment to the contractor. Any contractor, whose business would be in jeopardy due to slow payments, is encouraged not to respond. It has been CES' experience that its members always pay, but many are slow in processing payments.

Note: Members pay an administrative fee equal to one percent (1%) of the purchase price of goods and services purchased from CES contracts. Offerors will include the administrative fee in all pricing in the Discount and Price Schedule submitted. The contractor must be willing and able to allow CES to apply a one percent deduct prior to issuing its purchase order to the contractor. Contractor's invoice to CES will only reflect the actual amount due from CES. The CES administrative fee will be included in charges such as freight/shipping, bond costs and travel and per diem costs. The CES administrative fee is non-taxable and will be adjusted prior to CES issuing its purchase order.

**Payment Discounts:** Any payment discount offered must be made directly to CES and not to the member receiving the materials or services. Quick-payment discounts of 10 days are normally impossible; 20, 30 and 45 days are more reasonable. Payment discounts of 45 calendar days or more will be deducted from the bid price to determine low price.

**Peripheral Items:** Offeror can include various peripheral products and software that function with the primary offering.

**Price List:** The vendor will furnish CES with copies of the approved price list to facilitate eligible procurement agencies in placing orders. When the contractor offers a discount off retail price, the Manufacturer's Suggested Retail Price (MSRP), such discounts will include the CES one percent (1%) administrative fee and must be submitted as printed by the manufacturer.

**Price Reduction and Adjustment:** A price reduction can be offered at any time and will become effective upon notice. Special, time-limited reductions are permissible under the following conditions:

1. The price reduction is available to all members equally.
2. The price reduction is for a specific time period, no less than 30 days.
3. The original price is not exceeded after the time limit.
4. CES is to be notified and have the new prices on record prior to any offer of the new prices to a CES member.

Price increases (change in discount rate) will be considered at the time of a contract extension and will be a factor in renewal.

**Pricing:** Offeror will describe discounts and special pricing offered. Offeror must agree that prices offered through this contract will include the CES one percent (1%) administrative fee and while this contract is in effect, prices offered will be at least two percent (2%) below the lowest offered by the offeror to New Mexico educational institutions for a similar volume. Should a lesser cost be provided to any other educational institution, the preceding and existing work through this contract will be reduced in price to meet that rate. A copy of the current retail manufacturer's price list will be included in the bid. If the offeror has a leasing department or a leasing company, the cost of leasing can be included in the bid. However, members reserve the right to choose a different leasing company. Leases with options to purchase must be described. Rental plans will not contain end-of-rental-term buy-out information.

**Prime Contractor:** Any firm, business and/or individual(s) who submits a response to this RFB and is awarded a contract. The contractor will be considered a prime contractor to CES and CES will not enter into any agreements with a subcontractor. Any contractor paid directly by CES is a prime contractor. Any subcontractor performing under this RFB is contracted and paid by the prime contractor. Prime contractors using subcontractors must be responsible for any subcontractors required to perform and/or provide products and services offered herein.

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

**Product Line:** The various supplies, materials, equipment, peripherals software, related installation and maintenance services which an offeror has available that meet and/or exceed the specifications and requirements found herein. If offeror has a published catalog, it can submit the entire catalog. However, CES reserves the right to select products within the catalog for award without having to award all the contents.

**Progress Payments:** CES will permit its members to make progress payments on a purchased product or service under the following conditions:

1. The procurement unit and the contractor agree to the terms of the progress payments prior to issuing a purchase order to CES and the terms and conditions are so noted on the procurement unit's purchase order or are communicated to CES in writing.
2. The communication to CES describes the terms and timelines of acceptable delivery, the associated amounts to be paid and the schedule of payments.
3. The procurement unit has established and included in its communication to CES a satisfactory method of verifying progress and/or acceptable delivery.
4. Payments will be made only after actual products and/or services are verified and received and CES is in position of any/all forms/documents/invoices required herein.
5. Payments will be made in full compliance with the procurement units' local board policies, procedures and any and all other applicable state or local rules, regulations and statutes.

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

**Project Director:** The offeror will assign a project director to coordinate operational activities with the Executive Director of CES and will make monthly reports to the Executive Director.

**Protests:** Protests will be filed and resolved in accordance with the State of New Mexico Procurement Code. Venue for any and all legal actions regarding or arising out of the transactions covered herein will be solely in the District Court in and for the County of Bernalillo, State of New Mexico. The laws of the State of New Mexico will govern this RFB and resulting transactions.

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

**Public Record:** All bids submitted to this invitation will become the property of CES and will become a matter of public record available for review, subsequent to the bid opening, under the supervision of the Executive Director of CES from 9:00 a.m. to 4:00 p.m., Monday through Friday, at 4216 Balloon Park Road NE, Albuquerque, New Mexico.

**Qualifications:** Includes any and all skills, knowledge, capacities, capabilities, experience, financial stability, available human and physical resources, historical background, past and present performance, properly licensed to perform and do business in New Mexico, proposed products/services meet or exceed specifications specified herein and proposed pricing complies with state and local requirements. The evaluation of a respondent's qualifications will be done in accordance with the criteria set forth herein, and the most recent edition of any relevant regulation, standard, document or code that will be in effect. Where conflict among the requirements, or with these specifications exists, the most stringent requirement will be used.

**Request for Bid (RFB):** All documents, including those attached or incorporated by reference, which are used for soliciting a bid.

**Responsible Offeror:** An offeror who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make acceptable delivery of the services or items of tangible personal property and/or services described in the bid.

**Responsive Bid:** An offer which conforms in all material respects to the requirements set forth in the REQUEST FOR BID. Material respects of a request for a bid include, but are not limited to, offeror's qualifications, price, quality, quantity or delivery requirements.

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

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

**Safety Standards:** All items supplied on this contract will comply with all current applicable Occupational Safety and Health Standards, National Electric Code, American Refrigeration Institute (ARI), National Electrical Manufacturers Association (NEMA), American Society Heating, Refrigeration, Air Conditioning Engineers (ASHRAE), American National Standards Institute (ANSI), and National Fire Protection Association Standards (NFPA).

**Sample:** Samples may be required prior to awarding a contract and/or prior to entering into an individual project contract. Upon request of CES or its members, the offeror will provide

adequate samples and detailed specifications for any item offered. Samples must be submitted within 10 days of request from CES or its member. Samples will be free of charge and submitted and removed by offeror at offeror's expense. Samples will be compared to bid 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 members will not be held responsible for samples damaged or destroyed in examination or testing. Samples not removed within 30 days after notice to offeror will be considered abandoned and member will have the right to dispose of them.

**Serial Numbers:** Contractor must verify that original manufacturer's serial number has not been altered in any way.

**Severability:** The provisions of this contract 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.

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

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

**Shipping Terms:** Identify and state the associated cost of delivering products offered under this contract to any designated location in New Mexico. Contractor will retain title and control of all goods until they are delivered, received and signature of delivery has been obtained. All risk of transportation and all related charges will be the responsibility of the contractor. CES or the member will notify the contractor and freight company promptly of any damaged goods and will assist them in arranging an inspection. No F.O.B. vessel, car or other vehicle terms will be accepted.

**Site Cleanup:** Contractor will clean up and remove all debris resulting from its work as required by the member. Upon completion of the work, the premises will be left in a neat, unobstructed condition with everything in good repair and order.

**Site Preparation:** Prior to a purchase order being issued by a member, the size, location and site conditions that exist at the time the contractor takes possession and/or control must be clearly identified and stated in writing. The contractor will not begin a project for which the site is not prepared or in the condition agreed upon in writing by the member, unless contractor decides to accept the site as is and is willing to perform the preparation work necessary at no cost, or until the member 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.

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

**Specifications:** All Scope of Work specifications in this RFB are designed to enable a contractor to satisfy a requirement for a product, material, process or service. A specification may be expressed as a standard, a part of a standard, or independent of a standard. No specifications are intended to unnecessarily limit competition by eliminating items capable of satisfactorily meeting the actual needs of the procurement. Any contractor believing a specification is unnecessarily restrictive, and submits a bid, must indicate such in its initial response.

**State Wage Rates:** It is the contractor's responsibility to be acquainted with the New Mexico Department of Labor's rules, regulations, procedures and requirements relating to state wage rates, and to comply with state and federal regulations regarding payment of wages on public projects. The contractor, as established by the New Mexico State Labor and Industrial Commission, will pay wage rates for every job performed under this contract with a total project cost of more than Twenty Thousand Dollars (\$20,000) on an individual basis. The contractor will pay all mechanics and laborers employed on the site of the project by the contractor, unconditionally and not less often than once a week, and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications.

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

1. In awarding subcontracts, the offeror agrees that any subcontract competitively solicited by contractor will not be awarded solely upon membership, non-membership or affiliation in a union or professional association or other organized group or agency, but on competitive bid and ability to meet the specifications and comply with the requirements of the individual project.
2. The offeror will not enter into any subcontract subject to this solicitation without prior notification and approval from CES. Any such subcontract shall incorporate by reference the terms and conditions of this solicitation and each individual project contract.
3. No subcontracts will be entered into with any unlicensed party. Contractor must use subcontractors openly, include such arrangements in the proposal and certify upon request that such use complies with the rules of the NMCID and the New Mexico Public Works Act and Procurement Code. No subcontracting costs can be hidden in a cost proposal to CES.
4. Subcontractor payment: Contractor agrees to pay subcontractors in a timely manner and in accordance with the New Mexico Subcontractors Act. If contractor receives a progress payment from CES, the contractor will pay subcontractor(s) their correct proportion of the amount paid. CES will contract to provide release of liens from subcontractors within 15 days of date of payment. Failure to pay subcontractors for work faithfully performed and properly invoiced can result in the suspension or cancellation of this contract.
5. 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.

**Suspension or Debarment Status:** If any firm, business, person or vendor submitting an offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any federal, state or local government, the offeror must include a letter with its response or offer setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter, or to not disclose in the letter all the pertinent information, will result in the cancellation of any contract. By signing the offer section, the offeror certifies that no suspension or debarment exists.

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

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

**Term of Contract and Extension:** The term of the agreement will commence on award and continue until July 7, 2006 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three additional 12-month periods ending on July 7, 2007, July 7, 2008 and July 7, 2009. Since technology changes rapidly, CES may require a vendor to respond to a new RFB rather than extend a contract secured under this RFB.

**Termination of Contract by CES:** CES can cancel any contract secured by solicitation without any further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of CES is or becomes at any time while the contract or any extensions of the contract are in effect an employee of or a consultant to any other party to this contract with respect to the subject matter of the contract. Such cancellation will be effective when written notice from CES is received by the parties to this contract, unless the notice specifies a later time. (See also Cancellation)

**Termination of RFB:** The RFB in no manner obligates CES to the eventual purchase of any product or services described or which may be proposed until confirmed by a written Acceptance of Offer and Contract Award. Progress towards this end is solely at the discretion of CES, and may be terminated without penalty or obligation at any time prior to the signing of a contract. CES reserves the right to cancel this RFB at any time for any reason and to reject any or all bids.

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

**Token Bids:** If any offeror submits a perfunctory offer with no serious intent of being accepted, CES reserves the right to remove the offeror from its potential vendor's list. If an offeror wishes to remain on the vendor's list, either a no response, or a request to remain on the list, is all that is needed.

**Trade-In Equipment:** Equipment for trade-in will be dismantled by the offeror and removed at the offeror's expense. The conditions of the trade-in equipment at the time it is turned over to the offeror will be the same as when the original agreement was made, except as affected by normal wear and tear from use between the time of the offer and the trade-in. Values placed on trade-in products are between the member purchasing the new unit and the offeror.

**Total Project Costs:** Total member's costs include energy, facilities, repair costs, present values of moneys, vendor charges, personnel costs, bonds, New Mexico gross receipt taxes, CES one percent (1%) administrative fee and all other identifiable costs. Contractor charges include all the costs of contractor support, materials, transportation, permit fees and all other identifiable costs associated with the bid. Contractor costs means the costs of all hardware, materials, software, transportation, contractor support, warrantee fees and all other identifiable costs associated with the bid. Contractor support means services provided by the contractor, such as consulting, education, training, management of the system purchased and other integration and maintenance support.

**Warranty/Quality Guarantee:** The offeror warrants that all equipment, supplies, materials and services delivered under this solicitation conforms to the specifications of this solicitation and/or the specifications as defined in individual projects performed under this solicitation. The manufacturer has the primary responsibility to honor a manufacturer's warranty. The offeror must agree to assist the member 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 equipment or material supplied to CES or its members will conform to all requirements of the contract and all representations of contractor and will be fit for all purposes and uses required and defined in each individual project. All work performed, equipment and materials must carry a minimum 12-month manufacturer's/contractor's warranty that includes parts, labor and reimbursable expenses.
2. Unless modified elsewhere in this solicitation, contractor warrants that for one year after acceptance of the individual project, the work performed, equipment and/or materials provided to the member 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.
3. Any extended manufacturer's warrantee that is obtained to meet the 12-month requirement will be passed to the member without exception. CES reserves the right to cancel the contract if contractor charges the member for any product and/or services received at no cost under a warranty.

**Weighted Evaluation:** CES reserves the right to use a point system to evaluate responses and to assign points to the cost elements as it determines most appropriate. The scoring system will be based on the point system defined in each category.

**Withdrawal of Offer:** An offeror can withdraw its bid, provided such written notice is received at the CES office prior to the specified due date and time.

**Year End Procurement:** For purchase orders (PO) issued to a contractor, goods must be delivered and services must be completed five (5) days prior to the end of the member's fiscal year (June 30<sup>th</sup>). CES must receive all invoices dated for the prior fiscal year by the 10<sup>th</sup> of July. The member can cancel purchase orders not completed by June 25<sup>th</sup>. The member can issue revised purchase orders dated after July 1<sup>st</sup> for any goods not delivered or services not completed by June 25<sup>th</sup>.

## **SECTION II: SCOPE OF WORK AND SPECIFICATIONS**

### **A. SCOPE OF WORK**

1. CES, which is based in Albuquerque, is composed of all of the eighty-nine (89) New Mexico public school districts and 63 other public educational institutions that are parties to the Joint Powers Agreement to Establish an Educational Cooperative. CES was organized in 1979 as a direct response to the needs of small and rural Local Education Agencies (LEA's). CES offers numerous programs and services. Currently, 152 public educational institution members use one or more of the CES provided programs or services each year.
2. Members and other local public bodies will individually elect to participate or not participate in each section of the provided scope of work. No estimate or guarantee of services is made to the offeror.
3. It is important that the offeror understands that CES is not a sales agency or a marketing firm. If you are awarded a contract, you must be committed to work your contract. Due to the scope of work solicited herein, the offeror must be willing, able and possess the man power to make one-on-one contact with members' business officers and buyers to ascertain their needs and requirements in order to develop and propose a solution that they can consider to meet their needs.
4. When you respond, CES is asking you to become a partner in providing quality goods and services to its members at competitive prices. Partnership with a contract awarded through competitive bidding saves members both time and money. Time is saved by being able to purchase what is needed without having to wade through the bidding process (write bid, advertise bid, open each response, evaluate and have the board make a selection). Money is saved because each CES partner has already agreed that our members have the lowest prices it will offer to procurement units in the state.

### **B. DUTIES OF THE CONTRACTOR**

Once the award is made to the offeror, the offeror as contractor will assign a project director to coordinate operational activities with the designated representative of CES and will make monthly reports to this representative. It is the responsibility of the contractor to market the products or services to the member.

### **C. DUTIES OF CES**

The general duties of CES will include:

1. Inform members of vendors and obtain participation of members.
2. Inform contractor of participating members.
3. Process pay requests for payment.
4. Follow up as needed on problems.
5. Periodic review with contractor as to projects and any problems.

### **D. OVERVIEW OF REQUEST**

1. CES and its members desire to contract with a responsible firm or firms to provide, perform construction services and/or install finished products, materials or articles of merchandise and equipment, which are fabricated into and become a permanent fixed part of a structure; construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, structure, facility, roadway, excavation or to do any part thereof or perform work in connection with improvements to roofing systems, HVAC units,

utility service lines and metering devices and sewer lines and other related infrastructures on an as-needed basis. The work may include but is not limited to design, installation, repair and alteration of a variety of educational buildings and facilities for members.

2. Under this solicitation, a master contract is established with standard specifications and pricing based upon a coefficient that is applied to the (R.S. Means) unit pricing or other pricing methodology established herein. When a specific project is requested, the member and the CES contractor agree on the scope and the cost is determined by the pricing methodology outlined in the contractor's response and subsequent award by CES.
3. Because all work under this solicitation is on a project-by-project basis, exact project specifications are not available. General specifications and requirements are listed under each category. Firms whose statements of qualifications and offerings are accepted, approved and awarded will be used to develop and establish the specifications for any work to be performed under individual projects.
4. CES currently has contracts with providers who offer all of the services solicited herein to its members. The volume for these construction services during the past 12 months is around eight million dollars (\$8,000,000). This information is provided only as an aid and is not to be considered a guarantee or estimate of volume.

#### E. SPECIAL BID SECURITY

1. New Mexico Procurement Code requires that all competitive sealed bidding for construction have a bid security. The amount of the bid security bond for this RFB is Twenty-Five Thousand Dollars (\$25,000). It must accompany the RFB submittal and be placed behind Tab 1.
2. Acceptable bid security, which must be provided with the submission of the initial offer, will be an amount equal to that specified above, or an annual or one-time bid bond underwritten by a surety company licensed to issue bid bonds in New Mexico. Bid security can be provided using a form similar to the New Mexico State Procurement Department, with the principal being the prime contractor and CES being the Agency of Record.
3. Upon receipt of an award under this RFB, contractor agrees to purchase a Twenty-Five Thousand Dollar (\$25,000) performance bond and keep it in place and active with CES as long as this contract is in effect. Since CES anticipates that more than one member will purchase through this contract, the prime contractor may be required to provide payment and performance bonds equal to one hundred percent (100%) of the total amount of each individual project performed under this RFB, in addition to the performance bond issued to CES.
4. The prime contractor agrees to provide all performance and payment bonds required by a CES member at the time a contract between the member and the prime contractor is executed. If the prime contractor fails to deliver any required performance or payment bond, the bid security with CES will be enforced and the contract with CES canceled.

Note: Prime contractor must identify its bonding capacity. Contractor will have the right to refuse work once its bonding capacity has been reached.

#### F. BONDS

1. Upon execution of a contract between a CES member and the prime contractor, performance and payment bonds will be provided the member as required by New Mexico law.

2. The prime contractor will execute a performance bond in an amount equal to one hundred percent (100%) of the price specified in the contract between the member and a surety company authorized to do business in New Mexico. Performance bonds between the member and the prime contractor will be on standard forms.
3. A payment bond, in an amount equal to one hundred percent (100%) of the price specified in the contract between the member and the prime contractor, will be executed by a surety company authorized to do business in New Mexico. This bond will protect all persons supplying labor and material to the prime contractor for the performance of the work provided in the contract. Payment bonds between the member and the prime contractor will be on the standard form.
4. The prime contractor will deliver both the performance and payment bonds to CES at the time the contract between the member and the prime contractor is executed.
5. All suits for nonpayment or nonperformance will be filed as allowed under New Mexico law.
6. The prime contractor will be responsible for providing CES with copies of all contracts and bonds in accordance with CES purchasing procedures.
7. Performance and payment bonds for members outside New Mexico must be provided by companies licensed to provide bonds for public entities in the state of the member. Bid securities are always with CES and provided by New Mexico licensed companies.
8. Upon award and execution of a contract between CES and the offeror, performance bond will be provided to CES in the amount of Twenty-Five Thousand Dollars (\$25,000) as required by New Mexico law.

#### G. PAYMENT RETENTION, PROGRESS PAYMENTS

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

#### H. CONTRACT BETWEEN OWNER, BUYER AND CONTRACTOR

An agreement by CES, its member and a CES contractor for the purpose of procuring construction and professional services for a particular project must be completed for any construction project offered and performed under this RFB with a total value of Twenty Thousand Dollars (\$20,000) or more. This agreement must be signed by all parties prior to the contract starting any work..

1. Owner is an educational institution or local public body, which is a Party to the aforementioned Joint Powers Agreement, desiring to receive certain goods and services offered by the CES contractor under this RFB.
2. Buyer (CES) is an entity created by a Joint Powers Agreement as Authorized by Section 11-1-1, et. seq., N.M.S.A., 1978 which is acting as a conduit through which title to tangible goods may be vested in owner. Buyer warrants and assures the owner that it has

complied with the Procurement Code, the Public Works Contract Act and the Subcontractor Fair Practices Act in contracting for procurements from CES contractors.

3. Contractor is a vendor who has responded to a Request for Bid published by buyer in accordance with the Procurement Code, Section 13-1-137 (A), N.M.S.A., 1978, and a resultant contract has been issued to the vendor of goods and services in the construction area.
4. The contractor will be responsible for providing CES with the information required to complete this form.
5. It is at the discretion of the owner and the contractor to determine if an additional industry standard owner/contractor contract is to be executed in addition to this contract.

#### I. CONTRACT BETWEEN MEMBER AND PRIME CONTRACTOR

In any contract between the prime contractor and a CES member based on this contract, the terms and conditions of this contract will prevail. A contract between the CES member and the prime contractor for construction items will be an industry standard agreement that includes the principal segments below:

1. The Recital should be a comprehensive description of the project to be constructed by the company. It is an overview of the entire project.
2. The Scope of Work is a description of the work to be performed by the prime contractor that includes all specifications, drawings and other official documents. All applicable codes around which the contract is made will be included as will any technical specifications and general conditions.
3. Work to be performed by the CES member must be clearly described.
4. The member must provide an all weather road to the site and prepare the site with room for construction equipment.
5. The condition of the site prior to start up will be agreed upon between the member and the prime contractor and will be written into the contract. The prime contractor will assume full responsibility for the protection and safekeeping of any products stored on the premises.
6. Temporary electrical service and the cost for power, water and other member costs will be identified.
7. The method and manner of performance must be stated. Employees of the prime contractor are not employees of the CES member. The level of competency of the personnel will be subject to approval by the CES member. The prime contractor must agree to comply with all local, state and federal laws. Noise, pollutants, and material hauling operations must not annoy adjoining property owners. Procedures for dealing with fire, theft, and storm damage must be established. Methods the prime contractor will use to guarantee safe job practices, relating to the health and welfare of the member's employees, must be established.
8. If construction space is directly under, above, in or near member used space, the prime contractor must agree to receive written approval from the contact person prior to interrupting any classroom or program.
9. Access to the construction space will be limited to the way agreed upon by the parties.
10. Fixtures, that is, air conditioning units and other equipment, will be moved as required for performance of work, installation structures, and in accordance with plans and specifications. When fixtures are moved, 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 construction,

replacement, or repair services. The appropriate tradesman, and/or company, licensed to perform such work will perform all disconnections and reconnections. Any damage caused by the disconnection, storage, or reconnection of equipment will be repaired at no additional cost to the CES member.

11. All work will be accomplished in conformance to Occupational Safety and Health Administration (OSHA) safety requirements and any additional federal, state, or local fire or safety requirement. Contractor must advise member contact person whenever work is expected to be hazardous to students, member employees and/or operators.
12. When work, loading, or unloading of equipment is repaired or is operating 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.
13. Fire extinguishers will be maintained within easy reach whenever power tools and torches are being used. The prime contractor will advise the member contact person when volatile materials are to be used near air ventilation intakes, so that they can be shut down or blocked as directed.
14. 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 unlabeled 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 members contact person.
15. The prime contractor must agree to treat its labor in keeping with its labor contract agreement and in the best interest of the CES member. Any overtime practices or retroactive agreements with labor unions that would be to the detriment of the CES member must be limited to only those approved by the CES member.
16. Change orders are to be avoided, if possible, since they often indicate poor planning. A mutually agreed upon system for establishing changes must be identified, including changes in scope and changes in compensation for the prime contractor. Because of cost, safety and scheduling considerations, the ability to make field change orders needs to be permitted, and mutually agreed upon paper work to document these changes, must be allowed. A change order that increases the contract amount in excess of Fifteen Thousand Dollars (\$15,000), or five percent (5%) of the contract amount, whichever is greater, must be approved, in writing, by the governing board of the CES member. A copy of the approval must accompany a revised purchase order to CES. No change order that increases the cost of the project will be permitted without a purchase order to CES from the member ordering the change. Minor changes mutually agreed upon between the member and the prime contractor that do not involve compensation may be made without informing CES, unless such change significantly modifies the scope and needs to be documented.
17. Compensation
  - a. Compensation for received goods, terms of progress payments, and a schedule of payments will be described in the contract document. The agreement must state that CES will not be responsible for any late fees due the prime contractor by the CES member.
  - b. The CES member 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.

- c. The prime contractor must agree that the CES member 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 member.
  - d. A schedule for performance of work that can be met without planned overtime is the responsibility of the prime contractor. Monthly progress reports must be given to the CES member by the prime contractor. The specifics of what is reported should be described in the contract.
  - e. Terms for acceptance by the owner and title to work must be clearly agreed upon and described in the contract. If any part of the construction requires the owner to assume control prior to the completion, this needs to be defined. Both parties must agree on the definition of what constitutes final acceptance before payment of any retained compensation.
18. For audit purposes, a copy of any contract(s)/agreement(s) between the CES member 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)/agreement(s) to CES.
  19. The condition of the site before start-up will be agreed upon between the CES member and the contractor, and will be written into the contract.

J. CONSTRUCTION PROJECTS WITHOUT A CONTRACT BETWEEN MEMBER AND PRIME CONTRACTOR

Any construction project entered into and performed under this RFB that a formal contract between the CES member and the prime contractor is not executed, the terms, conditions and stipulations in item (H), paragraphs 1 through 19 above, must be clearly identified and stated, if applicable, within the written quote or proposal provided by the prime contractor to CES and the CES member.

K. QUALITY CONTROL ISSUES

1. During the course of the contract, the member's contact person may secure samples according to Construction Industries Division guidelines or industry standards of materials being used from containers at the job site, and submit them to an independent laboratory for comparison to specified material.
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. Upon completion of the project, prime contractor acceptance, and complete payment received, the prime contractor will deliver to the CES member all associated warranties and owners manuals. A copy of any and all warranties and guarantees applicable to goods and services covered under this bid must be included as part of the bid response.

L. QUOTES AND PROPOSALS

1. All proposals submitted to a CES member under this RFB may be time and materials, or based upon R. S. Means. IF R. S. Means based proposals, you must use the current year, standard cost data. Only the following cost data titles will be accepted:
  - a. Repair and Remodeling Cost Data
  - b. Building Construction Cost Data

c. Facility Construction Cost Data

2. All work performed **must** be quoted per R. S. Means by the general contractor, even if subcontractors are used. Subcontractor's invoices must tie to the R. S. Means spreadsheet.
3. An R. S. Means spreadsheet **must** be submitted to substantiate the quote given to the CES member. Make sure that spreadsheet columns are expanded to show the full R. S. Means number and a sufficient amount of the description.
4. Pricing **must** be done by Location Codes. National Average will not be allowed. In order to choose the "closest" location code, the first three (3) numbers of the zip code will be used to determine the city location index in New Mexico. The same criteria are used by R. S. Means. As an example, if the project is in Hobbs, which has a zip code of **88240**, the city index to be used is Roswell, which has a zip code of **88201**.
5. CES discount, bonding cost and NMGRT must be shown as separate line items at the bottom of the R. S. Means spreadsheet. This information can be handwritten or typed on the spreadsheet or can be shown on a separate summary sheet. The summary sheet must start with the R. S. Means spreadsheet total and show the detail for each of the items stated above.
6. All change orders must be supported by an R. S. Means spreadsheet.

M. NEW MEXICO STATE WAGE RATE DOCUMENTATION

1. The New Mexico Department of Labor (NMDOL) requires that certain forms be completed for every project that needs a wage decision issued. CES will submit for the wage decision and upon receipt of the decision will provide it to the prime contractor. The contractor is responsible for completing and submitting the required forms to the NMDOL 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 the New Mexico Department of Labor, with a copy being mailed or faxed to CES, prior to the start of this project. The Affidavit of Wages Paid must be submitted to the New Mexico Department of Labor, with a copy being mailed or faxed to CES, at the conclusion of your work on this project. The minimum information required for the Notification of Award is: general contractor's name, address, telephone and fax numbers, approximate date work to start, estimated completion date, estimated cost of project and subcontractor list, being sure to provide name, address, telephone and fax numbers for each subcontractor. The prime contractor is responsible for insuring that the its subcontractor(s) also submit the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid to the New Mexico Department of Labor with a copy being mailed or faxed 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, the Payment and Performance Bond, are received by CES. **Final payment will not be released** until CES receives a copy of the Affidavit of Wages Paid.

N. RFB SCOPE OF WORK

New Mexico educational institutions are continually upgrading existing facilities to meet their current and future facility needs. CES is seeking a qualified contractor(s) who is licensed in the State of New Mexico and may include, but is not limited to, the following

areas of licensure: GB, GS, EE, MM, etc., which are required to perform work for Members under this RFB.

Under the terms of any award given under this RFB, each individual project contract will be negotiated with the CES member.

O. RFB SPECIAL TERMS AND CONDITIONS

The terms and conditions listed below apply to all categories of this RFB. Each category will contain additional terms, conditions and specifications, which are in addition to these. If there is a conflict between categorical terms and conditions and those listed below, the categorical terms and conditions will take precedence.

1. New Mexico is a large state geographically. For this solicitation CES is dividing the state into seven (7) service regions. Offerors will be required to indicate within their response which of these service regions of the state they wish to provide services to, and prioritize the areas in order, the areas that your firm intends to concentrate its efforts if given an award. The seven service regions are described below.
  - a. **Region One (1)** – Aztec, Bloomfield, Central, Dulce, Farmington and Jemez Mountain school districts.
  - b. **Region Two (2)** – Chama Valley, Española, Mesa Vista, Peñasco, Pojoaque Valley, Questa, Santa Fe and Taos school districts.
  - c. **Region Three (3)** – Cimarron, Clayton, Des Moines, Las Vegas City, Maxwell, Mora, Mosquero, Pecos, Raton, Roy, Springer, Wagon Mound and West Las Vegas school districts.
  - d. **Region Four (4)** – Albuquerque, Belen, Bernalillo, Cuba, Estancia, Gallup-McKinley, Grants-Cibola, Jemez Valley, Los Alamos, Los Lunas, Magdalena, Moriarty, Mountainair, Quemado, Rio Rancho, Socorro and Zuni school districts.
  - e. **Region Five (5)** – Clovis, Corona, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Santa Rosa, Texico, Tucumcari and Vaughn school districts.
  - f. **Region Six (6)** – Alamogordo, Animas, Capitan, Carrizozo, Cloudcroft, Cobre, Deming, Gadsden, Hatch Valley, Hondo Valley, Las Cruces, Lordsburg, Reserve, Ruidoso, Silver, Truth or Consequences and Tularosa school districts.
  - g. **Region Seven (7)** – Artesia, Carlsbad, Dexter, Eunice, Hagerman, Hobbs, Jal, Lake Arthur, Loving, Lovington, Roswell and Tatum school districts.
2. Upon execution of a contract between a CES member and the prime contractor, performance and payment bonds will be provided by the offeror as required. The prime contractor agrees to notify the CES member in writing of this requirement before accepting any work orders.
3. The offeror will deliver payment and performance bonds to CES at the time the contract between the member and contractor is executed.
4. CES will not withhold an amount for retainage. However, final payment will be released by CES only when the project is complete and all required documents have been received and approved by CES. Progress payments may be a part of any project and must be stipulated.
5. In the construction, erection or repair of all buildings and structures under this award, the offeror 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.

6. The listing threshold for this RFB will be Five Thousand Dollars (\$5,000). The offeror will list all persons, businesses and contractors who the offeror anticipates to be a subcontractor under this RFB. This information will include: (a) name, address and county of the place of business; (b) category of product and services that will be performed by each subcontractor; and (c) their NMCID license number.
7. If an offeror fails to list a subcontractor in excess of the listing threshold, 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 and stating that they are fully qualified to perform the proposed products and services themselves and that they will perform all work themselves.
8. If after the award of the contract the offeror sub-contracts any portion of the work in excess of the listing threshold to an unlisted subcontractor, the offeror will be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided therein.
9. Progress payments may be made to the offeror on the basis of a duly certified and approved estimate of work performed during a designated period of time or percentage of project completed. The offeror must agree to pay all subcontractor or material suppliers for work completed, accepted and billed within seven (7) days of their receipt of the progress payment form CES, unless otherwise agreed on in writing between the parties.
10. A subcontractor to the offeror may request, in writing, that the subcontractor be notified by CES within five (5) days from payment of each progress payment made to the offeror. It is the responsibility of the offeror to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract and that the CES member must make payments before CES can issue progress payments. The offeror must provide CES with all subcontractors and suppliers information utilized for any individual project performed under this RFB.
11. The offeror and the CES member will agree upon a schedule of payments based on identifiable milestones of the project and include these timelines in project contract documents.
12. In any contract between the offeror and a CES member based on this RFB, the terms and conditions of the RFB will prevail. A contract between the CES member and the offeror for construction will be an industry standard agreement. The parties may agree to use the American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201 as a guide.
13. In any contract between the CES member and the offeror, a scope of work (a description of the work to be performed by the offeror) will include all specifications, drawings and other final documents. All applicable codes around which the contract is made will be included, as will any technical specifications and general conditions.
14. Work to be performed by the CES member must be clearly described and agreed to by the offeror and CES member prior to project start up. Any agreements on liquidated damages and early completion incentives will be between the CES member and the offeror and must be agreed upon in writing prior to start up. If the CES member declines a liquidated damages or early incentive agreement, the offeror will obtain a written and signed statement to this effect. A copy will be provided to CES.
15. The condition of the site before start up will be agreed upon between the CES member and the offeror and will be written into the contract. The offeror will assume full responsibility for the protection and safekeeping of any products stored on the premises.

16. Temporary electrical service and the cost for power, the cost for water and other member costs will be identified and agreed upon in writing.
17. The method and manner of performance must be stated: employees of the offeror are not employees of the CES member or CES; the level of competency of the personnel will be subject to approval by the CES member; the offeror must agree to comply with all local, state and federal laws; adjoining property owners must not be annoyed by noise, pollutants, material hauling operations; procedures for dealing with fire, theft, and storm damage must be established; and methods the offeror will use to guarantee safe job practices relating to the health and welfare of the member employees and company employees will be clearly stated.
18. All work will be accomplished in conformance to OSHA safety requirements, and any additional federal, state or local fire or safety requirement. 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 member of the situation. The offeror will not construct any device or produce any condition that intentionally violates a fire or safety code or safety standard.
19. The offeror must advise CES member's contact person whenever work is expected to be hazardous to school children, member employees and operators.
20. The offeror will deliver materials to the worksite in new, dry, unopened and well-marked containers showing product and offeror's name. Damaged or unlabeled materials will not be accepted.
21. The offeror will deliver materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the member's contact person.
22. Change orders are to be avoided if possible since they often indicate poor planning. A mutually agreed upon system for establishing changes must be identified, including changes in scope and changes in compensation for the offeror. Because of cost, safety and scheduling considerations, the ability to make field change orders needs to be permitted, and mutually agreed upon paperwork to document these changes must be allowed. A change order that increases the contract amount in excess of Ten Thousand Dollars (\$10,000) or five percent (5%) of the contract amount, whichever is greater, must be approved in writing by the governing board of the CES member. A copy of the approval must accompany a revised purchase order to CES. No change order that increases the cost of the project will be permitted without a purchase order to CES from the CES member ordering the change. Minor changes mutually agreed between the member and the offeror that do not involve compensation may be made without informing CES, unless such change significantly modifies the scope and needs to be documented.
23. Compensation for received goods, terms of progress payments, and a schedule of payments should be described in the contract. The agreement must state that CES will not be responsible for any late fees or penalties due the offeror by the CES member.
24. The CES member retains the right to extend the schedule of work or to suspend the work and to direct the offeror 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.
25. The offeror must agree that the CES member reserves the right to release information about the project and that any advertising of the project by the offeror must be approved by an authorized official of the buyer.

26. A schedule for performance of work that can be met without planned overtime is the responsibility of the offeror.
27. Terms for acceptance by the member and title to work must be clearly agreed upon and described in the contract. If any part of the construction requires the member to assume control before the completion, this needs to be defined. Both parties must agree on the definition of what constitutes total acceptance before payment of any retained compensation. Upon completion of the project, the worksite will be left in a condition equal to or better than before the project.
28. For audit purposes, a copy of any contracts and agreements between the CES member and the offeror must be kept on file in the office of CES. It is the responsibility of the offeror to supply a signed copy of all contracts and agreements to CES.
29. The offeror may offer extended warranties available at extra cost to Members that agree to a maintenance contract. The maintenance contract must be offered as a separate line item. Upon request, no-cost training must be offered by the prime contractor for the maintenance staff of the member and will be arranged before installation as part of the purchase contract.
30. Upon completion of the work, the offeror will present the member with all documents necessary to close out the project. Maintenance manuals, drawings and warranties on installed equipment will be given to the member.
31. Even if final payment is made, if the member discovers an unfinished job that should have been completed, the offeror will complete the work in a timely fashion at no additional cost.
32. The offeror will perform all warranty work and remain available to the member should continued service be required after warranty obligations are met.
33. The offeror must possess a New Mexico contractor's license that enables him to undertake, or purport to have the capacity to perform, supervise others, to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any road, land, public educational facility/structure/building or to do any part thereof. This also includes the erection of any structure or facility within the limitations of this RFB, to connect such structures or improvements to utility service lines and metering devices and sewer lines; to provide mechanical service for new or improvement of a facility, etc. The contractor agrees to keep any required license current and in compliance with the rules and regulations of the New Mexico CID.
34. The offeror will ensure that all individuals, firms or subcontractors being used to perform or supervise work under this contract hold a current contractor's license, as required by NMCID and by law. All subcontractors to be utilized under this contract must be clearly identified with the name, address, trade or type of work, New Mexico license number and New Mexico State Tax ID.

P. PRICE AND COST SUBMITTAL

1. The R. S. Means Company publishes a CD Rom and books covering a wide range of the various construction services and products that may be required under this RFB. The current CD/books will be the basis for all construction services and products provided within a quote or proposal that is not clearly stated and identified within an established published price list provided as part of the offeror's response.
2. The offeror represents what portion of the R. S. Means total cost (including overhead and profit) will be charged the CES member for construction costs. A bid cost of 92% indicates that the contractor will charge the Means Total Cost for each assembly item

times .92 as the billable amount; a bid cost of 102% indicates that the contractor will charge the Means Total Cost for each assembly item times 1.02 as the billable amount. Note that this item includes state tax. Travel and per diem have not been included. In preparing a proposal for a CES member, travel and per diem may be added if the location of the project is more than 70 map miles from the home location of the contractor or subcontractor. If overtime is required to meet the CES member's timelines, the additional cost must be clearly identified.

3. Factors affecting cost, including quality of materials, productivity of labor force, size of project and location have been included in the Means calculation. Bond costs have been included in Means overhead and profit. Items as season of the year, contract management, weather conditions, building code requirements, safety and environmental concerns have not been addressed and must be broken out and clearly identified and stated with their related costs.
4. The labor cost table must be completed showing contractor's CES rates. These rates will be used to determine driving time, overtime and other chargeable time.
5. Goods and services provided under this contract that are not part of an R. S. Means portion of a quote/proposal, the cost of these items will be calculated by taking the list/retail price less the CES discount. Any items not covered by R. S. Means or a published price list must be submitted in advance and approved by CES prior to being included in any quote or proposal.
6. If a product/service is found not to be listed on a manufacturer and/or retail price list and is custom designed, manufactured and is provided for a unique application or project, the offeror must issue a written request for quote to three (3) or more manufacturers, providers and suppliers of such products/services. All written responses to the offeror's written quote must be submitted to and accepted by CES prior to the cost of said item(s) being included in any quote or proposal submitted to a CES member. CES and/or its member reserve the right to accept or reject any quote or proposal including such items.
7. If a product or services is required as part of the performance under this contract that can only be obtained and/or manufactured from a single source and fall under the sole source provision of the New Mexico Procurement Code (13-1-126), the offeror must provide CES with the necessary documentation to substantiate the purchasing method.
8. Cost evaluation will be based on a point system with points being awarded for being low to high bidder for each cost evaluation item, that is, contractor, discount off R. S. Means, overhead and profit percentage markup, mileage charge, per diem rate, travel time, etc. If an offeror leaves out an item that is required, CES will allot zero (0) points to that item, and if awarded a contract, cannot be used in providing products or services. The low bidder will receive the full point value and all other bidders will receive points calculated as follows:

$(\text{Lowest Bid} / \text{Other bid}) \times \text{point value}$

Other points will be awarded for labor rates. Low bid on each labor rate for each category will be awarded the total points for that individual rate. Each labor rate in each category will have a total value of the points indicated, and each other bidder will receive points calculated as follows:

$(\text{Lowest Bid} / \text{Other bid}) \times \text{point value}$

Q. LISTING OF CATEGORIES

CES has prepared one (1) RFB document that includes several bid requests for construction related services. Select the category/categories in which you choose to respond and prepare the response only for those categories. You do not need to respond to all categories. Each category is divided into several sections, including:

1. Categorical Scope of Work
2. Categorical Definitions
3. Categorical Terms and Conditions
4. Categorical Specifications
5. Required Categorical Response
6. Categorical Price and Cost Submittal
7. Cost Evaluation Information

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## Category 7

## Construction Management Services

New Mexico public educational institutions have a number of methods of funding and receiving capital outlay funds. Whether it be property tax, general obligation bonds, Senate Bill 9, direct legislative appropriation, NMPSFA critical capital outlay funds or a combination, these funds, are limited and must be used to cover both remodeling/updating of existing facilities and/or new construction. For members to meet the current and future demands in this area, they must have reasonable and economical construction services. They must economically and efficiently utilize these funds and get the most for every dollar possible.

It has become necessary for members to have a process to collect, evaluate, summarize and report all of the variables relating to facility maintenance, repair, remodeling and replacement in order to ensure and provide the best educational environment for New Mexico students.

Secondly, once an ongoing capital outlay plan is established and implemented, assistance must be provided in all phases of the implementation, that is, facility design; preparing, issuing, evaluating and awarding bids; construction oversight; quality assurance; problem resolution and cost control.

Due to the increasing amount of time, effort, paperwork and resources required to provide facility heavy maintenance, repair, remodeling and to do new construction, CES has been asked by its members to seek and secure contracts with specialists in construction to provide as little or as much assistance as needed to maintain existing and provide new facilities on an ongoing basis or as funds become available.

### Categorical Scope of Work

CES is seeking a New Mexico-based firm to work with members specifically in the construction management area. The awarded vendor will provide comprehensive management and consulting services for all phases of a capital outlay project's design and construction process from conception to a finished product. This RFB is not seeking the procurement of specified professional services, such as architect, engineer, land surveyor, assayer, geologist, landscape architect, as described in the New Mexico Procurement Code. This RFB is seeking construction management and other construction related services to ensure control of project time, cost and quality construction. This may include but is not limited to:

1. Assist the member in selecting a construction team to evaluate and monitor capital outlay projects and to assist in building renewal, eliminating existing deficiencies and overseeing all construction projects. In addition, the construction manager will assist the member in adopting operating policies and procedures to establish facility guidelines and standards.
2. Provide sample facility construction methods and building materials to assist in the development of project specifications that will ensure that facilities are of a high quality and will control ongoing maintenance and operational costs.

3. Provide data collection, evaluation services, cost estimates and analyses of bid/construction data. Make recommendations to ensure that existing facilities that are remodeled or upgraded will be brought up to and maintained at an adequate level to meet current building standards. A good complete maintenance plan establishes a building renewal schedule to provide for major renovations and repairs of building systems, that is, heating, cooling, plumbing, electrical, fixtures, floor coverings, etc., and infrastructure. Monies designated in this area are limited and must be used wisely.
4. Assist the member in the bidding process by procuring comprehensive bids in all phases of the capital outlay project. These bids will include building supplies and materials, labor, construction and other related services and/or a combination of all of the above. Upon receipt of the bids, the construction manager will evaluate all bids and consider alternatives. The construction manager will prepare and present a summary report detailing the data and its effect on the project related costs to the member. Once a decision has been made on what to award, the construction manager will prepare all contract documents/purchase orders and present them for approval and implementation by the member.
5. The construction manager will serve as the member's representative and project manager. These services will include preparing, organizing, maintaining, submitting, and tracking, summarizing and reporting all project documents on behalf of the member. Samples of this document are the bid, purchase information, contracts, time schedules, change orders, shipping, freight and vendor invoices, and daily, weekly and/or monthly project progress reports as required. The construction manager will act as liaison and coordinator between the member, architect, contractors, local and state agencies, community groups and others as required. The member and construction manager will establish parameters, operating guidelines and procedures for this function prior to signing of a construction management contract.
  - a. The construction manager will be responsible for the day-to-day operation of the capital outlay project, conducting project/progress meetings and over seeing the construction activities and project site to ensure that the member's interest is protected, and dealing with, handling and communicating any concerns, problems, issues that might occur during the construction process.
  - b. The construction manager will review and verify all vendor invoices for accuracy, and will coordinate all conferences, all required inspections and provide the member with reports and documentation as required.
  - c. The construction manager will assist in the closing of all contracts, obtain all warranties, collect and file all documents for the permanent record, including all releases of liens and partial and final occupancy permits.
  - d. The construction manager will over see and coordinate all post construction activities, that is, identify, develop, report and ensure that punch list items noted during substantial completion walk through are resolved before the final inspection the construction manager will negotiate, mediate and resolve to the member's satisfaction any unresolved issues, ensure all warrantees are in place with appropriate documentation and that all final billing and cost data is submitted and finalized.
  - e. The construction manager will prepare and present a final project report indicating:
    - 1) The original scope of the project;
    - 2) Any and all additions, modifications, deletions with their justification; and

- 3) The original estimated project cost in relationship to the final project cost indicating differences and over all out come their effect to the member's master plan.
6. On remodel projects of less than \$20,000 and which are not part of a larger project, the construction manager will act as primary contractor on behalf of the member to secure these construction services. All costs billed for these must be in accordance with the construction manager's CES contract prices or must be obtained through and comply with public procurement rules and regulations.
7. Upon request of the member, the construction manager will participate as a member/consultant of the member's facility management board to assist them in developing, maintaining and implementing a master facility plan.
  - a. The construction manager will assist the facility management board and architect to establish goals, collect facts, identify concepts, and determine the functional needs necessary for facility remodeling or construction.
  - b. The construction manager will work with the facility management board and architect in the design phase of a project.
  - c. The construction manager will work with the facility management board and architect in the preparation of construction documents prior to the bidding of the work.
  - d. The construction manager will assist in the bidding phase of the project. The construction manager will encourage the facility management board to use cooperative contracts from the State of New Mexico or from other cooperatives, including CES, when such use will result in savings to the member.

### **Categorical Definitions**

**Architect** – A person who by reason of his knowledge of the mathematical and physical science, and the principles of architecture and architectural engineering acquired by professional education and practical experience is qualified to engage in the practice of architecture as attested by his registration as an architect.

**Construction Manager** – A person who by reason of special knowledge in the construction industry, acquired by professional education and practical experience, is qualified to assist the member, architect, engineer and project contractors in all phase of a project, from pre-construction to post-construction.

**Construction Services** – Building, altering, repairing, installing or demolishing in the ordinary course of business any driveway, sidewalk, parking area or related project; building, stadium or other structure; parks, landscaping, playgrounds, golf course or similar facility; drainage, canal, ditch or similar facility, sewage or water treatment facility, pump station or similar facility; sewage, water, gas or other pipeline; electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners; air conditioning conduit, heating or other similar mechanical work; leveling or clearing land; excavating earth; drilling water wells and other related services covered under GB 98, EE98, MM98, and GS98 licenses.

**Engineer** – A person who by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience is qualified to practice engineering as attested by his registration as a professional engineer.

**Member's Representative** – An individual identified by the member as contact person for individual project. Member's representative has authority to make decisions and to authorize any actions as defined for the project.

**NMCID** – New Mexico Construction Industries Division

**Project Manager** – A person who by reason of special knowledge in the capital outlay area, facility utilization, evaluation, management, acquired by professional education and practical experience is qualified to assist the member in contract and information management, quality control, cost control, schedule control and will represent the member in all matters relating to the management and upkeep of facilities capital outlay projects.

### **Categorical Terms and Conditions**

1. New Mexico educational institutions are continually modifying, renovating, remodeling and updating existing facilities to meet their current and future educational program needs. In today's world, master facility plans are a must and require an ongoing effort on the part of educational leaders to maintain existing and provide new facilities with the limited financial resources available. Members continue to look for options and alternatives to meet their needs and are seeking assistance in managing construction services that may range from restroom remodeling and Americans with Disabilities Act (ADA) compliance to major renovation and new construction.
2. Upon request of the member, the construction manager will visit with the member to obtain, evaluate, review the type of and scope of construction services to be provided. The project's location, conditions and timelines, along with the member's expectations and desired outcome, will be clearly identified and conveyed to the contractor.
3. Based on the information obtained from the member and after review of the project's documentation and scope of work, the construction manager will prepare a clear and detailed proposal covering the services to be provided, the supplies, materials, equipment and other related items needed to perform and complete the project, and the estimated timelines, terms, conditions and warrantee to be issued.
4. The construction manager will clearly identify all goods and services required and will prepare a price quote sheet to be submitted to perspective vendors and/or subcontractors. Eligible CES and local vendors will be solicited and sealed price proposals requested.
5. The member, upon receipt of the vendors cost proposal, will review, evaluate and determine if changes or modifications need to be made or if they are acceptable. The member reserves the right to accept or reject any proposal submitted. If the member determines through the evaluation and proposal process that the construction manager can perform and provide the designated goods and services at a lower price than those

submitted, the member can offer the work to the construction manager as long as there is no conflict of interest.

6. If the construction manager is offered the project, the member and the construction manager will generate and enter into an AIA/Industry Standard contract for construction services. The member will submit a copy of the signed AIA/Industry Standard contract along with a purchase order to CES for processing. CES will verify the process followed by the parties and that the pricing is in accordance with this RFB and will only issue a CES purchase order upon verification.
7. The construction manager, upon receipt of the CES purchase order, will, if required, provide the member with a performance and payment bond.
8. The construction manager will provide the proposed goods and services in accordance with the project documents. Any change orders and/or modifications to the project will be allowed only with written approval of CES, the member and the construction manager.
9. When the job is completed and accepted by the member, the construction manager will terminate the project with CES and final payment will be issued.
10. Offeror must be an experienced firm with construction managers, financial and construction specialists with eight (8) or more years experience as a GB98 and three (3) years of the eight (8) years must be documented work with public facilities.
11. Any consultant terminated from a professional position within the past eight (8) years must provide information about the termination. CES reserves the right to approve or reject any consultant suggested by the offeror to work the contract based on the information obtained.
12. Contractor agrees to update the qualifications brief and background checks of consultants on an annual basis. For new consultants to be placed on contract, the contractor will provide all the above information prior to appointment to the contract.
13. Contractor will accept NTE (not to exceed) purchase orders for as-needed services, if requested. The process for invoicing and receiving payments must be clearly stated and agreed to by all parties. The contractor will not invoice for services that exceed the NTE purchase order.
14. Offeror will identify its regular costs, CES discount and the CES prices. All costs, including hourly fees, administrative fees, per diem, travel, daily, weekly and other charges, will be clearly described in the offeror's response.
15. Contractor will establish mutually agreed upon outcomes with the member prior to executing any project covered by this RFB.
16. Contractor will have and maintain for the term of contract the appropriate professional, errors and omissions liabilities insurance and must provide proof of insurance certificate.
17. Contractor must provide and maintain a performance and payment bond in an amount to equal one hundred percent (100%) for each member contract that exceeds \$25,000.
18. Every contract in excess of \$20,000, which requires or involves the employment of tradesman and/or laborers, will contain a provision stating the minimum wages to be paid to various classes of laborers and tradesman and will be based upon the wages as determined by the New Mexico Department of Labor. The contractor will pay all tradesman and laborers employed on the site of the project, unconditionally and not less often than bi-weekly, the full amount accrued at time of payment computed at wage rates not less than those stated in the minimum wage rates issued for the project.

19. In any contract between the contractor and a member based on this RFB, the terms and conditions of the RFB will prevail. A contract between the member and the contractor for construction will be an industry standard agreement. The parties can use the American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201 as a guide.
20. In any construction contract between the member and the contractor, a scope of work (a description of the work to be performed by the contractor) will include all specifications, drawings and other of final documents. All applicable codes around which the contract is made will be included, as will any technical specifications and general conditions.
21. Work to be performed and/or activity to be conducted by the member must be clearly described and agreed to by the contractor and the member prior to project start up. Any agreements on liquidated damages and early completion incentives will be between the member and the contractor and must be agreed upon in writing prior to start up. If the member declines a liquidated damages or early incentive agreement, the contractor will obtain a written and signed statement to this effect. A copy will be provided to CES.
22. The condition of the site before startup will be agreed upon between the member and the contractor and will be written into the contract. The contractor will assume full responsibility for the protection and safekeeping of any products stored on the premises.
23. Temporary electrical service and the cost for power, the costs for water and other member costs will be identified in writing and agreed upon.
24. The method and manner of performance must be stated: employees of the contractor are not employees of the member; the level of competency of the personnel will be subject to approval by the member; the contractor must agree to comply with all local, state and federal laws; adjoining property owners must not be annoyed by noise, pollutants, material hauling operations; procedures for dealing with fire, theft, and storm damage must be established; and methods the contractor will use to guarantee safe job practices relating to the health and welfare of the member employees and company employees will be clearly stated.
25. All work will be compliance with OSHA safety requirements and any federal, state and 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 member of the situation. The contractor will not construct any device or produce any condition that intentionally violates a fire or safety code or safety standard.
26. The contractor must advise member's representative whenever work is expected to be hazardous to school children, district employees and/or operators.
27. The contractor will deliver materials to the worksite in new, dry, unopened and well-marked containers showing product and contractor's name. Damaged or unlabeled materials will not be accepted.
28. The contractor will deliver materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the member's representative.
29. Change orders are to be avoided if possible since they often indicate poor planning. A mutually agreed upon system for establishing changes must be identified, including changes in scope and changes in compensation for the prime contractor. Because of cost, safety and scheduling considerations, the ability to make field change orders needs to be permitted and mutually agreed upon and paperwork to document these changes must be allowed. A change order that increases the contract amount in excess of \$15,000 or five

percent of the contract amount, whichever is greater, must be approved in writing by the member's governing board. A copy of the approval must accompany a revised purchase order to CES. No change order that increases the cost of the project will be permitted without a purchase order to CES from the member ordering the change. CES will then issue a revised purchase order to the contractor. Changes mutually agreed upon by the member and the prime contractor that do not involve compensation or do not significantly modify the scope of work, can be made without communication to CES.

30. Compensation for received goods, terms of progress payments and a schedule of payments must be described in the contract. The agreement must state that CES will not be responsible for any late fees due the prime contractor by the member.
31. The member 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.
32. The contractor must agree that the member reserves the right to release information about the project and that any advertising of the project by the prime contractor must be approved by member's representative.
33. Terms for acceptance by the member and title to work must be clearly agreed upon and described in the contract. If any part of the construction requires the member to assume control before the completion, this must be defined. Both parties must agree on the definition of what constitutes total acceptance before payment of any retained compensation. Upon completion of the project, the worksite will be left in a condition equal to or better than before the project.
34. For audit purposes, a copy of any contracts/agreement(s) between the member and the contractor must be submitted to and kept on file with CES. It is the responsibility of the contractor to supply a signed copy of all contracts and agreements to CES.
35. Upon completion of the project, the contractor will ensure that the member has received all documents necessary to closeout the project and ensure that all maintenance manuals, as built drawings, and warranties paperwork on installed equipment is received and activated.
36. The contractor must have a valid New Mexico contractor's license. The contractor must agree to keep all required licenses current and in compliance with the rules and regulations of the NMCID.
37. The contractor will ensure that any individuals, firms or subcontractors being used to perform or supervise work under this contract have all licenses required by NMCID and/or by law. All subcontractors must be clearly identified with the name, address, trade or type of work, New Mexico license number and New Mexico State Tax ID.
38. The following are definitions relating to labor cost and state wage rates.
  - a. Non State Loaded Wage Rate: amounts paid employees including fringe, overhead and profit for jobs that do not require state wage rates.
  - b. State Loaded Wage Rate: amounts paid employees including fringe, overhead and profit for jobs that do require state wage rates.
  - c. Base State Wage Rate and the Base State Fringe Rate: the actual state rates obtained by CES from the New Mexico Department of Labor for each project.

The project wage determination for each project will be compared with the RFB response rates and if rates provided for the project are different, the contractor will be allowed to adjust its rates by the amount of change between the RFB and the wage determination.

## **Required Categorical Responses**

The offeror must respond to each of the items listed below by providing written narratives, documentation and other information necessary to answer the questions, demonstrate its ability to provide/perform construction products/services solicited herein. Failure to respond and comply with the items below may result in the offeror's response being considered non-responsive.

1. Identify by name and title all managers, foremen, supervisors and professional personnel to be assigned to work under this contract and furnish their resumes indicating their qualifications, current New Mexico licenses and work experience. Also, include manager, CEO or partners as part of this list. (Place information after Tab 5)
2. Offeror will detail prior experiences with New Mexico public educational institutions where services were similar to what is requested in this category. (Place information after Tab 5)
3. Offeror will provide a forty-five minute presentation to a CES committee to demonstrate its ability to conduct meetings. Topics to be covered:
  - a. Construction management benefits and disadvantages.
  - b. Company's philosophy and understanding for the need of construction managers.
  - c. Educational facility construction current trends, concern, issues and overall objectives.
  - d. Construction management and its role in cutting construction costs why, how and where.

## **Categorical Price and Cost Submittal**

1. Hourly rates are to be categorized by: construction management, consulting, clerical and related fees, construction services and related labor groups.
2. The R.S. Means Company publishes a CD Rom and books covering the areas specified in the General Terms and Conditions of this RFB. The current CD/books will be the basis for all quotes and proposals.
3. What portion of the R.S. Means total cost (including overhead and profit) will be charged the member for construction costs? A bid cost of 92% indicates that the contractor will charge the Means Total Cost for each assembly item times .92 as the billable amount. A bid cost of 102% indicates that the contractor will charge the Means Total Cost for each assembly item times 1.02 as the billable amount. Note the following:
  - a. When using the R.S. Means assembly cost items, the contractor must for each individual proposal document and include the R.S. Means factors that are applicable, including factors affecting cost, quality of materials, productivity of labor force, size of project and location. Items, such as season of the year, contract management, weather conditions, building code requirements, safety and environmental concerns are also addressed in R.S. Means.
  - b. Any costs associated with travel, per diem, permits, state gross receipts taxes, performance and payment bond costs and other applicable reimbursable cost will appear as separate line items on the offeror's quote/proposal. In preparing a

- quote/proposal for a member, travel and per diem may be added if the location of the project is more than 70 map miles from the home location of the contractor or subcontractor.
- c. If travel time is required due to the location or overtime is required to meet the CES member's timelines, the additional cost must be clearly identified.
  4. Factors affecting cost including quality of materials, productivity of labor force, size of project and location have been included in the Means calculation. Bond costs have been included in R.S. Means overhead and profit. Items as season of the year, contract management, weather conditions, building code requirements, safety and environmental concerns have not been addressed but you must be clearly identify how these items will be handled in your cost proposal.
  5. The labor cost table must be completed showing contractor's CES rates. These rates will be used to determine driving time, overtime and other chargeable time.
  6. If there are goods and services provided under this contract that are not covered by R. S. Means then the cost of these items will be calculated by taking the list/contractor's price plus the contractor's stated overhead and profit.
  7. Cost evaluation will be based on a point system with points being awarded for being low to high bidder for each cost evaluation item, which is contractor discount off R.S. Means, overhead and profit percentage markup, mileage charge, per diem rate, travel time, etc. If a bidder leaves out an item or does not indicate NC (for no charge) for a required item, CES for evaluation purposes will insert a zero (0) for the number of points awarded for that item. The low bidder will receive 200 points and each other bidder will receive points calculated as follows:

(Lowest Bid / Other bid) x points designated for the item.

Other points will be awarded for labor rates. Low bid on the sum of the two (2) loaded rates for each category will receive 25 points and each other bidder will receive points calculated as follows:

(Lowest Bid / Other bid) x points designated for the category

8. Normal unit retail cost must be a stated amount from a national manufacture's/distributor's price list/contractor's cost sheet. Contractors, when providing cost proposals to members, must indicate each R.S. Means item identification code and its Means Costs using the appropriate location and category groupings. Costs not found in R.S. Means or additional costs due to special circumstances or conditions as allowed herein must be clearly stated. These include mileage, per diem, travel time, vehicle, equipment, site office space, utility services and other related costs for both construction management and construction services.

## Cost Evaluation Information

### 1. General Cost Items

- a. Travel Time – This represents any cost associated with employees and/or subcontractors traveling to and from the project site from their home location. Offeror is to indicate the percent of the individual's regular hourly rate that is to be charged for travel time. Example: If an individual is paid One Hundred Dollars (\$100) per hour and you charge the customer Fifty Dollars (\$50) an hour, the percent of regular time would fifty percent (50%).
  - b. Per Diem – This represents the costs associated with housing and meals for individuals who have to stay over night while working on a project. Offeror is to indicate the daily rate to be charged per man. Note: This does not cover transportation costs.
  - c. Mileage Rate – This represents the per mile cost to the member when a vendor owned vehicle is used for transportation. Offeror is to indicate per mile charge, that is Forty-Five Cents (\$.45) per mile.
  - d. Performance and Payment Bond Costs – This represents the cost the vendor incurs to provide a performance and payment bond to the member for an individual project when it is required. The offeror is to indicate the percentage rate charged on the total cost of an individual project to obtain a bond, and the documentation to substantiate the rate, that is, two percent (2%).
  - e. Bonding Capacity – This represents the offeror's maximum level of bonds that it can obtain at any one time. Offeror is to indicate its bonding capacity and provide documentation from security company to substantiate the amount.
  - f. Alternative Methods of Costing – These methods include the custom manufactured items, items not covered by other methods and sole source. Offeror is to indicate the percent of overhead and/or markup to be added to these costs to obtain the retail cost on which the CES discount can be taken to achieve CES price. Note that this does not include R. S. Means method.
  - g. CES Discount Off Alternative Method of Costing to Obtain CES Prices. This represents the percent of discount that is taken off the standard price (item cost plus percent of profit/overhead equals standard price) to obtain the CES price. Example: item cost \$1,000 percent of profit/overhead 20% equal standard price of \$1,200 less the CES discount 10% \$100 equal the CES price of \$1,080.
  - h. Discounts Provided on Price List and Catalogs – This represents the average discount provided by the offeror on stated prices.
  - i. Offeror's Discount off R. S. Means costing of products and services relating to construction projects not covered by other costing methods.
  - j. Offeror's Support for CES Pricing – This is the percent of difference between what the offeror's price to CES and the price that the offeror would offer the same products directly to any public educational institution in New Mexico. The offeror's CES price is \$100, the offeror's direct price to CES members is \$103. The difference is 3% percent.
2. Labor Rates – Hourly rates for individual(s) who perform services on an as-needed basis specializing in the following areas. Rates provided must be loaded (includes benefits, payroll taxes, overhead and profit).

- a. Construction Manager/Consultant – A qualified professional with experience and background in providing comprehensive services in construction management.
- b. Project Design/Development Consultant – A professional with experience and background in construction management.
- c. Labor rate certified draftsman to develop and provide project documentation.
- d. Labor (Clerical) – An individual who is not licensed and provides secretarial/clerical support services either on or off site of a project.
- e. Labor Rates (Tradesman) – An individual who is licensed and/or certified to perform specialized work related to a project (welder/iron worker).
- f. Labor Rates (Tradesman) – An individual who is licensed and/or certified to perform specialized work related to a project (electrician).
- g. Labor Rates (Tradesman) – An individual who is licensed and/or certified to perform specialized work related to a project (plumber).
- h. Labor Rates (Tradesman) – An individual who is licensed and/or certified to perform specialized work related to a project (carpenter).
- i. Labor Rates (Tradesman) – An individual who is licensed and/or certified to perform specialized work related to a project (concrete worker).
- j. Labor (General) – An individual who is not licensed and/or certified to perform specialized work, but assists the installer and/or performs various tasks related to a project.

### **SECTION III: CONDITIONS LEADING TO AND INCLUDING CONTRACT AWARD**

#### **A. CONTRACT FORM**

The form of the contract between CES and the contractor will be as per that in Section IV.

#### **B. BID SUBMISSION**

Sealed bids will be received until 1:30 p.m. local time, April 8, 2005, either hand delivered to the agency offices, 4216 Balloon Park Road NE, Albuquerque, New Mexico, or by mail at the same address. One (1) original of the bid and supporting documentation must be included and submitted in a binder. If you choose to extend your offer to schools in Colorado and/or Texas, include an additional original bid, with original signatures for each state included. No oral, telephone or facsimile of any bid or bid modifications will be considered.

#### **C. BID REVIEW**

Commencing on April 8, 2005 at 1:30 p.m. local time, bids will be publicly opened and reviewed by the designated CES representative. Recommendation of award and notification to all respondents will be made by July 7, 2005.

#### **D. EVALUATION FACTORS**

To qualify as a responsive bidder, a bid must be responsive, must have been submitted on time and materially satisfy all mandatory requirements identified throughout the RFB. To be considered responsive, a bid must reasonably and substantially conform to all of the specified requirements in the RFB in the judgment of the CES representative. Any deviation from requirements indicated herein must be stated on an attached sheet(s), otherwise it will be considered that bids are in strict compliance with all requirements and any successful vendor will be held responsible therefore. Deviations or exceptions stipulated in vendor responses, while possibly necessary in the view of a particular vendor, may result in a penalty assessment being assigned during the evaluation process. Language to the effect that the vendor does not consider this bid to be part of a contractual obligation will result in that vendor's bid being disqualified. Due to the unpredictable nature of what any particular vendor may wish to stipulate with regard to exceptions, exclusions, or limitations of liabilities, vendors are forewarned that CES reserves the right to assign any penalties it considers warranted. Terms of the RFB that any offeror considers particularly unwarranted and to which that offeror would have to take significant exception in its response should be stated in the bid clearly and concisely as exceptions and/or deviations. Vendor's required responses "yes" are responsive or "no" are non-responsive.

##### **1. Vendor Qualifications**

Yes No Provided \$25,000 Bid Security (Behind Tab 1) (page )

Yes No Brief history of company that includes its' philosophy of doing business (Page 12, Item 4.a.)

Yes No Company's location, key people, facilities and ability to perform (Page 12, Item 4.b.)

Yes No Narrative describing product and service standards and/or awards of products or services (Page 12, Item 4.c.)

- Yes No Written evidence of manufacturer and/or manufacturer's authorized agent/dealer (Page 12, Item 4.d.)
- Yes No Financial qualification and business stability (Page 13, Item 4.e.)
- Yes No Written statements regarding employment procedures and background checks (Page 13, Item 4.f.)
- Yes No Verification of insurance and levels of coverage, certificate of insurance (Page 13, Item 4.g.)
- Yes No Ability to contract – SPD other contracts (Page 13, Item 4.h.)
- Yes No Key sales people who will be assigned this contract (Page 14, Item 4.i.)
- Yes No Reasons why your products and services are worth the prices or fees you are charging (Page 14, Item 4.j.)

2. Responses to Specific Requests in Each Category (Place after Tab 5)

- Yes No Copy of Special Terms and Conditions
- Yes No Acceptance of Special Terms and Conditions
- Yes No Required Categorical Responses

3. Cost

- Yes No Listing of materials, services and products that meet or exceed specifications of RFB 2005-012.

4. Cost Scoring Evaluation

After offerors have been determined to be responsive and cost evaluation points have been assigned to each responsive bidder, only offerors scoring greater than 60% of the total points possible will be considered for a possible award. CES reserves the right to make a multiple award if it feels that a multiple award is in the best interest of its members.

E. COST CONSIDERATIONS

The negotiated contract between CES and the contractor will be for a firm, fixed discount off current school/government price with indefinite quantity. CES will not be liable for any cost in bid preparation. CES will not reimburse for the cost of developing, presenting or providing any response to this solicitation.

F. IMPORTANT NOTICE TO OFFERORS

CES is an educational service agency that provides needed education-related services to New Mexico public educational institutions. Under New Mexico law, CES charges a fee to the schools when CES provides a service. There are no other annual membership fees or dues, other than what CES collects for offering a service.

Finally, offeror should keep in mind that CES desires to provide for small, rural New Mexico schools the same prices that big districts pay. Therefore, offers that require minimum purchases or minimum dollar amounts on a purchase order may be either rejected or have very little business if accepted.

G. COLORADO EXTENSION

Through an agreement with the Colorado Board of Cooperative Educational Services Association (CBOCES) in Colorado, the products and services in this RFB can be extended to the school districts in Colorado. CBOCES in Colorado will use the "CBOCES" conduit to enable any school district in Colorado to use this award.

If you are willing to sign a contract based on this RFB with CBOCES, it will be agreed and assumed that Colorado will be understood where the words New Mexico are used. Where New Mexico laws are quoted, similar Colorado laws will be interpreted. In any event, CES suggests any vendor who chooses to use this RFB to include Colorado offer an even larger discount, considering the potential increase in sales by combining the states. If CES awards a contract to you and you have marked the CBOCES box on the cover page, CES will forward a copy of your bid and the CES award to CBOCES. Note that you must provide an additional original of the bid for Colorado in your response.

Neither CBOCES nor CES will hold the other responsible for any irregularities in the contract. CES neither encourages nor discourages vendors from contacting CBOCES. If you would like to discuss the use of any contract awarded by CES in Colorado, contact can be made as follows:

Colorado BOCES Association

John Tillman

President

c/o San Luis Valley BOCS

P. O. Box 1198

Alamosa, CO 81101-1198

Phone: (719) 589-5851

Fax: (719) 589-8012

E-mail: [jtillman@slvbocs.org](mailto:jtillman@slvbocs.org)

H. TEXAS EXTENSION

Through an agreement with The Cooperative Purchasing Network (TCPN) in Texas, the products and services in this RFB can be extended to the educational and other governmental institutions in Texas. TCPN in Texas will use the "TCPN" conduit to enable any educational or other governmental institution in Texas to use this award.

If you are willing to sign a contract based on this RFB with TCPN, it will be agreed and assumed that Texas will be understood where the words "New Mexico" are used. Where New Mexico laws are quoted, similar Texas laws will be interpreted. Additional terms and conditions will be required by TCPN. CES suggests that any vendor including Texas in its response should offer an even larger discount, considering the potential increase in sales by combining the states. If CES awards a contract to you and you have marked the TCPN box on the cover page, CES will forward your bid and the CES award to TCPN. Please note that you must provide an additional original of your bid to be sent to TCPN.

Neither TCPN nor CES will hold the other responsible for any irregularities in the contract. CES neither encourages nor discourages vendors from contacting TCPN. If you would like to discuss the use of any contract awarded by CES in Texas, please contact:

The Cooperative Purchasing Network (TCPN)  
Doug Rupe  
7145 West Tidwell  
Houston, Texas 77092-2096

Phone: 713-744-6356  
Toll free: 888-884-7695

Fax: 713-744-0648  
Toll free: 800-458-0099

E-mail: [drupe@esc4.net](mailto:drupe@esc4.net)

**SECTION IV: BID FORMS**

Form A **BIDDERS DECLARATION FORM**

Offeror must indicate each category it is responding to below by placing an “x” beside it. Failure to complete and return this form will cause the bid to be considered non-responsive.

- Category 1 GB98 Construction Services
- Category 2 Paving, Concrete and Other Related Services
- Category 3 EE98 Electrical Construction Services
- Category 4 Installation of Windows and Doors
- Category 5 MM98 HVAC Services (Heating, Cooling, Air Conditioning and Radiant Heat), Including Design, Installation and Servicing
- Category 6 Roofing Maintenance, Repair and Replacement Services
- Category 7 Construction Management Services

**Offeror must indicate the regions in New Mexico it will provide services to by placing an “X” beside the area. Failure to indicate the areas will be cause to consider your bid non-responsive.**

New Mexico is a large state geographically. For this solicitation CES is dividing the state into seven (7) service regions. Offeror will be required to indicate in its response which of these service regions of the state it wishes to provide services to, and prioritize the areas in order, the areas that it intends to concentrate its efforts if given an award. The seven service regions are described below.

- Region One (1)** – Aztec, Bloomfield, Central, Dulce, Farmington and Jemez Mountain school districts.
- Region Two (2)** – Chama Valley, Espanola, Mesa Vista, Penasco, Pojoaque Valley, Questa, Santa Fe and Taos school districts.
- Region Three (3)** – Cimarron, Clayton, Des Moines, Las Vegas City, Maxwell, Mora, Mosquero, Pecos, Raton, Roy, Springer, Wagon Mound and West Las Vegas school districts.
- Region Four (4)** – Albuquerque, Belen, Bernalillo, Cuba, Estancia, Gallup-McKinley, Grants-Cibola, Jemez Valley, Los Alamos, Los Lunas, Magdalena, Moriarty, Mountainair, Quemado, Rio Rancho, Socorro and Zuni school districts.
- Region Five (5)** – Clovis, Corona, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Santa Rosa, Texico, Tucumcari and Vaughn school districts.
- Region Six (6)** – Alamogordo, Animas, Capitan, Carrizozo, Cloudcroft, Cobre, Deming, Gadsden, Hatch Valley, Hondo Valley, Las Cruces, Lordsburg, Reserve, Ruidoso, Silver, Truth or Consequences and Tularosa school districts.
- Region Seven (7)** – Artesia, Carlsbad, Dexter, Eunice, Hagerman, Hobbs, Jal, Lake Arthur, Loving, Lovington, Roswell and Tatum school districts.

**OFFER AND ACCEPTANCE OF OFFER AND CONTRACT AWARD**

**PROJECT: As Defined in RFB 2005-012**



**OFFER TO BE COMPLETED BY VENDOR**

In compliance with the Request for Bid, the undersigned warrants that I/we have examined the Instruction to Offerors, and, being familiar with all of the conditions surrounding the proposed projects, hereby offer and agree to furnish all labor, materials and supplies incurred in compliance with all terms, conditions, specifications and amendments in this REQUEST FOR BID, and any written exceptions in the offer. Signature also certifies understanding and compliance with the certification requirements of the Special Terms and Conditions. The undersigned understands that its competence and responsibility and that of its proposed subcontractors, time of completion, as well as other factors of interest to CES as stated in the evaluation section will be a consideration in making the award.

Company Name \_\_\_\_\_ Contact Person \_\_\_\_\_  
Address \_\_\_\_\_ Authorized Signature \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Printed Name \_\_\_\_\_

**OFFER EXTENDED TO COLORADO AND TEXAS SERVICE AGENCIES**



If you are willing to honor purchase orders through the Colorado BOCES Association in Colorado under the same terms and conditions as in this RFB, place initials in the box.



If you are willing to honor purchase orders through The Cooperative Purchasing Network (TCPN) under the same terms and conditions as in this RFB, place initials in the box.

**ACCEPTANCE OF OFFER AND CONTRACT AWARD TO BE COMPLETED ONLY BY CES**

Your Offer for Contracting Services is hereby accepted. As contractor, you are now bound to sell the materials and services listed by the attached offer based upon the solicitation, including all terms, conditions, specifications, amendments as set forth in the Request for Bid. As contractor you are hereby cautioned not to commence any billable work or provide any material or service under this contract until contractor receives an executed purchase order from CES.

The parties intend this contract to constitute the final and complete agreement between CES and contractor and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall bind any of the parties hereto. No change or modification of this contract will be valid unless it is in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract will not be affected thereby. The term of the agreement will commence on award and continue until July 7, 2006 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods ending July 7, 2007, July 7, 2008 and July 7, 2009.

\_\_\_\_\_  
Authorized Signature Contract Number \_\_\_\_\_  
Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

AGENCY  
SEAL  
or  
STAMP



Form D

**INDEFINITE QUANTITY UNIT PRICE SCHEDULE**

**Bid Submission Form: All Categories**

Use this form, or duplicate it, to price all equipment, services, supplies, and other commodities you wish to place on contract under this category. If you have a printed price list and/or catalog, you may attach it as an appendix and list its title and the associated CES discounts to be applied.

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**Pages 234-273**  
**Intentionally**  
**Left**  
**Blank**

## **Form D-7 INDEFINITE QUANTITY UNIT PRICE SCHEDULE**

### **Bid Submission Form: Category 7 - Construction Management and GB98 Construction Services**

#### **Instructions to Bidders**

Each RFB specification identified in Section II: The Scope of Work and Specifications refers to the type and quality of products and services being bid. In the form below, enter your bid prices for those items indicated, the prices and/or discounts offered for providing all equipment, goods, services, supplies and related items. The prices you offer on these pages affirm that you have accepted the specifications to obtain, deliver and provide those goods and services requested. Each bidder is encouraged to offer its lowest and best prices for the complete product line(s) offered. When providing price lists and/or catalogs, state a list/retail/regular price, CES discount and the CES price.

Duplicate the individual forms to submit your bid. If additional clarification, price sheet(s) and/or catalog(s) pertaining to the bid being submitted are needed, include them behind Tab 6. Clearly indicate and identify the items involved and what you wish to communicate in your response.

Description of Cost Factors	Cost Evaluation Points	Unit of Measure	Base Cost
Travel time round trip from home location to worksite within the region - percent of regular time	75	% / Regular Rate	_____ %
Per diem rate - meals and lodging per 24 hour period	35	Per Day	\$ _____
Vehicle/equipment rental - percent of overhead/markup added to cost	25	Percent	_____ %
Mileage rate for company owned vehicles (car/medium duty truck)	50	Per Mile	\$ _____
Performance and Payment Bond - bonding rate (percent of project)	30	Percent	_____ %
Bonding Capacity - total amount of capacity available	10	Dollar Amount	\$ _____
Discounts Offered Off R.S. Means (Total R.S. Means cost quote less CES discount) Rate of Discount	225	Percent	_____ %
Alternative Methods of Costing - percent of overhead/markup and profit added to cost	80	Percent	_____ %
Discounts Offered Off Alternative Costing Methods (cost plus profit and overhead) Less Rate of Discount	80	Percent	_____ %
Offeror's Support for CES Pricing, Percent off the Offeror's Support for CES Pricing page	50	Percent	_____ %

**Regular and Customary Non-State Loaded (Includes Benefits and Overhead) Labor Rates**

<b>Service Rates For</b>	<b>Cost Evaluation Points</b>	<b>Unit of Measure</b>	<b>CES Rate</b>
Construction Management/Consultant	200	Per Hour	\$_____
Project Design/Development	75	Per Hour	\$_____
Draftsman	20	Per Hour	\$_____
Clerical	10	Per Hour	\$_____
Welder/Iron Worker	5	Per Hour	\$_____
Electrician	5	Per Hour	\$_____
Carpenter	5	Per Hour	\$_____
Cement Mason	5	Per Hour	\$_____
Plumber	5	Per Hour	\$_____
General Labor/Runner	10	Per Hour	\$_____

# Acceptance of Terms and Conditions

Rather than duplicate each term and condition and indicate acceptance, offeror can sign the statement below. Any exceptions must be listed on this page (additional pages can be attached, if necessary).

I accept the General Terms and Conditions of this RFB, except as listed below.

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature (should match cover signature)

I accept the Categorical Terms and Conditions for (circle those that apply)

- 1      2      3      4      5      6      7

except as listed below.

\_\_\_\_\_  
Signature (should match cover signature)

Form F      **SUPPORT AND MAINTENANCE PLANS**

The best warranty and maintenance plans offer toll-free or collect calls from buyers. Please identify the phone numbers below.

- Toll Free Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_
  
- Collect Calls Accepted at this Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_
  
- Service and Maintenance Number \_\_\_\_\_  
Contact Person: \_\_\_\_\_
  
- Technical Help Phone Line: \_\_\_\_\_  
Contact Person: \_\_\_\_\_

Describe your maintenance facilities: Location, name and phone number of contact person, number of technicians, value of parts inventory normally on hand.

Describe the steps a buyer should take to activate the warranty.

Describe any maintenance plan available beyond the one-year warranty, including costs.

**OFFEROR'S SUPPORT FOR CES PRICES**

Cooperative Educational Services (CES) is a public educational service agency established as a JPA, and is supported by user's fees rather than by appropriated funds. The procurement activities of CES, therefore, are funded through a small administration fee paid by the public educational institution or local procurement unit using one or more of our contracts. There is no cost or fee paid by the vendor to CES.

There are many reasons public educational institutions use CES contracts. Because each of our contracts is based on a sealed bid, institutions are exempt from having to issue a RFB. This saves them a great amount of time, and a large amount of money. In addition, because each vendor agrees that the price charged through a CES contract will be the lowest that vendor will offer, the institution knows that issuing its own RFB will not necessarily reduce the cost of the procurement. Finally, the service and convenience of processing orders through one agency (CES) simplifies the procurement process. Rather than having to issue a dozen purchase orders, for example, a member may issue one to CES. If problems occur, the institution has the assistance of CES in reaching a satisfactory solution.

A vendor receives many of the same benefits as a CES member. Rather than having to respond to dozens of individual RFB's, which is a big cost of doing business, a response to CES opens the door to over 152 public educational institutions. The business office of the vendor has the advantage of invoicing CES rather than each individual account. The vendor also has CES service in collection as some public entities are slow in processing payments. If problems develop, the vendor has the mediation service of CES to settle difficulties.

Purchase orders from our members are sent to CES with the prices including CES' one percent (1%) administrative fee. CES then issues its purchase order, with the CES one percent (1%) administrative fee removed, to the vendor asking the vendor to ship directly to the institution but to send CES the invoice. CES then invoices the member. The state does not give CES any funds to provide procurement services for public educational institutions.

Because CES asks the institutions to pay one percent (1%) for the services, CES also expect vendors, who are awarded contracts, to provide an incentive to the members to use a CES contract. If a vendor will sell a product to a member for the same price as on the CES contract, the member, in effect, is paying one percent (1%) more when it purchases through CES. On large purchases the convenience of not having to issue a bid may be overshadowed by the amount of the administrative fee.

Therefore, CES requests that each vendor offer prices on CES contracts lower than the price it offers to members purchase directly, or that might issue a local bid. CES asks this, not for a "most favored nation" relationship, but as a commitment of partnership between CES and the vendor. CES wants members to understand that when using a CES vendor, they are not only satisfying the procurement code but are truly reducing the costs of education.

**Please indicate the level of support you will offer on this contract. *Check only one box***

- Prices will be **no different** from what we ordinarily offer to public educational institutions.
- Prices are (check)  Three percent (3%) lower than our best price to individual members.  
 Four percent (4%)  
 Five percent (5%)  
 Ten percent (10%)  
 Other

\_\_\_\_\_  
Signature (must match signature on cover sheet)

\_\_\_\_\_  
Title

**Company Name** \_\_\_\_\_

*Circle Answers Where Appropriate*

1. For products on your price list, is shipping/handling included in the price? YES      NO  
 If PP & A, estimate S/H on purchases \_\_\_\_\_
2. Is your product marketed by anyone else in New Mexico? YES      NO
3. Do you guarantee that prices in the RFB are the lowest you will offer to public educational institutions and other procurement units in New Mexico during the time of any contract between CES and your company? Do you also agree to immediately reduce any price to CES equal to or lower than a price quoted to any other New Mexico procurement unit? YES      NO
4. If applicable, list any New Mexico contractor's licenses held by your company.

Name of Licensee	Classification	Number

5. Describe your return policy? What is your restock fee, if any? \_\_\_\_\_
6. Where should CES mail purchase orders?

Vendor Name: \_\_\_\_\_

Attention Line: \_\_\_\_\_

UPS Address: \_\_\_\_\_

Mailing Address \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone (to verify prices): \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address \_\_\_\_\_

If you want CES to send purchase orders by a private, NEXT DAY carrier, please identify the carrier and your account number: \_\_\_\_\_

\* Not including manufacturer's GSA contracts

Form H **QUESTIONNAIRE FOR OFFEROR (Continued)**

7. Where do you want payments sent?

Vendor Name: \_\_\_\_\_

Attention: \_\_\_\_\_

UPS Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone \_\_\_\_\_ Fax: \_\_\_\_\_

If you want CES to send payments by a private, NEXT DAY carrier, please identify the carrier and your account number: \_\_\_\_\_

8. Additional contacts for CES.

New Mexico Representative: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Contact for RFB/Contract: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

9. Sales Support by Region

<u>Name</u>	<u>Region Served</u>	<u>Telephone</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

10. If your normal area of service is regional, will you honor and fill purchase orders in any part of the State at the prices quoted in this RFB? YES NO

11. Will you offer CES a quick pay discount? If YES, what is the discount? \_\_\_\_\_ Days? \_\_\_\_\_

**Offeror has attached a letter (or agreements) from the manufacturer that certifies the following:  
(check each)**

\_\_\_\_\_ Offeror is a bona fide dealer for the equipment in the bid.

\_\_\_\_\_ Offeror is authorized to submit a bid for the equipment.

\_\_\_\_\_ The manufacturer will either assume or assign to another dealer the obligations in this bid should the offeror fail to complete the contract.

\_\_\_\_\_  
Signature (must match cover signature)

\_\_\_\_\_  
Date

If the offeror is the manufacturer, please sign below.

\_\_\_\_\_  
Signature (must match cover signature)

\_\_\_\_\_  
Date

REFERENCES: List five (5) New Mexico public educational institution references, including contact person(s) and phone numbers. (Please print or type)

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

**COMMENTS ON MULTIPLE AWARDS  
AND  
“MOST-FAVORED-CUSTOMER” CONTRACTS**

Professional procurement associations such as the Council of State Governments, and the National Association of Purchasing Management, have taken strong stands on multiple awards and the GSA pricing policy of the federal government.

"Competition is diminished when preference is sought by one sector of government or a class or classes of vendors. The National Institute of Governmental Purchasing (NIGP) and the National Association of State Purchasing Officials (NASPO) have joined in strongly worded resolutions opposing the use of most-favored-customer pricing clauses and multiple award contracts. Both practices, employed by the federal government and others, have negative effects on competition throughout all public contracting. The first sets a floor on prices and is favored by firms that enjoy commanding positions in the market place. The second transfers the buying decision from central purchasing to using agencies by offering a virtually unmonitored free choice from a smorgasbord of multiple awards..."

*State and Local Government Purchasing*, Third Edition, page 13

"A multiple award is the award of a contract to two or more suppliers for furnishing an indefinite quantity of a like item or category of items, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service, or product compatibility. It is important to understand that making multiple awards can evade central purchasing responsibilities for making buying decisions between and among products and vendors. Multiple awards transfer these decisions in large part or in whole to the program agencies, where they are likely to be made with less impartiality and purchasing proficiency. Written policy and rules are necessary to guard against laxness and abuses in connection with multiple awards."

*Ibid*, page 76

The stand of the NIGP and the NASPO on multiple contract awards is clear. Most of their membership represents a central purchasing authority, whose very job is purchasing goods and services for their fellow departments. Typically, a state purchasing office is established to serve the needs of state agencies. A similar situation in the schools would be if the business office of Lizard Flats Unified School District multiple awarded ten vendors of classroom furniture, and allowed each teacher to requisition the desks he desired for his classroom.

In contrast, CES is not a central purchasing office. Rather, we are a public education service agency. Each institution that joins CES is not yielding its own purchasing authority. Unlike state agencies that must use state awarded contracts, each CES member has an elected board and is a sovereign unit of government. It is CES' position that rather than "offering a virtually unmonitored free choice from a smorgasbord of multiple awards," CES provides the member with choices among vendors whose products and services have met a rigid standard and scope of work, and that have guaranteed a level of performance and service not always offered to the single member. In the past few years, CES has rejected more offers than have been awarded; when we multiple award, it is a limited award.

CES agrees with NIGP's and NASPO's stand on GSA pricing. One way around the limitations the federal government places on manufacturers in pricing is to contract with the dealers of these very same manufacturers; because dealers are independent contractors, they are able to sell at any price they elect, often below GSA prices. If a manufacturer only sells direct, and has a GSA contract, it behooves the buyer to insist on matching prices.

CES is one of the agencies that insist on a "most favored customer" clause in its contracts. CES does not believe such a clause has "negative effects on competition throughout all public contracting. (by setting) a floor on prices and is favored by firms which enjoy commanding positions in the market place." First, many of CES' contracts are with very small companies without any "commanding position" in the New Mexico market. Secondly, CES knows that a contract with them will save vendors considerable money, since it frees them from individual bids from the 152 public educational institutions, and other political subdivisions that use CES contracts. CES firmly believes that the organization would cease to exist as a valuable service to New Mexico public educational institutions if they allowed their contracted vendors to "bid against themselves" when a member institution elects to issue its own RFB.

When a contractor says "this is the lowest price I will offer in New Mexico to public agencies," then the buyer knows that the only way to get a lower price is from other vendors. Competition is enhanced in this fashion. If a member institution awards a contract to a vendor not on a CES contract, for a product or service similar to that on a CES contract, the result will be an even bigger savings to the district and, hopefully, the eventual lowering of prices by the CES contractor, or an eventual re-bidding by CES to secure better contracts for its' members.

1. Before you begin, make duplicate copies of the price page.
2. All pricing must use the price form, normally using one sheet per brand of product. If you have an exceptionally large price list or a price catalog, you may attach the data to the form but it must be categorized and indexed in a way that the following information is clearly identified:
  - A. Product Brand
  - B. Product Description
  - C. Retail Price or Standard Education/Government Price
  - D. Percent Discount
  - E. CES Price
  - F. Volume Discounts Available
  - G. Any Special Pricing (bundles, time-limit sales, etc.)
  - H. Installation/Labor Costs, if any
    - I. Mileage/Travel Costs, if any
    - J. Freight/Shipping, if any
  - K. Special Warranty Information
3. Once your offer is accepted, any future price adjustments must be made in the same manner.
4. It is your responsibility to keep your contract current in every way. Auditors review our contracts and everything must be legal.

**IF, FOR ANY REASON, YOU NEED TO LOWER A PRICE TO REMAIN COMPETITIVE, OR TO PASS ON A SPECIAL PRICE OFFERED BY YOUR SUPPLIER, YOU MUST FIRST SEND A FAX OR LETTER TO CES THAT OFFICIALLY LOWERS THE PRICE. ONCE CES HAS RECEIVED THE INFORMATION, THEN YOU MAY OFFER THE NEW PRICES TO YOUR CUSTOMERS. IT IS AGAINST THE TERMS AND CONDITIONS OF THIS RFB TO AGREE TO A LOWER PRICE WITH A CUSTOMER, AND THEN LATER NOTIFY CES. CES ENCOURAGES ALL OFFERORS TO OFFER THE LOWEST PRICES POSSIBLE, BUT AT NO TIME MAY THE OFFEROR GIVE A PRICE TO ONE CES MEMBER THAT IS NOT AVAILABLE TO OTHERS.**

**SUBMISSION CHECK-OFF FORM**

**In order for CES to clearly understand the proposal being presented by the offeror, a complete response to this RFB must contain the following:**

**It is suggested that the vendor preparing a response check off each required item as it is completed.**

- |       |     |  |
|-------|-----|--|
| _____ | 1.  | <b>Form A</b> – Offerors Declaration Form (page 230) ( <b>PLACE BEHIND TAB 1</b> )   |
| _____ | 2.  | <b>Form B</b> – The signed Offer and Contract Award (page 231) ( <b>PLACE BEHIND TAB 1</b> )   |
| _____ | 3.  | <b>Form C</b> – The signed Affidavit (page 232) ( <b>PLACE BEHIND TAB 1</b> )  |
| _____ | 4.  | <b>Form D</b> – Price List of the equipment/services offered (page 233) ( <b>PLACE BEHIND TAB 6</b> )  |
| _____ | 5a. | <b>Form E</b> – A list of any exemptions or modifications of <u>General</u> Terms and Conditions (page 277) ( <b>PLACE BEHIND TAB 3</b> )  |
| _____ | 5b. | <b>Form E</b> – A list of any exemptions or modifications of <u>Categorical</u> Terms and Conditions (page depends on category) ( <b>PLACE BEHIND TAB 5</b> )  |
| _____ | 6.  | <b>Form F</b> – Support and Maintenance Plans (page 278) ( <b>PLACE BEHIND TAB 7</b> )   |
| _____ | 7.  | <b>Form G</b> – Offeror’s Support for CES Prices (page 279) ( <b>PLACE BEHIND TAB 7</b> )  |
| _____ | 8.  | <b>Form H</b> – Questionnaire for Offeror (pages 280-281) ( <b>PLACE BEHIND TAB 7</b> )  |
| _____ | 9.  | <b>Form I</b> – Manufacturer’s Representative Form (page 282) ( <b>PLACE BEHIND TAB 7</b> )  |
| _____ | 10. | A point-by-point response for the 10 items (a–j) under Vendor Qualifications (pages 11-14) ( <b>PLACE BEHIND TAB 4</b> )   |
| _____ | 11. | A point-by-point response to each requested item to which the vendor is responding under Section II-Scope of Work, D. Specifications (page number depends on category) (categorical responses) ( <b>PLACE BEHIND TAB 5</b> ) |
| _____ | 12. | Letters of financial stability and credit limit ( <b>PLACE BEHIND TAB 4</b> ) (requested in No. 10 above)  |
| _____ | 13. | All miscellaneous forms that apply ( <b>PLACE BEHIND TAB 8</b> ) (requested in No. 10 above)   |
| _____ | 14. | Copies of all licenses ( <b>PLACE BEHIND TAB 4</b> ) (requested in No. 10 above)   |
| _____ | 15. | Appendix with catalogs, slicks, model information, etc. ( <b>PLACE BEHIND TAB 10</b> )   |
| _____ | 16. | <b>Form L</b> – Submission Check-Off Form (page 285) ( <b>PLACE BEHIND TAB 9</b> )   |

\_\_\_\_\_  
Signature