

**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, February 27, 2006**

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**RFB Number:** **RFB 2006-014 - JOC Region 5**

**Issue Date:** **Monday, February 27, 2006**

**Commodity Titles:** **Job Order Contract (JOC) for Construction Products and Services for JOC Region 5, which includes Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico and Tucumcari**

A job order contract is an indefinite quantity contract pursuant to which the contractor will perform an ongoing series of individual projects at different locations throughout the identified CES JOC Regions located in the southern part of New Mexico. The bid document includes a Technical Specification Book and a Construction Task Catalog® (CTC) containing construction tasks with pre-set unit prices. All unit prices are based on local labor, material and equipment prices and are for the direct cost of construction. The offeror will bid four (4) adjustment factors to be applied to the established unit prices. The first two (2) for performing work during Normal Working Hours. The second two (2) for performing work during Other Than Normal Working Hours. For each project the contractor will be paid the unit prices multiplied by the quantity and multiplied by the contractor's awarded Adjustment Factor. With the JOC concept, the awarded contractor will furnish all management, documentation, materials, labor and equipment required to perform and complete the individual construction project's defined scope of work developed by contractor, CES member and CES.

**Mandatory Pre-Bid Conference Date** **Friday, March 17, 2006**

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**Day / Date:** **Friday, March 17, 2006**

**Time:** **9:00 a.m. local time**

**Location/Mail Address:** **Clovis Municipal Schools  
Administrative Office Board Room  
1009 Main Street  
Clovis, New Mexico**

Day / Date: Friday, April 7, 2006

Time: 1:30 p.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. 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 Road NE, Albuquerque, NM 87109, will receive sealed bids until Friday, April 7, 2006, at 1:30 p.m. local time for Job Order Contract (JOC) for Construction Products and Services for JOC Region 5, which includes Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico and Tucumcari.

A Job Order Contract is an indefinite quantity contract pursuant to which the contractor will perform an ongoing series of individual projects at different locations throughout the CES JOC Region. The bid document includes a Technical Specification Book and a Construction Task Catalog® (CTC), containing construction tasks with pre-set unit prices. All unit prices are based on local labor, material and equipment prices and are for the direct cost of construction.

There will be a mandatory Pre-Bid Conference held on Friday, March 17, 2006 at 9:00 a.m. local time at the Clovis Municipal Schools Administrative Office Board Room located at 1009 Main Street, Clovis, New Mexico.

All bids must be submitted in a sealed envelope marked "SEALED BID – RFB 2006-014 - JOC Region 5" 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, February 26, 2006  
Sunday, March 5, 2006

Albuquerque  
Clovis  
Farmington  
Santa Fe

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

**RFB 2006-014 - JOC Region 5**

**TABLE OF CONTENTS**

I.	<u>INSTRUCTIONS TO OFFERORS</u>	
A.	Introduction	6
B.	Examination of Documents	6
C.	Mandatory Pre-Bid Conference	6
D.	Questions	6
E.	Bid Submission	7
	1. Preparation of the Bid	7
	2. Format of the Bid	7
	3. Contents of the Bid	8
	4. Offeror Qualifications	9
F.	Listing of General Terms and Conditions	15
II.	<u>SCOPE OF WORK AND SPECIFICATIONS</u>	
A.	Scope of Work	35
B.	Duties of the Contractor	35
C.	Duties of CES	35
D.	Overview of Request	35
E.	Special Bid Security	36
F.	Bonds	37
G.	Payment Retention, Progress Payments	37
H.	Contract between Owner, Buyer and Contractor	37
I.	Contract between Member and Prime Contractor	38
J.	Construction Projects Without a Contract Between Member and Prime Contractor	40
K.	Quality Control Issues	40
L.	Quotes and Proposals	41
M.	New Mexico State Wage Rate Documentation	41

**TABLE OF CONTENTS, continued**

**Page**

N. RFB Scope of Work	41
O. RFB Special Terms and Conditions	42
P. Price and Cost Submittal	45
Q. Listing of Category	47
1. Job Order Contract (JOC) for Construction Products and Services for JOC Region 5, which includes Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico and Tucumcari	47

**III. CONDITIONS LEADING TO AND INCLUDING CONTRACT AWARD**

A. Contract Form	61
B. Bid Submission	61
C. Bid Review	61
D. Evaluation Factors	61
E. Cost Considerations	63
F. Important Notice to Offerors	63

**IV. BID FORMS**

Form A Offer, Acceptance of Offer and Contract Award	64
Form B Affidavit	65
Form C Acceptance of Terms and Conditions	66
Form D Indefinite Quantity Unit Price Schedule	67
Form E Offeror's Support for CES Prices	70
Form F Support and Maintenance Plans	71
Form G Questionnaire for Offeror	72
Form H Form for References	74
Form I Comments on Multiple Awards and "Most-Favored-Customer" Contracts	75
Form J Offeror Qualifications Template	76
Form K Submission Check-Off Form	82

## **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. If the offeror is not familiar with the type of facilities and site conditions found in the educational institutions located within this region, they may want to visit the various institution's campuses to familiarize themselves with the general state of the facilities, any special conditions that may be encountered (such as possible isolate locales) or typical weather conditions that may affect work during a certain season. There shall be no allowance for anticipated profits. Submission of a bid constitutes a representation by the offeror that the offeror has made all appropriate examinations, investigations and has made provision as to the cost thereof in its bid.

### **C. MANDATORY PRE BID CONFERENCE**

As a condition of bidding on RFB 2006-014 - JOC Region 5, prospective bidders must attend a mandatory Pre-Bid Conference. The Pre-Bid Conference will be held on Friday, March 17, 2006 at 9:00 a.m. local time at Clovis Municipal Schools Administrative Office Board Room located at 1009 Main Street, Clovis, NM 88102. The purpose of the Pre-Bid Conference is to discuss the JOC concept, bid documents and bid considerations. The training session will address JOC from a contractor's viewpoint.

### **D. 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\\_lst.asp](http://www.ces.org//ces/jobrfp/rfprfb_lst.asp)) as addenda and will become part of the bid documents. Those not having access to the Internet can 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. Oral answer and/or interpretations to a bid question given by Cooperative Educational Services, shall be binding unless reduced to a written addendum issued prior to bid opening. All bids shall be responsive to and include the provisions of all addenda issued prior to the bid opening.

## 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. 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. 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
- \$25,000 Special Security Bid Bond (page 36)
  - Signed Acceptance of Offer (page 64) **Form A**
  - The RFB Affidavit page, notarized signature required (page 65) **Form B**
- Tab 2: Introduction
- Executive Summary (a one page description of what you are proposing on this contract)
- Tab 3: General Terms and Conditions
- Listing of General Terms and Conditions (insert pages 15 through 34 of the solicitation in order)
  - Acceptance of all General Terms and Conditions (first line must be signed (page 66) **Form C**)
  - Listing of any exceptions to General Terms and Conditions
- Tab 4: Offeror Qualifications
- Answers and responses to Offeror's Qualifications (page 76) **Form J**
  - Sub-Contractors List
  - Copies of Contractor's NMCID Licenses
  - Confirmation of NMDOL Registration
  - Copy of New Mexico Preference Certificate
  - Documentation from offeror's financial institution(s)
  - Documentation from offeror's surety company
  - Certificate of Insurance
- Tab 5: Category
- Categorical Scope of Work, Definitions, Terms, Conditions and Specifications (insert pages 52 through 59 of the solicitation in order)
  - Acceptance of Categorical Terms and Conditions, second line must be signed (page 66) **Form C**
  - Listing of any exceptions to the Categorical Terms and Conditions
- Tab 6: Cost Bid Form
- Indefinite Quantity Unit Price Schedule (page 67) **Form D**
- Tab 7: Required Forms
- Offeror's Support for CES Prices (page 70) **Form E**
  - Questionnaire for Offeror (page 72) **Form G**
  - Support and Maintenance Plans (page 71) **Form F**
  - References (page 74) **Form H**

- Comments on Multiple Awards and “Most-Favored Customers” Contracts (page 75) **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 82) **Form K**
- 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 7, 2006, 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. Offeror Qualifications

All bids must contain the necessary documentation; answers or responses to the requests listed below and must be placed behind Tab 4 of the offeror’s bid response. 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. By signing the acceptance form for General Terms and Conditions, the offeror certifies that the information provided herein is true and sufficiently complete so as not to be misleading.

- a. Provide documentation and information as requested relating to the history of your company that includes its’ philosophy of doing business, its’ background, expertise, experience, past performance and ability to provide the construction products and 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.

1) Organization

- a) How many years has your organization been in business as a contractor?
  - b) How many years has your organization been in business under its' present business name?
  - c) Under what other or former names has your organization operated?
  - d) If your organization is a corporation, answer the following:
    - 1. Date of incorporation
    - 2. State of incorporation
    - 3. President's name
    - 4. Vice-President's name(s)
    - 5. Secretary's name
    - 6. Treasurer's name
  - e) If your organization is a partnership, answer the following:
    - 1. Date of organization
    - 2. Type of partnership (if applicable)
    - 3. Name(s) of general partner(s)
  - f) If your organization is individually owned, answer the following:
    - 1. Date of organization
    - 2. Name of owner
  - g) If the form of your organization is other than those listed above, describe it and the name of the principals.
  - h) Where are the headquarters of the company physically located? Provide address, city, state and zip code. Provide same 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 organization provided the services/products requested in this solicitation?
  - i) For the key individuals who will be marketing, consulting, estimating, coordinating supervising and managing before, during and after-sales services, warranty, maintenance, support services offered in response to this solicitation, in your response, provide a listing of and the qualifications of these key individuals. Provide the name, title, qualifications and experience in the area(s) of services that they will be providing.
  - j) Describe your organization's current in-house workforce, equipment and facilities available to perform under this solicitation.
- 2) Licensing
- a) What year was your organization first licensed as a contractor in the State of New Mexico?
  - b) List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.
  - c) List jurisdictions in which your organization's partnership or trade name is filed.
  - d) 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.
  - e) Has your organization or any of the qualifying parties named above ever conducted business, past or present, as a contractor under a different business name? If yes, what name(s) and when.

- 3) Experience and Past Performance
  - a) List the categories of work that your company normally performs with its' own forces.
  - b) Provide a complete list of major construction projects (over \$60,000 in total construction costs) that your company had or has in progress, as of January 1, 2006, giving the name of project, owner, architect, contract amount and scheduled completion date. Please state the total worth of work in progress and under contract as of March 30, 2006.
  - c) Within the last five (5) years, has your company performed work on New Mexico public work projects? If the answer is "yes", describe each project and your company's role. In your description, include the following information on each project described.
    - 1) Project name
    - 2) Owner of the project
    - 3) Owner representative or contact
    - 4) Contract amount
    - 5) Architect/Engineer (A/E)
    - 6) Date of completion
    - 7) Percentage of the cost of the work performed with your own forces
  - d) List all projects your company has completed beyond the scheduled date of substantial completion and the number of days past the scheduled substantial completion date on which substantial completion was certified as indicated by owner and architect signature.
  - e) List all projects in which your company failed to complete the project, including all punch list items identified by the owner and/or owner's representative by the date agreed to by all parties.
  - f) In the last five years, has your company provided any extended warranties on a project and not been able to fulfill to the owner's satisfaction? If yes, for each describe the issues. For each include the following information:
    - 1) Project name
    - 2) Owner of the project
    - 3) Owner representative or contact
    - 4) Architect/Engineer (A/E)
    - 5) Date of substantial completion
    - 6) Type of warranty coverage
    - 7) Reasoning for inability to resolve, such as owner not fulfilling obligations
- 4) Insurance, Claims, Suits and Disputes
  - a) 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 and/or its member as a certificate holder. Normally, this is a free service provided by an insurance company.
  - b) Provide written documentation and evidence relating to the surety company that will be providing payment and performance bonds for projects performed under this solicitation. Please address the following:
    - 1) Name, address, phone number and agent's name

- 2) Letter from the surety company stating your firm's current bonding rate and your organization's total bonding capacity
  - 3) Has your company used this surety company for more than two (2) years? If no, please provide the names, addresses, phone numbers, contact names and dates under agreement with any other surety company used in the past three (3) years.
- c) Are there any judgments, claims, arbitration proceedings, suits or disputes pending or outstanding against your company or its' officers in New Mexico or any other jurisdiction?
  - d) Has your company filed any law suits or requested arbitration with regard to construction contracts within the last five years?
  - e) If the answer to items c) or d) above is yes, please provide complete details, including but not limited to:
    - 1) Name and location of project owner
    - 2) Name and location of project architect
    - 3) Name and location of project
    - 4) Nature of and amount in dispute
    - 5) Forum in which dispute was presented, that is AAA arbitration; mediation; district court (state, file name, and number)
    - 6) Manner in which dispute was resolved
  - f) For the last five (5) years list any projects where your surety has been given notice of default of your company's performance under either its' performance bond or labor and material payment bond. For each project state the nature of the claim against your company and the outcome of each such claim.
  - g) Within the last five (5) years has any surety on any project you have worked on paid or settled work that your company had contracted to complete? If yes, give complete details.
  - h) Within the last five (5) years has your company been a party in civil litigation or administrative proceedings which have alleged a violation of any of the following: environmental law or regulation; law banning workplace discrimination; law governing wages, hours, labor or employment standards; conduct of occupations; law governing professions or regulated industries; or any other law which would reflect, if convicted, a lack of business integrity or honesty? If yes, give complete details.
  - i) Within the last five (5) years has your company had a tax lien filed against it by any taxing authority? If yes, provide the following: when, by what tax authority and has the lien been released? If no, describe action your company has taken with respect to the lien.
  - j) Within the last five (5) years has your company been debarred from bidding on or performing work for any public agency (federal, state or local public body) as a contractor or subcontractor? If yes, provide complete details, including actions your company has taken to prevent such debarment in the future.
  - k) Miscellaneous items
    - 1) Is the workers' compensation experience modifier for the company as reported by your insurer less than 2.0? If no, what is your reported E-Mod?

- 2) Is the incident/injury rate for your company as reported by your insurer less than the Bureau of Labor Standards published rate for New Mexico? If yes, what is the BLS published rate for New Mexico?
- 5) Financial Resources and Banking Information
- a) 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, the offeror is asked to provide a financial statement, preferably audited, including your company's latest balance sheet and income statement showing the following items:
    - 1) Current assets (e.g. cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses)
    - 2) Net fixed assets
    - 3) Other assets
    - 4) Current liabilities (e.g. accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes)
    - 5) Other liabilities (e.g. capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings)
    - 6) Name and address of firm preparing attached financial statement, and date thereof
    - 7) Is the attached financial statement for the identical company named on page one?
    - 8) If not, explain the relationship and financial responsibility of the company whose financial statement is provided (e.g. parent-subsidiary).
    - 9) Provide written evidence or other documentation relating to your banking and/or lending institution. Include the following:
      - a) Names, addresses, phone numbers and contact names
      - b) Letters from listed financial/lending institution that indicates the amount of time your company has had a relationship with them.
      - c) Your 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".
    - 10) 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.
    - 11) Within the last seven (7) years has your company been the subject of any voluntary or involuntary bankruptcy, insolvency or receivership proceeding? If so, please state the case name(s) and court file number of

each proceeding, the nature of the proceeding, whether such proceeding is ongoing and the resolution of each completed proceeding.

6. 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.
7. Has and does your company incorporate formal quality assurance and control processes on public works projects? If yes, describe the processes with their expected results and the benefits received by the owners by implementing such a program.
8. 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 for 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 CES members? 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?
9. 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?
10. In comparing previous projects your organization has completed, do you see any areas where your organization possesses experience, production or service facilities, personnel or other service reputation that should be considered with your ability to provide on time quality construction projects for New Mexico educational institutions? If yes, fully describe these attributes, resources and how they are utilized to benefit the owner's projects.

#### 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 Offerors:** 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. CES reserves the right 1) to award bid based upon the base bid only or any combination of base bid and alternate(s); 2) to reject any or all bids or any part thereof; 3) to waive any informality in any bid; and 4) to accept the bid that is in the best interest of its members. It is the responsibility of the offeror to inquire as to bid results and the status of any subsequent award(s). The list of alternates, if any, is not prioritized. 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 CES member directly. CES will invoice the CES 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.

**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 contractor 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 contractor 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 CES 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 CES members and/or invoicing CES 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, contractor must be willing to provide, upon request, certification of insurance to any CES member using this contract. If the contractor 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 offeror 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 offeror will not discriminate against any employee, or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246).
4. The offeror 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 offeror agrees to promote and offer to CES 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.

**Commencement Date/Substantial Completion Date:** The Commencement Date will not be later than ten (10) days the CES purchase order has been issued and will be established by a Notice to Proceed. The allowed duration for each project will be determined on a project by project basis.

**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:
  - a. 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
  - b. 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 of, or mark-up in addition to the Construction Task Catalog® identified here in.

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 Resident Preference:** It will be the sole responsibility of the prime bidders requesting consideration for resident preference at bid opening to submit to the State Purchasing Agent the questionnaire for Resident Contractor's Certification and to receive approval and a certification number from the State Purchasing Agent, which must be included on the bid proposal, prior to the bid opening. Requests for qualification for Residents Contractor Preference after bid opening will not be considered.

**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 offeror's 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. Contractor 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.

**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.

**Execution of Contract and Compliance with Bid Instructions:** By submitting a bid, the offeror acknowledges its understanding of these Instructions to Bidders and its willingness to comply with the requirements of the bid documents. If a bid is accepted by CES, said offeror shall execute all necessary agreements and provide the required documents within ten (10) working days after the Notice of Award, subject to forfeiture of its bid security if such is not timely done. Offeror further acknowledges its understanding of the payment/performance bond requirements and insurance requirements called for in the proposed contract documents.

**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.

**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 CES member as co-insured up to the limits of the Tort Claims Act. Additional punitive damages liability to \$500,000 will be

provided naming CES as co-insured. In addition, contractor must provide, upon request, identical certification of insurance to any CES member using this 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 CES member.

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

**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 contractor 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.

**Liquidated Damages:** The CES member may suffer financial loss if the project is not substantially complete on the established date. The Contractor (and his Surety) shall be liable for and shall pay to the CES member, not as a penalty, the sums that maybe hereinafter agreed upon as liquidated damages per calendar day of delay until the work is determined by the CES and its member to be substantially complete. Liquidated damages will be determined on a project by project basis.

**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.

**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.

**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.

**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.

**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.

**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.

**Ordering Process:** All orders accepted by the contractor must be issued by CES. 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.

**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 contractor 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: CES 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 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.

**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.

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

**Project Director:** The contractor 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:** CES may make such investigations as necessary to determine the ability of the Offeror's ability and capacity to perform the work, and the offeror shall include 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. CES reserves the right to reject any bid if the evidence submitted by, or investigation of, such offeror fails to satisfy CES, that such offeror is qualified to carry out the obligations of the contract and to complete the work described therein.

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

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

**Site Preparation:** Prior to a purchase order being issued by a CES 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.

**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 Sixty Thousand Dollars (\$60,000) on an individual basis. The contractor will pay all mechanics and laborers employed on the site of the project by the contractor, unconditionally and not less often than once a week, and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications. In the event it is found by the State Labor Commission or CES, that any person employed by the contractor or subcontractor on the site of a project covered by this solicitation has been, or is being paid, as a result of a willful violation, a rate of wages less than the rate of wages required by the NMDOL, CES may, by written notice to the contractor and his subcontractor (if the violation involves a subcontractor) terminate their right to proceed with the work, or such part of the work as to which there has been a willful failure to pay the required wages. CES may proceed with the work to completion by contract or otherwise, and the contractor and his sureties shall be liable for any excess cost occasioned thereby. Any party receiving notice of termination of his contract or subcontract under the provisions of this section may appeal the finding to the State Labor Commissioner as provided in the Public Minimum Wage Act.

**Subcontractors:** Listing for each individual job order proposal, pursuant to the New Mexico Subcontractors Fair Practices Act will be required. There shall be only one subcontractor listed for each classification. If a contractor fails to specify a subcontractor in excess of the listing threshold, he represents that he is fully qualified to perform that portion of the work himself. If the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act, the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided therein. If it is necessary for the contractor to contract with third party firms to provide various goods and services, the following will apply:

1. In awarding subcontracts, the contractor agrees that any subcontract competitively solicited by contractor will not be awarded solely upon membership, non-membership or affiliation in a union or professional association or other organized group or agency, but on competitive bid and ability to meet the specifications and comply with the requirements of the individual project.
2. The contractor 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.

**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 May 12, 2007 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods ending on May 12, 2008, May 12, 2009 and May 12, 2010. CES may require a contractor 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 contractor and removed at the contractor's expense. The conditions of the trade-in equipment at the time it is turned over to the contractor 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 contractor.

**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.

**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 89 New Mexico public school districts and 70 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, 159 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.
5. The work performed under this contract will be set forth in the detailed Scopes of Work referenced in the individual job orders. The contractor is required to perform the detailed Scope of Work for the job order amount within the job order completion time.
6. The construction work and related services identified herein will be performed in designated area of JOC Region 5.

### **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 CES member.

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

The general duties of CES will include:

1. Inform members of contractor and obtain participation of members.
2. Inform contractor of participating members.
3. Process purchase orders and 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 CES members.

2. Under this solicitation, a master contract is established with technical specifications and pricing based upon an adjustment factor applied to the unit price set forth in the Construction Task Catalog® as developed by The Gordian Group dated February 8, 2006. When a specific project is requested, the CES member and the contractor will jointly develop and agree on the scope by initiating a Job Order. The cost is determined by utilizing the unit prices established in the Construction Task Catalog® and applying the contractor's adjustment factor as identified 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 in the Gordian Group's Technical Specification Book dated February 8, 2006.
4. CES currently has contracts with providers of construction related services who offer similar type of services solicited herein to its members. The volume for these construction services during the past 12 months is around twelve million dollars (\$12,000,000). 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 performance bond 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 original performance and payment bonds to the CES member and a copy of the 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. 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 (See Exhibit 3)

An agreement by CES, its member/NMPSFA 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 Sixty Thousand Dollars (\$60,000) or more. This agreement must be signed by all parties prior to the contract starting any work.

1. Owner (CES member)/NMPSFA (New Mexico Public School Facilities Authority) is an educational institution or local public body or state agency, 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 member must be limited to only those approved by the member.
16. 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. 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 values and 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 offices. 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 will be based upon tasks and unit prices obtained from the Gordian's Technical Specification Book (Exhibit 1) and the Construction Task Catalog® (Exhibit 2), both dated February 8, 2006. All worked performed **must** be quoted per the Technical Specification Book and the Construction Task Catalog® by the general contractor, even if subcontractors are used. Subcontractor's invoices must tie to the price quotes submitted for the project.
2. A unit price spreadsheet **must** be submitted to substantiate the quote given to the CES member.
3. Bonding cost and New Mexico Gross Receipt Tax (NMGRT) must be shown as separate line items at the bottom of the cost spreadsheet. This information can be handwritten or typed on the spreadsheet or can be entered and printed off of the JOC web-based application. The information submitted must clearly identify and contain all of the required detail for each of the items make-up each individual construction project.
4. All change orders must be supported and submitted in accordance with the Technical Specification and Unit Price books.

#### 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 to provide a variety of construction products and services for a firm fixed-price based on the Technical Specifications Book (Exhibit 1) and the Construction Task Catalog® (Exhibit B) of this solicitation. The Scope of Work may include

but is not limited to construction services relating to the repair, alteration, renovation, modernization, rehabilitation, demolition, and construction of infrastructures, buildings, structures or other public facilities. The work will be accomplished by issuing a job order under a JOC contract awarded in accordance with this solicitation. The JOC contractor will furnish all management, documentation, labor, materials and equipment to needed to perform and complete the scope of work stated for each individual project requested under this RFB. The services may include, but are not limited to, the following areas of licensure: GB, GS, EE, MM, etc., which are required to perform the tasks identified in Exhibit One (1) 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 are in addition the Listing of General Terms and Conditions listed herein and contain additional terms, conditions and specifications... If there is a conflict between the general 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 four (4) JOC service regions. CES has identified below which of the four (4) JOC regions is to be covered by this solicitation and which of its members are in the identified JOC Region. The awarded contractor(s) will be restricted to providing and performing their products and services only to those CES members within the JOC Region 5, which includes Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico and Tucumcari.
2. Upon execution of a contract between a CES member and the prime contractor, performance and payment bonds will be provided by the contractor as required. The prime contractor agrees to notify the CES member in writing of this requirement before accepting any work orders.
3. 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 and its member. Progress payments may be a part of any project and must be stipulated.
4. In the construction, erection or repair of all buildings and structures under this award, the contractor is hereby required to use, whenever the species of lumber necessary for such construction or repair work is available in this state, such species of lumber produced from timber grown in the State of New Mexico.
5. The listing threshold for this RFB will be Ten Thousand Dollars (\$10,000). 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 and county of the place of business; (b) category of product and services that will be performed by each subcontractor.
6. 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.

7. If after the award of the contract, the contractor sub-contracts any portion of the work in excess of the listing threshold to an unlisted subcontractor, the contractor will be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided therein.
8. Progress payments can be made to the contractor 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 contractor 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 from CES, unless otherwise agreed on in writing between the parties.
9. A subcontractor to the contractor can request, in writing, that the subcontractor be notified by CES within five (5) days from payment of each progress payment made to the contractor. It is the responsibility of the contractor to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract and that the CES 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.
10. The contractor 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.
11. In any contract between a CES 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 final documents. All applicable codes around which the contract is made will be included, as will any technical specifications and general conditions.
12. Work to be performed by the CES member must be clearly described and agreed to by the contractor 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 contractor and must be agreed upon in writing prior to start up. If the CES 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.
13. 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 contractor will assume full responsibility for the protection and safekeeping of any products stored on the premises.
14. Temporary electrical service and the cost for power, the cost for water and other member costs will be identified and agreed upon in writing.
15. The method and manner of performance must be stated: employees of the contractor 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 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.
16. 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 contractor will not construct any

- device or produce any condition that intentionally violates a fire or safety code or safety standard.
17. The contractor must advise CES member's contact person whenever work is expected to be hazardous to school children, member employees and operators.
  18. The contractor 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.
  19. The contractor will deliver materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the member's contact person.
  20. Change Orders – A mutually agreed upon system for establishing changes must be identified, including changes in scope and changes in compensation for the contractor. A change will be initiated by creating an additional job order for the project. 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 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 upon between the member and the contractor that do not involve compensation may be made without informing CES, unless such change significantly modifies the scope and needs to be documented.
  21. 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 contractor by the CES member.
  22. The CES member retains the right to extend the schedule of work or to suspend the work and to direct the 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.
  23. The 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 contractor must be approved by an authorized official of the member.
  24. A schedule for performance of work that can be met without planned overtime is the responsibility of the contractor and must be submitted with the job order price proposal.
  25. 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.
  26. For audit purposes, a copy of any contracts and agreements between the CES member and the contractor must be kept on file in the office of CES. It is the responsibility of the contractor to supply a signed copy of all contracts and agreements to CES.
  27. The contractor 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.

28. Upon completion of the work, the contractor 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.
29. Even if final payment is made, if the member discovers an unfinished job that should have been completed, the contractor will complete the work in a timely fashion at no additional cost.
30. The contractor will perform all warranty work and remain available to the member should continued service be required after warranty obligations are met.
31. The contractor 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.
32. CES solicited for and awarded a contract to The Gordian Group for products and services relating to the development of, establishing, implementing and conducting a JOC program for construction services. It should be noted that the cost of these products and services are paid by the CES member when it processes an order through the JOC system. As part of the CES JOC program, CES has adopted and will use the following products and services made available by The Gordian Group.
  - a. Consulting and training services to assist CES in developing, implementing and conducting a JOC program.
  - b. Tasks and Technical Specification Book developed specifically for JOC Region 5 dated February 8, 2006.
  - c. Construction Task Catalog® dated February 8, 2006 based on the Task and Technical Specification Book developed for JOC Region 5 dated February 8, 2006.
  - d. Provide and maintain a web-based application to CES, its members, NMPSFA and awarded contractors to enter, maintain, track, report and conduct JOC transactions covered by this solicitation.

P. PRICE AND COST SUBMITTAL

1. The offeror is responsible for reviewing all of the solicitation documents and conducting and performing the necessary investigations, assessments, analysis to obtain a complete understanding of what is being requested; what are the specifications and requirements of the contractor; what are the necessary resources are required to perform and complete the construction tasks products being requested under this solicitation; and what are the associated with each.
2. All prices and information required on the Bid Form D must be typewritten or written in ink.
3. The following are the components that make-up the offeror's cost submittal.
  - a. Price schedules submitted will cover JOC projects performed for CES' members located in Region 5. The offeror agrees to perform all work required, or incidental to completing the work called for in each individual Job Order Notice to Proceed issued under this Job Order Contract using the Catalog of Construction Tasks® and Technical Specifications and drawings incorporated herein with the following adjustment factors:
    - 1) Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Mondays-Fridays):  
The contractor will perform all functions called for in the contract documents during normal working hours in the quantities specified in individual work orders

against this contract for the unit price sum specified in the Catalog of Construction Tasks® (CTC) multiplied by the adjustment factor of:

- a) Normal Working Hours - for Job Order Total in excess of \$60,000 requiring State Wage Rates. Specify an adjustment factor to four (4) decimal places.
  - b) Normal Working Hours – for Job Orders Totals less than \$60,000 not requiring State Wage Rates. Specify an adjustment factor to four (4) decimal places.
- 2) Other Than Normal Working Hours (Defined as all hours not defined as normal hours above): The contractor will perform all functions called for in the contract documents during other than normal working hours in the quantities specified in individual work orders against this contract for the unit price sum specified in the Catalog of Construction Tasks® (CTC) multiplied by the adjustment factor of:
- a) Other Than Normal Working Hours – for job order totals in excess of \$60,000 requiring state wage rates. Specify an adjustment factor to four (4) decimal places.
  - b) Other Than Normal Working Hours – for job order totals less than \$60,000 not requiring state wage rates. Specify an adjustment factor to four (4) decimal places.
4. Factors affecting cost, including quality of materials, productivity of labor force, size of project and location have been included in the Technical Specification Book (Exhibit 1) and the Construction Task Catalog® (Exhibit 2). Overhead, profit, season of the year, contract management, weather conditions, building code requirements, safety and environmental concerns have not been addressed in the Construction Task Catalog® (Exhibit 2) and must be built into the offeror's adjustment factor.
5. Cost evaluation will be based on a point system with points being awarded for being low to high bidder for each cost evaluation item (adjustment factor). If an offeror leaves out an item that is required, CES reserves the right to allot zero (0) points to that item and/or consider the offeror's response non-responsive. The low bidder will receive the full point value and all other bidders will receive points calculated as follows:

(Lowest Bid / Other bid) x point value

Q. LISTING OF CATEGORY

CES has prepared this document for Job Order Contract for Construction Products and Services. This category is divided into several sections, including:

1. Categorical Scope of Work
2. Categorical Definitions
3. Categorical Terms and Conditions
4. Categorical Price and Cost Submittal
5. Categorical Specifications and Exhibits

**Category**                    **Job Order Contract (JOC) for Construction Products and Services for JOC Region 5, which includes Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico and Tucumcari**

### **Categorical 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 to provide a variety of construction products and services for a firm fixed-price based on the Technical Specifications Book (Exhibit 1) and the Construction Task Catalog® (Exhibit 2) of this solicitation. The scope of work may include but is not limited to construction services relating to the repair, alteration, renovation, modernization, rehabilitation, demolition, and construction of infrastructures, buildings, structures or other public facilities. The work will be accomplished by issuing a series of individual job orders under a JOC contract awarded in accordance with this solicitation. The JOC contractor will furnish all management, documentation, labor, materials and equipment to needed to perform and complete the scope of work stated for each individual project requested under this RFB. The services may include, but are not limited to, the following areas of licensure: GB, GS, EE, MM, etc., which are required to perform the tasks identified in Exhibit Two (2) for members under this RFB.

### **Categorical Definitions**

**AA** – Aluminum Association

**ACI** – American Concrete Institute Building Code

**ADA** – American Disability Act

**Adjustment Factor** – The competitively bid adjustment to be applied to the unit prices listed in the Construction Task Catalog®

**A/E** – Architectural and Engineering

**AGA** – American Gas Association

**AI** – Asphalt Institute

**AISC** – American Institute of Steel Construction

**AISI** – American Iron and Steel Institute

**ANSI** – American National Standards Institute

**ASME** – American Society of Mechanical Engineers

**ASTM** – American Society for Testing and Materials

**AWS** – American Welding Society

**CCI** – Construction Cost Index

**CFM** – Cubic Feet per Minute

**CID** – Construction Industries Division

**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.

**Construction Task Catalog®** - comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price. (Also referred to as the “Unit Price Book” or “UPB”)

**CPSC** – Consumer Product Safety Commission

**Detailed Scope of Work** – A document setting forth the work the Contractor is obligated to complete for a particular Job Order.

**EMI** – Abbreviation for electromagnetic interference. High frequency interference (electrical noise) caused by electronic components or fluorescent lamps that interferes with the operation of electrical equipment is included. EMI is measured in microvolts, and can be controlled by filters. Because EMI can interfere with communication devices, the Federal Communication Commission (FCC) has established limits for EMI.

**EPA** – Environmental Protection Agency

**Factory-Built Building** – A residential or nonresidential building including a dwelling unit or habitable room thereof which is either wholly or in substantial part manufactured at an off-site location to be assembled on-site.

**FCC** – Federal Communications Commission

**Federal Regulations and Codes – Title 29** – Hazardous materials handling, removal and disposal; respiratory protection and monitoring; employee exposure to hazardous materials; employee exposure and medical records; construction involving hazardous materials and hazardous communications.

**Federal Regulations and Codes – Title 40** – National emission standards for hazardous materials and asbestos abatement projects, worker protection, asbestos-containing materials in schools.

**HID – High Intensity Discharge** – Generic term describing mercury vapor, metal halide, high-pressure sodium and (informally) low-pressure sodium light sources and luminaries.

**HVAC System** – An EPA approved vacuum system

**IEEE** – Institute of Electrical and Electronics Engineers

**Job Order** – A written order requiring the contractor to complete the detailed scope of work in the job order completion time for the job order amount. The CES member will be responsible for the development of the job order as well as the supervision and acceptance of the work contained in the job order description. Cooperative Educational Services will review the contractor's proposal for each job order requested and, if acceptable, will issue a CES purchase order for the work described therein. Each job order will include a detailed scope of work, a lump sum, firm fixed price proposal from the contractor, with New Mexico Gross Receipts Tax (NMGRT) shown as a separate line, time duration for the completion of the work and any special conditions that might apply to that specific job order.

**Job Order Amount** – The amount the contractor will be paid for completing a job order.

**Job Order Completion Time** – The time in which the contractor must complete the detailed scope of work.

**Job Order Contract (JOC)** – A job order contract is an indefinite quantity contract pursuant to which the contractor will perform an ongoing series of individual small to medium, multi-traded maintenance, repair and minor new construction projects at different locations throughout the identified CES regions.

**Job Order Price Proposal** – A price proposal prepared by the contractor that includes the pre-priced tasks, non pre-priced tasks, quantities and appropriate adjustment factors required to complete the detailed scope of work.

**Joint Scope Meeting** – A site meeting to discuss the work before the detailed scope of work is finalized.

**IES – Illuminating Engineering Society of North America** – Organization which establishes recommendations and practices for sports lighting facilities

**International Association of Plumbing and Mechanical Officials Uniform Plumbing Code** – Association that publishes and recommends standards and guidelines relating to plumbing and mechanical system design and installation

**International Conference of Building Officials Uniform Building Code** – A set of guidelines, standards and best practices relating to the various trades involved in building construction

**ISO** – International Standards Organization

**ISO 9000/9001** – International Standards Organization Quality Standards

**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.

**Modular/Pre-Engineered Building** – A factory-built building where the different components/sections are constructed at the manufacturer’s facilities and then transported to the project site where they are assembled, erected and/or constructed to make a complete building. Additional construction services may be needed to finish and/or install other components.

**MVIP** – Multi-Vendor Integration Protocol

**NBFU** – National Board of Underwriters

**NEC** – National Electrical Code

**NEISS** – National Electronic Injury Surveillance System

**NFPA** – National Fire Protection Association

**NFS** – National Sanitation Foundation

**NMDOL** – New Mexico Department of Labor

**NMPED** – New Mexico Public Education Department

**NMPSFA** – New Mexico Public School Facilities Authority

**NMSHD** – New Mexico State Highway Department

**Non Pre-Priced Tasks** – An item of work required by the detailed scope of work but not included in the Construction Task Catalog®. Architectural and engineering services may be required periodically during the life of this contract. If architectural and engineering services are

required they will be priced as a non pre-priced task. Any architectural and engineering fees will be negotiated with the contractor. Such work requirements will be incorporated into and made a part of this contract for the job order to which they pertain, and can be incorporated into the Construction Task Catalog®, if determined appropriate by CES, at the base price determined in this contract. Non pre-priced tasks will be separately identified and submitted in the job order proposal.

**OSHA** – Occupational Safety Hazard Administration

**Owner’s Representative** – A CES member’s employee or contracted consultant who has been designated by the member to coordinate, supervise, manage, make decisions and act on the member’s behalf during a procurement transaction or construction project.

**Pre-Priced Task** – An item of work included in the Construction Task Catalog® for which a unit price is given.

**Portable/Relocateable Building** – A factory-built building which is completely constructed at the manufacturer’s facilities and then is transported to the designated project site. The only services performed on the project site relates to setting the building in place and connecting the utilities.

**Proposal** – A set of documents including at least: (1) a job order price proposal; (2) a proposed project schedule; (3) a list of proposed subcontractors indicating MBE/WBE status; (4) sketches, drawings or layouts; and (5) technical data or information on proposed materials or equipment.

**RFI – Radio Frequency Interference** – Interference to the radio frequency band caused by other high frequency equipment or devices in the immediate area. Fluorescent light systems generate RFI.

**Subassembly** – A prefabricated wall, floor, ceiling, roof or similar combination of components.

**TIA** – Telecommunications Industries Association

**UBC** – Uniform Building Codes

**Unit Price** – The price published in the Construction Task Catalog® for a specific construction or construction related task. The unit prices are fixed for the duration of the contract. Each unit price is comprised of the labor, equipment and material costs to accomplish that specific task.

**USPHS** – United States Public Health Service

**UL** – Underwriters Laboratories is an independent organization whose responsibilities include rigorous testing of electrical products. When products pass these tests, they can be labeled (and advertised) as “UL listed”. UL tests for product safety only.

## Categorical Terms and Conditions

1. In its response, the offeror must demonstrate that it has the skill, knowledge, background, experience, capacity, financial resources and other resources to provide and perform the construction products and tasks defined in this RFB.
2. The contractor shall hold CES and its members harmless from damage from trespassing on property of others. There shall be no dumping of construction debris or other material on member's property. Any material that requires special handling as dictated by federal or state law shall be removed in compliance with the requirements of those laws. All such material shall be removed from the site by the contractor.
3. The contractor will familiarize itself with the site in order to anticipate unseen problems that may develop as the work progresses. Failure to have visited the site before submitting a job order proposal shall in no way relieve the contractor from furnishing any materials or performing any work required to complete the project in accordance with the contract documents, without additional cost to CES or its member.
4. This contract shall include the work of the Job Order Contract as required by the contract documents. Unless otherwise specified, the contractor shall supply all labor, transportation, materials, apparatus, storage sheds, fuel, scaffolding, and tools necessary for the entire, proper and substantial completion of the work, all according to proper construction standards; practices; and shall install, maintain and remove all equipment of the general installation and be responsible for the safe, proper, and lawful installation, maintenance and use of same; and shall install everything properly, incidentally, or reasonably implied either from the drawings or the specifications. Architectural and engineering services may be required periodically. If so, the architectural and engineering fees will be addressed as a non pre-priced item.
5. The duration of the contract is valid until May 12, 2007. The contract may be extended for three (3) optional periods. The optional contract performance period (term) will be twelve (12) months. There is no minimum value for any option period.
6. After award of the contract and at the issuance of each job order under this contract, a conference will be conducted by the CES member to discuss with the contractor issues of access and special requirements that are to be observed during the execution of the work.
7. This is an indefinite-quantity contract for construction work. All costs associated with preparing proposals shall be the responsibility of the contractor.
8. All work will be performed only as authorized by job orders issued in accordance with the contract documents. The contractor will furnish to the CES member the construction labor, services, supplies, equipment and related activities specified in the individual CES purchase order issued for each project.
  - a. The work of this contract will be determined by individual job orders. The contractor shall perform its job order construction work in accordance with this contract, including provision of all pricing, management, shop drawings, documents, labor, materials, supplies, parts (to include system components), transportation, facilities, supervision, and equipment needed to complete each job order.
  - b. Contractor shall maintain accurate and complete records, files and documents to include state and local laws, ordinances, rules, regulations, manufacturers' instructions and recommendations, which are necessary and related to the work to be performed.

- c. The contractor shall prepare and submit required reports, maintain current record drawings, and submit required information. The contractor will provide materials lists to include trade names and brand names and model materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary for a complete job. If CES or the member requests any information, the records and files will be made available to them.
  - d. In addition to the tasks and requirements in the Construction Task Catalog®, the CES member's project may, from time to time, require non pre-priced tasks. The parties will price these requirements in accordance with the procedures set forth below.
  - e. The contractor may be required to provide minor architectural, structural, mechanical, electrical, civil, or other engineering services for small performance based scopes of work as requested by the CES member or as required for filings or permits. The services shall be provided by architects or engineers registered and insured in the State of New Mexico to practice in the particular professional field involved. Professional liability coverage shall be at least \$500,000. All documents prepared by architects, consultants and engineers for the contractor under this contract are subject to review by the CES member and/or NMPSFA.
9. The procedure for initiating a job order (CES member's project) under the CES JOC program is as follows:
- a. As the need exists for performance by the contractor under the terms of this contract, the CES member will notify the Gordian Group's designated representative and the contractor of a project. The CES member and the contractor will schedule a site visit (Joint Scope Meeting) to discuss and develop a scope of work, determine the project requirement and compile all pertinent documents. From this meeting, the contractor and CES member shall come away at a minimum with the following:
    - 1) Job order number and title
    - 2) The general scope of work
    - 3) Existing site conditions
    - 4) Definition and refinement of requirements
    - 5) Detailed scope of work
    - 6) Establishing requirements for design drawings, sketches, submittals, catalogue cuts, samples, shop drawings, etc.
    - 7) Tentative construction schedule (bar chart or critical path method [CPM] schedule)
    - 8) Preliminary quantity estimates
    - 9) Proposal due date
  - 10) Methods and alternatives for accomplishing work
  - 11) Access to the site and protocol for admission
  - 12) Staging area
  - 13) Presence of hazardous materials
  - 14) Liquidated damages
- b. Upon completion of the joint scope process, the contractor will prepare and submit a draft of the detailed scope of work referencing any sketches, drawings, photographs and specifications required to document accurately the work to be accomplished for the CES member to review and approve, amend and/or reject. The detailed scope of work, unless modified and agreed to by both the contractor and the CES member, will

be the basis on which the contractor will develop its cost proposal and submit it to the member for its final acceptance or rejection. The contractor does not have the right to refuse to perform any task or any work in connection with a particular project.

- c. The contractor will prepare its proposal in accordance with the following:
- 1) Pre-priced tasks: For pre-priced tasks, the contractor shall identify the task and quantities required from the Construction Task Catalog®. The unit price set forth in the Construction Task Catalog® shall serve as the base price for the purpose of the operation of this provision. The contractor's proposal will include support documentation to indicate that adequate engineering and planning for the requirement has been done and that the tasks proposed are reasonable for the work to be performed. Documentation to be submitted with the proposal shall include, as appropriate, but not be limited to, design drawings, calculations, catalog cuts, specifications, and architectural renderings, subcontractor list and construction schedule.
  - 2) Non pre-priced tasks, if any, shall be separately identified and submitted in the proposal. Information submitted in support of non-pre-priced tasks shall include, but not be limited to the following:
    - a) Complete specifications and technical data, including task content, support drawings, task cost data, quality control and inspection requirements.
    - b) Work schedule
    - c) Costing data shall include a cost analysis report, establishing the basis for selecting the approach proposed for accomplishment of the requirements. Unless otherwise directed by the designated CES and/or its member's representative, costing data will be submitted demonstrating that the contractor sought and received three quotes to CES and/or its member. Contractor shall provide an installed unit price (or demolition price if appropriate) which shall include all costs required to accomplish the non-pre-priced task.
    - d) The final price submitted for non pre-priced tasks shall be according to the following formula:  
A = Direct labor cost and fringe benefits per prevailing wage rates labor that are not in Construction Task Catalog®  
B = Direct material costs (supported by three quotes)  
C = Direct equipment costs (supported by three quotes) for equipment not in Construction Task Catalog®  
D = Subcontractor costs (supported by three quotes)  
E = Allowable over head costs = A x 55%  
F = Allowable profit = (A + B + C) x 10%  
G = Subcontractor allowance = D x 5%  
Total Cost of Non Pre-Priced Task = A + B + C + D + E + F + G
    - e) Following approval by CES and/or its member's representative of a non pre-priced task and unit price, the non pre-priced task unit price will be entered into the computer database.
    - f) The total extended price for the non pre-priced task will be determined by multiplying the unit price by the quantity required. The price offered in the

proposal will be determined by multiplying the total extended price by an adjustment factor of 1.000.

- g) After a non pre-priced task is used on three separate job orders, the unit price for such task will be established, following approval by CES' representative, and fixed as a permanent pre-priced task, which will no longer require price justification.
  - h) CES representatives' determination as to whether an item is a pre-priced task or a non pre-priced task shall be final, binding and conclusive as to the contractor.
- 3) The contractor's proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done and that the tasks proposed are reasonable for the work to be performed. Documentation to be submitted with the proposal shall include, but not be limited to:
- a) Job order price proposal
  - b) Design drawings, calculations, specifications, and architectural renderings
  - c) Catalog cuts
  - d) Subcontractor and material supplier list
  - e) Construction schedule (detailed bar chart)
  - f) Special insurance
  - g) For special equipment, a copy of the warranty document may be required
- 4) Contractor's proposal shall be submitted by the date indicated on the Request for Job Order Proposal. All incomplete proposals shall be rejected. The time allowed for preparation of the contractor's proposal will depend on the complexity and urgency of the job order. On complex job orders, such as job orders requiring engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents with the proposal and so reflected in the proposal due date entered on the Request for Job Order Proposal. In emergency situations and minor maintenance and repair job orders requiring immediate completion, the job order proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the contractor may be directed to begin work immediately with the paperwork to follow.
- d. Review of the Proposal and Issuance of Job Order and CES Purchase Order
- 1) The CES member's representative will evaluate the contractor's proposal, proposed tasks, and compare these with the cost estimate of the detailed scope of work to determine the reasonableness of approach, including the nature and quantity of tasks proposed.
  - 2) The CES member reserves the right to reject a proposal for any reason, including but not limited to the quantities or tasks selected by the contractor, schedule, inadequate documentation, unacceptable pricing for non pre-priced tasks, selection of material, equipment or subcontractors. The CES member also reserves the right not to proceed with a job order (issue a purchase order to CES) if it is determined to be in the best interest of the member, or the proposed cost exceeds the member's estimate. The contractor has no claim to recoup proposal expenses. The member may pursue the performance of such work by other means.

- 3) By submitting a signed job order price proposal to the CES member, the contractor agrees to accomplish the work set forth in the detailed scope of work in accordance with the Request for Proposal. It is the contractor's responsibility to include the necessary tasks and quantities in each job order price proposal prior to delivering it to the CES member.
  - 4) Once the CES member has reviewed, evaluated the contractor's completed price proposal and desires to have the project done by the contractor, the CES member will issue CES a purchase order identifying the job order number/project. CES will review all information submitted and if CES finds the job order to be in compliance with the terms, conditions and specifications, CES will issue the contractor a CES purchase order, which is considered contractor's notice to proceed. All job orders/projects performed must be authorized by a CES purchase order.
  - e. Each job order awarded to the contractor must state the agreed upon requirements and project cost. All clauses of this contract will be applicable to each job order. Job orders will be authorized by a CES purchase order and shall include all documents relating to the identified project. The job order/CES purchase order, signed by and delivered to the contractor, constitutes CES and its member's acceptance of the contractor's proposal. A signed copy will be provided to the contractor, together with the Notice to Proceed.
  - f. In the event that immediate emergency response is necessary, the contractor shall be required to follow alternative procedures as established by CES. The contractor will begin work as directed by the CES member and approved by CES, notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work or Job Order. The contractor shall be compensated as if the work had been ordered under the standard procedures.
10. The CES furnished JOC software (Progen®) will be provided to the contractor for use as a tool to assist with expedient preparation of proposals in response to the CES member's issued request for job order proposals. This software will contain an electronic version (copy) of the Construction Task Catalog®, which can be accessed on the equipment provided by the contractor to locate and select desired items from the Construction Task Catalog®. Once the desired items are selected, the software shall provide for selection of quantities and based on the selected quantities, will extend and total Construction Task Catalog® costs for each proposal. The software will also permit introduction of non pre-priced tasks and the application of the adjustment factors. The cost of installation and maintenance of the software is the responsibility of CES and its members and is covered by CES' contract with The Gordian Group.
  11. The contractor will prepare and submit with each proposal a bar chart or CPM schedule setting forth the manner and sequence of the work. The contractor shall schedule the work in accordance with the time duration set forth in the Request for Job Order Proposal.
  12. Changes in the work requested in a job order shall be dealt with by a change order. Additions or deletions are calculated by using the appropriate item in the Construction Task Catalog®, times the quantity to be added or deleted, times the appropriate adjustment factor. Time will be negotiated as appropriate for the scope of work.

13. Notice to Proceed: The contractor will not begin work on a job order until CES' purchase order is issued and all documents relating to that job order are signed by CES, its member and the contractor and Notice to Proceed has been issued to the contractor.
14. The contractor shall provide for the safety of workers, CES member's personnel and the public, and shall comply with the requirements of regulating agencies for public health and safety, the Occupational Safety and Health Administration's (OSHA) rules and regulations, and with all applicable safety laws and regulations. The contractor will provide temporary enclosures or barricades at excavations and the removable sites of hazardous materials.
  - a. The member will make asbestos containing material (ACM), presumed asbestos containing material (PACM) and lead paint surveys as required to comply with OSHA Standard 1926.1101. If such materials are present and will remain in-place when the contractor enters the site, the member will show the location of such materials on its Request for Job Order Proposal drawings. The contractor will inform its' employees and all tiers of sub-contractors and sub-sub-contractors of such locations and shall provide all training and disclosures required by OSHA Standard 1926.1101.
  - b. Contractor shall take all reasonable precautions and shall have the complete responsibility during performance of the work for preventing the disturbance of any such materials, which are not scheduled for disturbance, removal or abatement as part of the work required by the contract documents. Such precautions shall apply to each individual job order issued under the contract.
  - c. If contractor encounters at the site material reasonably believed to contain ACM, PACM, lead paint or polychlorinated biphenyl (which has not been rendered harmless and is not scheduled during the performance of the work to be rendered harmless) and it must be disturbed for performance of the work, the contractor shall immediately stop work in the area affected and report the condition to the CES and its' member and architect in writing. Work in the affected area shall not resume until the material is rendered harmless, and it is agreed in writing by the CES member, the architect and the contractor (or as otherwise allowed by law) that work in the area should resume.
  - d. Contractor shall not bring to the site, nor allow to be incorporated into the work any material containing ACM, lead paint, or polychlorinated biphenyl (PCB). Any materials incorporated into the work, and later found to contain ACM, lead paint or PCB shall be removed at the expense of the contractor, including all containment, air clearances and disposal, without any additional or incidental costs to CES or its' member.
  - e. Light fixtures supplied or installed under contract with CES shall not contain lead or mercury.
15. All of the contractor's and sub-contractor's personnel while on public property must comply with and conduct themselves in accordance with all federal, state, local and the CES member's policies, rules, regulations and code of conduct. Copies of these policy statements are available upon request to the CES member. The contractor shall require all persons in its employ, directly or by sub-contract, and all representatives of suppliers to comply with these policies while on the CES member's property and/or construction sites.
16. Utility locations and shutoffs:
  - a. Shall be in compliance with 62-14-1 to 62-14-8 NMSA 1978 of the New Mexico State Code regarding the location of utilities. Responsibilities for the location of existing utilities, their protection and repair of damaged utilities shall be assigned in accordance

- with this code. At project site locations, the contractor shall call the One-Call Utility Locate Service in place for that area, or it shall call all utility owners for location of their utilities at the site. Marks placed in response to One-Call Utility Locate Requests will be valid for five calendar days only.
- b. The contractor will submit to the CES member a written request to schedule construction activities which require interruption of any power, water, sewer, laboratory or natural gas, steam, chilled water, vacuum, compressed air, HVAC, security, fire alarms or suppression, or any other systems, or which will impede pedestrian traffic, emergency egress, or vehicle access of any kind.
    - 1) Unless a longer time period for notification of request is required by the specifications or drawings, the contractor shall submit its written request not less than 14 days before all intended utilities shutoffs. In no case shall the period for notification be less than 14 days.
    - 2) The contractor's request for approval of shutoffs or impediment of access shall state the nature of the task, the anticipated duration of the activity and the impact the work will have on adjacent facilities and users.
    - 3) Written approval of the CES member shall be received before commencement of any work requiring shutoff of a utility, or impediment of any access.
    - 4) Unless otherwise instructed in writing by the CES member, the actual closing and opening of valves and switches for shutoff and reconnection of utilities and services shall be performed by CES member personnel only.
17. Reverence Standards
- a. In the event of contradiction, the CES RFB and contract documents shall take precedence over the requirements of industry or other standards referenced in the specifications and drawings.
  - b. Provisions of reference standard specifications shall not be construed or effective to change the duties and responsibilities of the CES, its members, the contractor or the architect from those set forth in the general and supplementary conditions.
18. Disposition of excess natural soils excavated at site:
- a. For job orders on CES member's campuses, all clean, uncontaminated soils excavated and not reused at the site for the work in accordance with the contract documents shall be transported and dumped by the contractor off site, as part of this contract.
  - b. Soils for this purpose shall include only natural soils, sand, clay, gravel, and rock. No limitation shall be placed on the size of rock allowed. No concrete, asphalt, rebar, wood or construction waste of any kind will be allowed.
  - c. All soils intended for deposit at the landfill site shall be first inspected and approved by the architect or his representative. Times and access for such deposition shall be coordinated with, and only by approval of the architect, or his representative.
19. Submittals or requests for prior approval shall not be sent by email, and will not be considered if so received.
20. Record Documents:
- a. Nothing in the general conditions shall be construed to limit the requirements for record documents.
  - b. It is CES' intent that record documents shall provide very detailed information regarding the work of this contract as well as the existing site conditions encountered.

- c. Except as otherwise specified, the contractor shall be required to provide accurate record documents for each portion of the work as part of its bid for that portion of the work, without additional cost to the CES or its members.
21. Delay in Completion – Liquidated Damages: The following is a schedule for liquidated damages.

<u>Job Order Amount</u>	<u>Calendar Day</u>
\$1.00 to \$25,000.00	\$ 235.00
\$25,001.00 to \$100,000.00	\$ 325.00
\$100,001.00 to \$250,000.00	\$ 410.00
\$250,001.00 and above	\$ 500.00

**Categorical Price and Cost Submittal**

1. **Adjustment Factor** – The contractor’s competitively bid price adjustment to the unit prices as published in the Construction Task Catalog®. Contractors must bid eight (8) adjustment factors as follows:
  - a. Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Mondays-Fridays)
    - 1) One for work in normal hours when the total project cost (job order) is in excess of \$60,000 requiring state/federal wage rates.
    - 2) One for work in normal hours when the total project cost (job order) is less than \$60,000 and does not require state/federal wage rates.
  - b. Other Than Normal Working Hours (Defined as all hours not defined as normal hours above)
    - 1) One for work in other than normal working hours when the total project cost (job order) is in excess of \$60,000 requiring state/federal wage rates.
    - 2) One for work in other than normal working hours when the total project cost (job order) is less than \$60,000 and does not require state/federal wage rates.
2. All adjustment factors are expressed as an increase or decrease from the published prices.
3. Plan Checking and Permit Fees – Include as part of the bid any plan checking fee as charged by any municipality, county or state government (or any other applicable entity or agency with jurisdiction over the project) for checking contract documents prior to obtaining a building permit. Include in the bid all costs incurred for permits relating to this requirement.
4. Adjustment of Factors for Option Year – This provision provides a means to adjust the base year adjustment factor to the option year adjustment factors by using actual escalation/de-escalation as measured by the Construction Cost Index (CCI) published in the ENR (formerly known as Engineering News and Record). This clause will apply only to those option periods awarded after the initial contract period end date of the original contract award. The originally bid adjustment factors are valid for the initial contract period beginning with the date of contract award.
  - a. CCI indexes are published monthly. The “base year” for the purposes of this clause is the last 12-month period just prior to the month in which this contract is awarded. The “base year index” is determined by totaling the monthly CCI indexes for each of the 12 months of the “base year” and dividing by 12. The result is the average CCI for the “base year”.

- b. The “first option extension period” for the purposes of the clause is established as May 12, 2007, the end of the initial contract period. The “first option extension index” is determined by totaling the monthly CCI indexes for the initial contract period and dividing by the number of months in the initial contract period. The result is the average CCI for the “first option extension period”.
- c. The price adjustment for the “option extension period” is determined by dividing the “option extension index” by the “base year index”. The “option year adjustment factor” for the option period is determined by multiplying the price adjustment by the original adjustment factor.
- d. All the above computations shall be carried to five (5) decimal places and then rounded to four (4) decimal places. Rounding of numbers shall be accomplished by increasing the fourth decimal place if the fifth decimal is equal to five (5) or greater. If the fifth decimal place is equal to four (4) or less, the fourth decimal shall remain unchanged.

### **Categorical Specifications and Exhibits**

The documents listed below and provided as exhibits are to be considered part of the RFB 2006-014 - JOC Region 5 solicitation and are to be included as part of any contract awarded as a result of this solicitation.

1. Technical Specification Book dated February 8, 2006 (provided by The Gordian Group)
2. Construction Task Catalog® dated February 8, 2006 (provided by The Gordian Group)
3. Three Party Contract (Contract Between Owner, Buyer and Contractor)
4. NMPSFA General Conditions of the Contract for Construction 2005 Edition Version 2.0

**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, Friday, April 7, 2006, 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. No oral, telephone or facsimile of any bid or bid modifications will be considered.

**C. BID REVIEW**

Commencing on April 7, 2006 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 April 28, 2006.

**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. Offeror Qualifications (Tab 4)**

- Yes No Provided \$25,000 Bid Security (Behind Tab 1) (Page 36)
- Yes No Organization – History, Qualifications and Background (Item 1 Page 9)
- Yes No Licensing (Item 2 Page 10)
- Yes No Experience and Past Performance (Item 3 Page 11)
- Yes No Offeror's capacity and ability to perform financially and financial stability. (Item 4 Page 11)

- Yes No Documentation form for security demonstrating bonding rate and capacity (Item 5 Page 13)
- Yes No Described their company's policies and procedures in regards to complying with the New Mexico Public Education Department (NMPED) mandate regarding security and background checks (Item 6 Page 14)
- Yes No Offeror is properly insured (Item 7 Page 14)
- Yes No Demonstrated capacity to provide Payment and performance bonds (Item 8 Page 14)
- Yes No Ability to contract – SPD other contracts (Item 9 Page 14)
- Yes No Justification why offeror's products and services are the most advantages to CES and its members (Item 10 Page 14)

2. Responses to Specific Requests for General Terms and Conditions (Place after Tab 3)

- Yes No Copy of Listing of General Terms and Conditions (Pages 14-33)
- Yes No Signed copy of Acceptance of General Terms and Conditions (Page 64)
- Yes No Offeror's listing of deviations and exceptions to General Terms and Conditions

3. Responses to Specific Requests for Category (Place after Tab 5)

- Yes No Copy of Special Terms and Conditions (Pages 41)
- Yes No Acceptance of Special Terms and Conditions
- Yes No Offeror's listing of deviations and exceptions to Categorical Terms, Conditions and Specifications

4. Cost

- Yes No Offeror submitted costs as required by RFB 2006-014 - JOC Region 5
- Yes No Offeror's Support for CES Pricing (Form E, Page 70)

5. Cost Scoring Evaluation

After offeror's have been determined to be responsive and cost evaluation points have been assigned to each responsive bidder, only offeror's 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.

Basis of Contract Award: The following formula has been developed for the sole purpose of evaluating bids and awarding the contract. Each bidder will be rated on the following award formula. The factors have been weighted as follows:

- A = 400 points for work in normal hours when the total project cost (job order) is in excess of \$60,000 requiring state/federal wage rates
- B = 300 points for work in normal hours when the total project cost (job order) is less than \$60,000 and does not require state/federal wage rates
- C = 100 points for work in other than normal working hours when the total project cost (job order) is in excess of \$60,000 requiring state/federal wage rates
- D = 200 points for work in other than normal working hours when the total project cost (job order) is less than \$60,000 and does not require state/federal wage rates

$$\text{TOTAL POINTS} = \text{A} + \text{B} + \text{C} + \text{D}$$

E. COST CONSIDERATIONS

The negotiated contract between CES and the contractor will be for a fixed-price (adjustment factor) applied to the unit prices calculated from the unit price book and are based on an 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

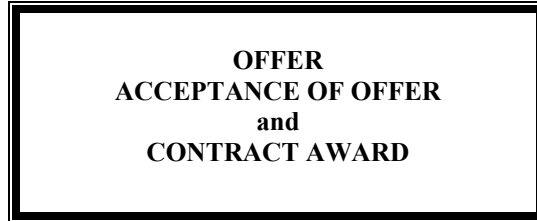
CES is an educational service agency that provides needed education-related services to New Mexico public educational institutions. Under New Mexico law, CES charges a fee to its members when CES provides a product and/or service. There are no other annual membership fees or dues, other than what CES 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.

**SECTION IV: BID FORMS**

**Form A OFFER AND ACCEPTANCE OF OFFER AND CONTRACT AWARD**

**PROJECT:** Job Order Contract for Construction Products and Services for JOC Region 5, which includes Clovis, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Texico and Tucumcari



**OFFER TO BE COMPLETED BY VENDOR**

In compliance with the Request for Bid, the undersigned warrants that I/we have examined the Instruction to Offeror's, 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 \_\_\_\_\_

**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 May 12, 2007 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods ending May 12, 2008, May 12, 2009 and May 12, 2010.

Authorized Signature \_\_\_\_\_ Contract Number \_\_\_\_\_ AGENCY SEAL  
Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2006. or STAMP



**Form C      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 the category except as listed below:

---

Signature (should match cover signature)

## **Form D – INDEFINITE QUANTITY UNIT PRICE SCHEDULE**

1. The undersigned, having familiarized himself with the local conditions affecting the cost of the work, and with the contract documents, hereby proposes to serve as the job order contractor for Cooperative Educational Services as required by the contract documents, to perform everything required to be performed and to provide and furnish all of the labor, materials, tools, equipment, expendable and otherwise, and to perform and complete in a workmanlike manner and within the specified time the work required, all in accordance with the contract documents and unit prices adjusted as hereinafter set forth.
2. In submitting this bid it is understood by the offeror that if written notice of the acceptance of this bid is mailed, faxed or delivered to the undersigned, the undersigned agrees to execute and deliver a contract in the prescribed form and furnish the required bond within 10 days after the contract is presented for signature.
3. The offeror understands that Cooperative Educational Services reserves the right to reject any or all bids, to waive minor informalities in any bid, to award the contract in the best interest of CES.
4. Offeror acknowledges receipt of the following addendum/addenda):  

---
5. The State of New Mexico In-State Bidder's Preference of five percent (5%) will apply to the total shown in Line 9 of each bid form of the award formula.
6. All prices and information required on the bid form must be typewritten or written in ink.

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

7. Schedule of Prices – The contractor shall perform all work required, necessary, proper for or incidental to completing the detailed scope of work called for in each individual job order issued pursuant to this contract for the unit prices set forth in Construction Task Catalog® (CTC) and the following adjustment factors:

### **PROJECTS WITH REQUIRED STATE OR FEDERAL WAGE RATES**

#### **Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Monday-Friday)**

Factors shall be expressed as: **1.1500** if you are adding fifteen percent (15%) to the unit costs found in the Construction Task Catalog® or as: **.9500** if you are offering a five percent (5%) discount to the unit costs found in the CTC. These figures are for example only.

NOTICE – The attention of offerors is particularly called to the fact that, unless the bid is made in strict conformity with the directions given, it may be rejected.

**Normal Working Hours (Defined as 7:00 a.m. to 5:00 p.m. Monday-Friday)**

- a. For work in normal hours when the total project cost (job order) is in excess of \$60,000 requiring state/federal wage rates

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(Specify to four (4) decimal places)

- b. For work in normal hours when the total project cost (job order) is less than \$60,000 and does not require state/federal wage rates

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(Specify to four (4) decimal places)

**Other Than Normal Working Hours 5:00 p.m. to 7:00 a.m. Monday to Friday, and All Day Saturday, Sunday and Holidays**

- c. For work in other than normal working hours when the total project cost (job order) is in excess of \$60,000 requiring state/federal wage rates

		•				
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(Specify to four (4) decimal places)

- d. For work in other than normal working hours when the total project cost (job order) is less than \$60,000 and does not require state/federal wage rates

		•				
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(Specify to four (4) decimal places)

8. Basis of Contract Award: The following formula has been developed for the sole purpose of evaluating bids and awarding the contract. Each offeror must complete the following award formula. The factors have been weighted as follows:

<b><u>Factor</u></b>	<b><u>Weight</u></b>
Normal Time Requiring Wage Rates	40%
Other Than Normal Time Requiring Wage Rates	10%
Normal Time Not Requiring Wage Rates	40%
Other Than Normal Time Not Requiring Wage Rates	10%
 Total	 100%

9. Cooperative Educational Services reserves the right to revise all arithmetic errors in calculations for correctness.

10. All prices and information required on the bid form must be typewritten or written in ink.

ADDRESS OF FIRM

RESPECTFULLY SUBMITTED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
BY \_\_\_\_\_

PHONE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

NEW MEXICO CONTRACTOR'S LICENSE NUMBER \_\_\_\_\_

IN-STATE CERTIFICATION NUMBER \_\_\_\_\_

APPLICABLE MINIMUM WAGE ACT REGISTRATION NUMBER \_\_\_\_\_

LICENSE CLASSIFICATION(S) \_\_\_\_\_

EXPIRATION DATE \_\_\_\_\_

**TYPE OF COMPANY (check applicable type)**

- 1. Corporation \_\_\_\_\_
- 2. Partnership \_\_\_\_\_
- 3. Sole Proprietorship \_\_\_\_\_
- 4. Other \_\_\_\_\_

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

**Form E            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 RFBs, which is a big cost of doing business, a response to CES opens the door to over 159 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

**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: \_\_\_\_\_

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

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

**Form G      QUESTIONNAIRE FOR OFFEROR**

**Company Name**

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*Circle Answers Where Appropriate*

1. 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

2. 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:

\_\_\_\_\_

3. 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: \_\_\_\_\_

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

4. Additional contacts for CES.

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

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

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

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

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

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

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

6. Please provide company's New Mexico Gross Receipt Tax ID Number \_\_\_\_\_

**Form H      FORM FOR REFERENCES**

List five (5) New Mexico business references, including contact person(s) and phone numbers.  
(Please print or type)

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

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. \_\_\_\_\_

**Form I**                    **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 159 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.

**Form J            Offeror Qualifications (Tab 4)**

**This is reprinted from Section 1, No. 4 – Offer Qualifications – Please provide your responses on this form and submit with your bid.**

Provide documentation and information as requested relating to the history of your company that includes its' philosophy of doing business, its' background, expertise, experience, past performance and ability to provide the construction products and 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.

- 1) Organization
  - e) How many years has your organization been in business as a contractor?
  - f) How many years has your organization been in business under its' present business name?
  - g) Under what other or former names has your organization operated?
  - h) If your organization is a corporation, answer the following:
    1. Date of incorporation
    2. State of incorporation
    3. President's name
    4. Vice-President's name(s)
    5. Secretary's name
    6. Treasurer's name
  - e) If your organization is a partnership, answer the following:
    1. Date of organization
    2. Type of partnership (if applicable)
    3. Name(s) of general partner(s)
  - f) If your organization is individually owned, answer the following:
    1. Date of organization
    2. Name of owner
  - g) If the form of your organization is other than those listed above, describe it and the name of the principals.
  - h) Where are the headquarters of the company physically located? Provide address, city, state and zip code. Provide same 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 organization provided the services/products requested in this solicitation?
  - i) For the key individuals who will be marketing, consulting, estimating, coordinating supervising and managing before, during and after-sales services, warranty, maintenance, support services offered in response to this solicitation, in your response, provide a listing of and the qualifications of

these key individuals. Provide the name, title, qualifications and experience in the area(s) of services that they will be providing.

- j) Describe your organization's current in-house workforce, equipment and facilities available to perform under this solicitation.
- 2) Licensing
    - a) What year was your organization first licensed as a contractor in the State of New Mexico?
    - b) List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.
    - c) List jurisdictions in which your organization's partnership or trade name is filed.
    - d) 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.
    - e) Has your organization or any of the qualifying parties named above ever conducted business, past or present, as a contractor under a different business name? If yes, what name(s) and when.
  - 3) Experience and Past Performance
    - a) List the categories of work that your company normally performs with its' own forces.
    - b) Provide a complete list of major construction projects (over \$60,000 in total construction costs) that your company had or has in progress, as of January 1, 2006, giving the name of project, owner, architect, contract amount and scheduled completion date. Please state the total worth of work in progress and under contract as of March 30, 2006.
    - c) Within the last five (5) years, has your company performed work on New Mexico public work projects? If the answer is "yes", describe each project and your company's role. In your description, include the following information on each project described.
      - 1) Project name
      - 2) Owner of the project
      - 3) Owner representative or contact
      - 4) Contract amount
      - 5) Architect/Engineer (A/E)
      - 6) Date of completion
      - 7) Percentage of the cost of the work performed with your own forces
    - d) List all projects your company has completed beyond the scheduled date of substantial completion and the number of days past the scheduled substantial completion date on which substantial completion was certified as indicated by owner and architect signature.
    - e) List all projects that your company failed to complete the project, including all punch list items identified by the owner and/or owner's representative by the date agreed to by all parties.

- f) In the last five years, has your company provided any extended warranties on a project and not been able to fulfill to the owner's satisfaction? If yes, for each describe the issues. For each include the following information:
  - 1) Project name
  - 2) Owner of the project
  - 3) Owner representative or contact
  - 4) Architect/Engineer (A/E)
  - 5) Date of substantial completion
  - 6) Type of warranty coverage
  - 7) Reasoning for inability to resolve, such as owner not fulfilling obligations
- 4) Insurance, Claims, Suits and Disputes
  - a) 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 and/or its member as a certificate holder. Normally, this is a free service provided by an insurance company.
  - b) Provide written documentation and evidence relating to the surety company that will be providing payment and performance bonds for projects performed under this solicitation. Please address the following:
    - 1) Name, address, phone number and agent's name
    - 2) Letter from the surety company stating your firm's current bonding rate and your organization's total bonding capacity
    - 3) Has your company used this surety company for more than two (2) years? If no, please provide the names, addresses, phone numbers, contact names and dates under agreement with any other surety company used in the past three (3) years.
  - c) Are there any judgments, claims, arbitration proceedings, suits or disputes pending or outstanding against your company or its' officers in New Mexico or any other jurisdiction?
  - d) Has your company filed any law suits or requested arbitration with regard to construction contracts within the last five years?
  - e) If the answer to items c) or d) above is yes, please provide complete details, including but not limited to:
    - 1) Name and location of project owner
    - 2) Name and location of project architect
    - 3) Name and location of project
    - 4) Nature of and amount in dispute
    - 5) Forum in which dispute was presented, that is AAA arbitration; mediation; district court (state, file name, and number)
    - 6) Manner in which dispute was resolved
  - f) For the last five (5) years list any projects where your surety has been given notice of default of your company's performance under either its' performance bond or labor and material men's payment bond. For each project state the nature of the claim against your company and the outcome of each such claim.

- g) Within the last five (5) years has any surety on any project you have worked on paid or settled work that your company had contracted to complete? If yes, give complete details.
  - h) Within the last five (5) years has your company been a party in civil litigation or administrative proceedings which have alleged a violation of any of the following: environmental law or regulation; law banning workplace discrimination; law governing wages, hours, labor or employment standards; conduct of occupations; law governing professions or regulated industries; or any other law which would reflect, if convicted, a lack of business integrity or honesty? If yes, give complete details.
  - i) Within the last five (5) years has your company had a tax lien filed against it by any taxing authority? If yes, provide the following: when, by what tax authority and has the lien been released? If no, describe action your company has taken with respect to the lien.
  - j) Within the last five (5) years has your company been debarred from bidding on or performing work for any public agency (federal, state or local public body) as a contractor or subcontractor? If yes, provide complete details, including actions your company has taken to prevent such debarment in the future.
  - k) Miscellaneous items
    - 1) Is the workers' compensation experience modifier for the company as reported by your insurer less than 2.0? If no, what is your reported E-Mod?
    - 2) Is the incident/injury rate for your company as reported by your insurer less than the Bureau of Labor Standards published rate for New Mexico? If yes, what is the BLS published rate for New Mexico?
- 5) Financial Resources and Banking Information
- a) 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, the offeror is asked to provide financial statement, preferably audited, including your company's latest balance sheet and income statement showing the following items:
    - 1) Current assets (e.g. cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses)
    - 2) Net fixed assets
    - 3) Other assets
    - 4) Current liabilities (e.g. accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes)
    - 5) Other liabilities (e.g. capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings)
    - 6) Name and address of firm preparing attached financial statement, and date thereof
    - 7) Is the attached financial statement for the identical company named on page one?

- 8) If not, explain the relationship and financial responsibility of the company whose financial statement is provided (e.g. parent-subsubsidiary).
  - 9) Provide written evidence or other documentation relating to your banking and/or lending institution. Include the following:
    - a) Names, addresses, phone numbers and contact names
    - b) Letters from listed financial/lending institution that indicates the amount of time your company has had a relationship with them.
    - c) Your 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".
  - 10) 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.
  - 11) Within the last seven (7) years has your company been the subject of any voluntary or involuntary bankruptcy, insolvency or receivership proceeding? If so, please state the case name(s) and court file number of each proceeding, the nature of the proceeding, whether such proceeding is ongoing and the resolution of each completed proceeding.
6. 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.
  7. Has and does your company incorporate formal quality assurance and control processes on public works projects? If yes, describe the processes with their expected results and the benefits received by the owners by implementing such a program.
  8. 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 for 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 CES members? 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?

9. 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?
10. In comparing previous projects your organization has completed, do you see any areas where your organization possesses experience, production or service facilities, personnel or other service reputation that should be considered with your ability to provide on time quality construction projects for New Mexico educational institutions? If yes, fully describe these attributes, resources and how they are utilized to benefit the owner’s projects.

**Form K      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. Twenty-Five Thousand Dollar (\$25,000) Bid Bond (**PLACE BEHIND TAB 1**)
- \_\_\_\_\_ 2. **Form A** – The signed Offer and Contract Award (page 64) (**PLACE BEHIND TAB 1**)
- \_\_\_\_\_ 3. **Form B** – The signed Affidavit (page 65) (**PLACE BEHIND TAB 1**)
- \_\_\_\_\_ 4. **Form C** – Signed copy of Acceptance to General Terms and Conditions (page 66) (**PLACE BEHIND TAB 3**)
- \_\_\_\_\_ 4a. A list of any exemptions or modifications of General Terms and Conditions (page 66) (**PLACE BEHIND TAB 3**)
- \_\_\_\_\_ 5. **Form D** – Indefinite Quantity Unit Price Schedule (page 67) (**PLACE BEHIND TAB 6**)
- \_\_\_\_\_ 6. **Form E** – Offeror’s Support for CES Prices (page 70) (**PLACE BEHIND TAB 7**)
- \_\_\_\_\_ 7. **Form C** – Signed (bottom section) copy of Acceptance to Categorical Terms and Conditions (page 66) (**PLACE BEHIND TAB 5**)
- \_\_\_\_\_ 7a. List of any exemptions or modifications of Categorical Terms and Conditions (page 66) (**PLACE BEHIND TAB 5**)
- \_\_\_\_\_ 8. **Form F** – Support and Maintenance Plans (page 71) (**PLACE BEHIND TAB 7**)
- \_\_\_\_\_ 9. **Form G** – Questionnaire for Offeror (pages 72-73) (**PLACE BEHIND TAB 7**)
- \_\_\_\_\_ 10. **Form H** – Form for References (page 74) (**PLACE BEHIND TAB 7**)
- \_\_\_\_\_ 11. **Form J** – A point-by-point response for the 10 items under Offeror’s Qualifications (pages 76-81) (**PLACE BEHIND TAB 4**)
- \_\_\_\_\_ 12. Letters of financial stability and credit limit (**PLACE BEHIND TAB 4**) (requested in No. 11 above)
- \_\_\_\_\_ 13. Letters form Surety Company indicating bonding rate and capacity. (**PLACE BEHIND TAB 4**) (requested in No. 11 above)
- \_\_\_\_\_ 14. Certificate of Insurance from Insurance Carrier. (**PLACE BEHIND TAB 4**) (requested in No. 11 above)
- \_\_\_\_\_ 15. Copies of all Contractor licenses (**PLACE BEHIND TAB 4**) (requested in No. 11 above)
- \_\_\_\_\_ 16. All miscellaneous forms that apply (**PLACE BEHIND TAB 8**) (requested in No. 11 above)
- \_\_\_\_\_ 17. Appendix with catalogs, slicks, model information, etc. (**PLACE BEHIND TAB 10**)
- \_\_\_\_\_ 18. **Form K** – Submission Check-Off Form (page 82) (**PLACE BEHIND TAB 9**)

\_\_\_\_\_  
Signature