

**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, August 27, 2007**

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RFB Number: RFB 2008-001A  
Issue Date: Monday, August 27, 2007  
Commodity Titles:  
**914 GB98 Construction Services**

**Non-Required Pre-Bid Conference**

(Please Refer to Item C: Non-Required Pre-Bid Conference, Page 6)

**RFB Due Date** **Friday, October 5, 2007**

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Day / Date: Friday, October 5, 2007  
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 office is in the third building on the left. The front office personnel will receive and sign in 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, October 5, 2007, at 1:30 p.m. local time. This solicitation consists of six (6) individual documents; RFB 2008-001A: GB98 Construction Services; RFB 2008-001B: Paving, Concrete, Site Work and Other Related Services; RFB 2008-001C: EE98 Construction Products and Services; RFB 2008-001D: Installation, Maintenance and Repair of Windows and Doors; RFB 2008-001E: MM98 Plumbing and HVAC Services (Heating, Cooling, Air Conditioning, Radiant Heat, Chillers, Boilers, Cooling Towers, and Pumps), Including Design, Installation and Maintenance; RFB 2008-001F: Source of Roofing Materials, Installation, Inspection, Maintenance and Repair Services.

There will be a non-required Pre-Bid Conference held in four locations throughout the state of New Mexico starting on Monday, September 10<sup>th</sup>, 2007, Roswell Public School's Administrative Complex Board Room, 300 N. Kentucky, Roswell, NM; Tuesday, September 11<sup>th</sup>, 2007, Las Cruces Public School's Administrative Complex Board Room, 505 South Main, Las Cruces, NM; Wednesday, September 12, 2007, Cooperative Educational Services, 4216 Balloon Park Road NE, Albuquerque, NM; and Thursday, September 13, 2007, Central Consolidated Schools, Shiprock Administrative Offices Board Room, Shiprock, NM. All meetings will start at 1:30 p.m. local time.

All bids must be submitted in a sealed envelope marked "**SEALED BID – RFB 2008-001A, B, C, D, E or F**" 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, email (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, August 26, 2007  
Sunday, September 2, 2007

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

## COOPERATIVE EDUCATIONAL SERVICES

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Phone (505) 344-5470 • Fax (505) 344-9343

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## **SECTION I                    INSTRUCTIONS TO OFFERORS**

### **A. INTRODUCTION**

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

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

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

### **C. NON-REQUIRED PRE-BID CONFERENCE**

CES will be holding non-required pre-bid conferences in four locations throughout the state. The pre-bid conferences are intended to assist prospective bidders in better understanding the CES procurement process by reviewing and discussing the solicitation document; answering and clarifying questions that potential bidders may have regarding the process or to preparing their response. These meetings have been scheduled for Monday, September 10<sup>th</sup>, 2007, Roswell Public School's Administrative Complex Board Room, 300 N. Kentucky, Roswell, NM; Tuesday, September 11<sup>th</sup>, 2007, Las Cruces Public School's Administrative Complex Board Room, 505 South Main, Las Cruces, NM; Wednesday, September 12, 2007, Cooperative Educational Services, 4216 Balloon Park Road NE, Albuquerque, NM; and Thursday, September 13, 2007; Central Consolidated Schools, Shiprock Administrative Offices Board Room, Shiprock, NM. All meetings will start at 1:30 p.m. local time.

### **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 may call CES either to determine if addenda have been issued or to request to CES by phone or fax that copies of the addenda be mailed. Questions received less than seven (7) days prior to bid due date will not be answered.

### **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 bid 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 offeror organize its bid in the following manner:**

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

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

- Tab 1: The Offer
- Bidders Declaration Form (page 69) **Form A**
  - \$25,000 Special Security Bid Bond (page 43)
  - Signed Acceptance of Offer (page 70) **Form B**
  - The RFB Affidavit page, notarized signature required (page 71) **Form C**
  - Any Addendums if issued.
- Tab 2: Introduction
- Executive Summary (a one page description of what you are proposing on this contract)
- Tab 3: General Terms and Conditions
- Terms and Conditions (copy of each page in order)
  - Acceptance of all General Terms and Conditions (first line must be signed (page 76) **Form E**
  - Listing of any exceptions to General Terms and Conditions (page 76) **Form E**
- Tab 4: Offeror Qualifications
- Answers to questions on **Form J** (page 82)
  - Sub-Contractors List
  - Copies of Contractor's NMCID Licenses
  - Confirmation of NMDOL Registration
  - Copy of New Mexico Preference Certificate
  - Documentation from offeror's security company
  - Certificate of Insurance (page 18)
- Tab 5: Items relating to Products and Services
- Special Terms and Conditions for **GB98 General Construction Services** (pages 58 - 62)
  - Acceptance of Special Terms and Conditions (page 76) **Form E**
  - Listing of any exceptions to the Special Terms and Conditions (page 76) **Form E**
  - Required Responses and documentation
- Tab 6: Cost Quotation
- Price information, price sheets from RFB (pages 72-75) **Form D, D-1 and D-2**
  - Additional pricing information.

- Tab 7: Required Forms
- Offeror's Support for CES Prices (page 78) **Form G.**
  - Questionnaire for Offeror (page 79) **Form H**
  - Support and Maintenance Plans (page 77) **Form F**
  - Manufacturer's documents indicating authorized representative, distributor, dealer and/or installer form (page 81) **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 89) **Form L**
- Tab 10: Literature, slicks, samples and supporting printed material

Step Three: **Go to the last page of this RFB and prepare the Submission Check-off Form. Sign it and place it after Tab 9. Send your bid to CES so that it arrives on or before Friday, October 5, 2007, 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 answers or responses to the requests listed below. Any offeror failing to respond completely may be considered non-responsive. Please arrange responses by placing them after Tab 4. One essential part of the evaluation process is for the evaluator(s) to have some information about the company being evaluated. For the evaluator(s) to know if the bid being read is within the capability of the offeror, factual information about the offeror is vital. After the evaluation process is finished and a contract is awarded, the information may be provided to the CES member considering the purchase. This is your opportunity to present your company to those interested evaluator(s) or, if awarded, member staff. Note this information is also contained on Form J.

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.

a. Organization

- 1) How many years has your organization been in business as a contractor?
- 2) How many years has your organization been in business under its' present business name?
- 3) Under what other or former names has your organization operated?
- 4) If your organization is a corporation, answer the following:
  - a) Date of incorporation
  - b) State of incorporation
  - c) President's name
  - d) Vice-President's name(s)
  - e) Secretary's name
  - f) Treasurer's name
- 5) If your organization is a partnership, answer the following:
  - a) Date of organization
  - b) Type of partnership (if applicable)
  - c) Name(s) of general partner(s)
- 6) If your organization is individually owned, answer the following:
  - a) Date of organization
  - b) Name of owner
- 7) If the form of your organization is other than those listed above, describe it and the name of the principals.
- 8) 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?
- 9) 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.
- 10) Describe your organization's current in-house workforce, equipment and facilities available to perform under this solicitation.

b. Licensing

- 1) What year was your organization first licensed as a contractor in the State of New Mexico?
- 2) List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.
- 3) List jurisdictions in which your organization's partnership or trade name is filed.
- 4) 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.
- 5) 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?

- c. Experience and Past Performance
- 1) List the categories of work that your company normally performs with its' own forces.
  - 2) 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, 2007, 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 June 30, 2007.
  - 3) 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.
    - a) Project name
    - b) Owner of the project
    - c) Owner representative or contact
    - d) Contract amount
    - e) Architect/Engineer (A/E)
    - f) Date of completion
    - g) Percentage of the cost of the work performed with your own forces
  - 4) 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.
  - 5) 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.
  - 6) 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:
    - a) Project name
    - b) Owner of the project
    - c) Owner representative or contact
    - d) Architect/Engineer (A/E)
    - e) Date of substantial completion
    - f) Type of warranty coverage
    - g) Reasoning for inability to resolve, such as owner not fulfilling obligations
- d. Insurance, Claims, Suits and Disputes
- 1) 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.
  - 2) 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:
    - a) Name, address, phone number and agent's name
    - b) Letter from the surety company stating your firm's current bonding rate and your organization's total bonding capacity

- c) 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.
- 3) 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?
- 4) Has your company filed any law suits or requested arbitration with regard to construction contracts within the last five years?
- 5) If the answer to items c) or d) above is yes, please provide complete details, including but not limited to:
  - a) Name and location of project owner
  - b) Name and location of project architect
  - c) Name and location of project
  - d) Nature of and amount in dispute
  - e) Forum in which dispute was presented, that is AAA arbitration; mediation; district court (state, file name, and number)
  - f) Manner in which dispute was resolved
- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.
- 11) Miscellaneous items
  - a) 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?
  - b) 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?

e. Financial Resources and Banking Information

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 (that is, 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 (that is, accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes)
  - 5) Other liabilities (that is, 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 (that is, 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 offeror. 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.
- f. Describe your company's policies and procedures in regards to complying with the New Mexico Public Education Department (NMPED) mandate regarding security and background checks for individuals working and/or providing services within public school buildings. Please describe or provide a sample of the type of background check that you are willing and able to perform on your providers in order to comply with this requirement.

- g. 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.
- h. CES is the administrative agency of the Reinstated and Amended 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?
- i. This is an RFB and while CES is required to base an award strictly on the lowest price, any time an offeror 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 an offeror. 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?
- j. 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 member'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.

**Contract Addendum:** Written changes, responses to questions and/or drawing issues before the date bids are open. An addendum may interpret or modify the bidding documents by making additions, deletions, clarifications or corrections.

**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. 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.

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

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

**Cancellation:** CES may, by written notice stating the extent and effective date, cancel this contract for convenience in whole or in part, at any time. CES will pay 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.

**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 offeror 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 an offeror 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.

**Contingency:** A value added to project's estimated cost to allow for unforeseen problems. This may be derived either through statistical analysis of past-project costs or by applying experience gained on similar projects. Contingency is not intended for changes in the project's scope of work.

**Contract:** Any agreement for the procurement of items of tangible personal property, services or construction.

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

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

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

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

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

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

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

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

**Contractor's Price List:** The contractor will furnish to and keep current with CES copies of the approved price list to facilitate eligible procurement agencies in placing orders. Price list(s) on file must clearly state and identify any/all products/services offered with their associated costs. When contractor offers a discount off a retail price, manufacturer's Suggested Retail Price (SRP), R. S. Means and/or other acceptable pricing document, they must include a complete copy of the document and/or the document must be available to the general public by electronic media or by the Internet.

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

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

**Credit Hold:** Is defined as the contractor refusing to process any CES purchase order due to CES' inability to pay an invoice because it has not received the payment from its member(s). CES will investigate, pursue and take whatever action it can to collect any outstanding payment due to contractor for acceptable products/services delivered. 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.

**Delivery:** Delivery of products and/or construction services shall be as stipulated within contractor's cost proposal and other project documents which have been accepted by all parties (buyer, contractor and owner). The contractor agrees to notify CES if an order cannot be processed and/or delivered within the stipulated time frame and/or the agreed upon time lines. The agency placing the order will then have the option of invoking other options enumerated within the buyer, contractor and owner Three Party Agreement. Ownership of products and services happens only after acceptance of delivery by the owner.

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

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

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

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

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

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

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

**Federal Requirements:** Contractor agrees, when working on any federally assisted projects with more than Sixty Thousand Dollars (\$60,000) 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,  
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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.

**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 contract. Prior to commencing any work, any subcontractor must procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime contractor. All subcontractors will provide workers' compensation insurance, which waives all subrogation rights against the prime contractor and CES member.

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

**Lease and Rentals:** Contractor may allow members to enter into rent, lease or lease purchase agreements, providing such agreements are in compliance with New Mexico Statutes and Public RFB 2008-001A

Education Department policies, rules and regulations. CES must receive a copy of the executed leasing documents before it will process a purchase order. CES will not collect lease payments. Offeror agrees that leases will be in compliance with the Uniform Commercial Code. All terms of leasing must be included in the bid, with interest rates described as related to a government standard. Offeror must indicate in its response to this solicitation if the shipping costs for the return of leased or rented equipment are the responsibility of the procurement unit, and what that cost will be. No sale of a contract to a third party will be made without informing CES and the procurement unit of the transfer. If contractor sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original contractor.

**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 contractor'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 herein after agreed upon as liquidated damages per calendar day of delay until the work is determined by CES and its member to be substantially complete. Liquidated damages will be determined on a project by project basis.

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

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

warranty work, offerors must include with the bid details of any such arrangement. Factory certified and trained technicians will be available to cover all parts of the state. Maintenance service in metropolitan areas of New Mexico should be available within 12 business hours, service in rural areas within 24 business hours. Any maintenance facility must have sufficient parts inventory to provide quality service on units sold to Members. On small pieces of equipment, out-of-state manufacturers may offer mail-in service, if normal turn around time is 48 hours.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Other Contractor:** A contractual term to describe one who is not a party to an individual project/contract being performed under this RFB, but who also has a construction contract with the same CES member for work at the same project site, therefore creating a need for recognition, coordination and cooperation among the member's several engaged contractors at that site.

**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.

**Owner's/Member's Agent/Representative:** Any individual such as an architect, engineer, construction manager or staff member, designated by the member to represent; communicate, coordinate and work with the contractor, before and during a construction project. The owners Representatives are usually responsible for or involved in the planning, designing, coordinating, supervising and signing off on the products and services being provided and/or performed by the contractor.

**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.

**Participating Entities:** Any agencies and/or organizations classified as tax-exempt non-public educational institutions, local public bodies and state agencies within the State of New Mexico, and public educational institutions outside the State of New Mexico that have signed an agreement permitting them to participate in and purchase professional services, construction services and tangible personal property through the CES procurement program.

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

**Patent and Copyright Infringement:** Contractor will, at its expense, defend CES and its members against any claim that any equipment or software supplied, hereunder, even if such equipment or software is modified by CES or its members subject to the last paragraph of this section, infringe a patent or copyright in the United States, Puerto Rico or a U.S. territory, and will pay all costs, damages and attorney's fees that a court finally awards as a result of such a claim. To qualify for such a defense and payment, CES must:

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

CES will be reimbursed for all expenses incurred by CES in fully cooperating with contractor as specifically requested by contract. CES is not required to incur any expenses specified in this paragraph that are not reimbursable by the contractor. If any party in any way involves any CES member, the same provisions that apply to CES in this paragraph will apply to the CES member. Contractor's obligation under this section is conditioned on CES' agreement that if the subject of such a claim, CES will permit the contractor, at its expense and option, either to procure the right for CES and its members to continue using the equipment and/or software, or to replace or so modify them with equipment or software which are functionally equivalent so that they become non-infringing. If neither of the foregoing alternatives is available on terms, which are reasonable in contractor's judgment and satisfactory to CES, CES will request its members to return the equipment or software on written request by contractor at contractor's expense.

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

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

will not preclude contractor's obligation to others not having modified their equipment or software.

**Payment Application:** A document authorized by CES and its members to be utilized by the contractor to request payment for products and construction services delivered as of a identified date and based on the construction contract's schedule of values previously submitted and agreed to by all parties. Payment applications must be submitted to and approved by the member prior to the contractor submitting an invoice to CES.

**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.

**Penalty:** Generally, a monetary penalty assessed to and contractually payable by a contractor to a CES member for failing to provide, perform and/or complete a construction project in accordance with the project documents.

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

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

**Pricing -Alternative Method of Costing:** This method covers any construction product and service not covered by the R.S. Means Cost Books, established and approved price list, is not a custom designed and manufactured item to meet the requirements of an individual construction project, sole source and is not a item. The alternative cost is calculated as follows:

1. The offeror must prepare, issue and receive three written quotes from available suppliers and select the supplier that offers the products and services that meets the stipulated requirements and specifications and is the most cost effective. All quotes must be made available upon request.
2. The offeror indicated the percent of overhead and/or markup to be added to these costs to obtain the normal and customary retail price.
3. The offeror indicated the percent of discount offered to CES and its members on the normal and customary retail price.
4. The CES price is calculated by taking the product and services cost to the offeror plus the indicated percent of profit/overhead which equals the normal and customary retail price. Then the indicated CES discount is applied to obtain the CES price. Example: Item cost \$1,000 percent of profit/overhead 20% equal retail price of \$1,200, less the CES discount 10% \$100 equal the CES price of \$1,100.

**Pricing – R.S. Means Method of Costing:** The R.S. Means Company is a nationally recognized company that has developed, established and publishes a CD Rom and books containing costs for a wide range of the various construction services and products covered by this RFB. The current CD/books has been adopted by CES as the primary source when applicable to establish the costs of construction products and services provided under this RFB that is not clearly stated and identified within an established published price list provided as part of the offeror's response. R.S. Means based proposals must utilize the current year, standard cost data that pertains to the type of construction project being proposed.

1. Only the following cost data titles will be utilized unless pre-approved by CES.
  - a. Repair and Remodeling Cost Data
  - b. Building Construction Cost Data
  - c. Facility Construction Cost Data
2. The offeror the offeror will submit a R.S. Means cost spreadsheet listing all construction product and represents that are required to complete the project's scope utilizing the R.S Means cost column (including labor, materials, overhead and profit) that will be charged the CES member. Any special cost modifiers available and utilized in preparing a cost proposal must be identified and approved by the CES member.
3. The offeror will indicate an R.S. Means Multiplier/Factor to be applied to the R.S. Means spreadsheet cost proposal total. An R.S. Means multiplier/factor of 0.92% indicates that the contractor will charge the Means Total Cost for each assembly item times 0.92 as the billable amount; a multiplier/factor of 102% indicates that the contractor will charge the Means Total Cost for each assembly item times 1.02 as the billable amount. Please see R.S. Means Multiplier/Factor for cost to be included in multiplier/factor.

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

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

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

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

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

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

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

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

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

1. The procurement unit and the contractor agree to the terms of the progress payments prior to issuing a purchase order to CES and the terms and conditions are so noted on the procurement unit's purchase order or are communicated to CES in writing.
2. The communication to CES describes the terms and timelines of acceptable delivery, the associated amounts to be paid and the schedule of payments.
3. The procurement unit has established and included in its communication to CES a satisfactory method of verifying progress and/or acceptable delivery.

4. Payments will be made only after actual products and/or services are verified and received and CES is in position of any/all forms/documents/invoices required herein.
5. Payments will be made in full compliance with the procurement units' local board policies, procedures and any and all other applicable state or local rules, regulations and statutes.

**Progress Payments on Construction:** All progress payments must be invoiced through CES. It is the responsibility of the procurement unit and/or 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.

**Project Documents:** Documents that consist of project specifications, drawings, contract agreement, terms and conditions, contractor's cost proposal, bonds, permits, CES/NMPSFA/owner Three-Party Agreement and other such documents prepared by and agreed to CES, its member, contractor and/or PSFA relating to an individual construction project covered by this RFB.

**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.

Protests shall be filed with Dr. Max Luft, the Executive Director of CES, and shall be resolved; in accordance with New Mexico statute and CES board policies and administrative procedures. A protest must be in writing and must be filed with the Executive Director of CES at 4216 Balloon Park Road Albuquerque NM 87109. A protest of a proposed award or awards must be filed within fifteen (15) days after the protester knows or should have known the basis of the protest, whichever is earlier. A protest filed on the fifteenth day must be received by 5:00 pm, MST. A protest must include:

1. The company name, contact name, address and telephone number of the protester;
2. The original signature of the protester or its representative;
3. Identification of the solicitation by solicitation number;
4. A detailed statement of the legal and factual grounds of protest including copies of any relevant documents; and
5. The form of relief requested.

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

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

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

**Quality:** Unless otherwise modified elsewhere in this solicitation, contractor warrants that for one (1) year after acceptance of the equipment or materials by member, they shall be:

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

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

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

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

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

**R.S. Means Multiplier/Factor:** Is defined as the amount (+/- percentage) that the contractor needs to apply to the R.S. Means Cost Proposal to obtain the required amount for the contractor to prepare for; execute and complete any individual scope of work covered by the R.S. Means Cost Books. The multiplier/factor must include all costs relating to the following and the listed items are provided as examples only:

1. General cost such as home office overhead; all types of insurance, fringe benefits, payroll taxes, worker's compensation etc.; site visits; project meetings and owner support services; project development; project office staff supplies, equipment and paperwork; inspection and testing fees; training; supervision; project mobilization and close-out and other related costs.
2. Subcontractor's overhead and profit such as project development; project oversight and supervision, project mobilization, meetings, close-out; all types of insurance, fringe benefits, payroll taxes, worker's compensation etc.; subcontractors bond if applicable; administrative and other related cost.
3. Construction related cost such as developing, preparing, modifying and submitting paper work relating to project proposals, sketches, drawings, NMPSFA documents, change order submittal, as-built drawings, preparing and submitting close-out documents; provide project information electronically if required; incidental engineering and architectural services; safety and protection equipment, supplies, materials and signage; vehicles such as pickup trucks, vans, utility trucks, service trucks, office trailers and portable toilets, for contractor's use, storage devices/containers supplies; tools equipment and materials, etc.; and temporary utilities.
4. Other project costs such as transporting of workers to and from the job site; housing workers while on the project; transporting supplies, materials and equipment to and from the job site; and differences in project size, complexity, location; etc.

**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.

**Schedule of Values:** A schedule of itemized products, services and other related costs that establishes the value or cost of each part and/or element required to prepare for, execute and complete an individual construction project. It shall be used as the basis for preparing contract documents and progress payments.

1. Schedule shall show breakdown of labor, materials equipment and other costs as directed by the CES member.
2. Costs shall be in sufficient detail to indicate separate amounts for each major subsection of the work. The contractor may include an item for bond, temporary facilities and job mobilization if applicable.
3. Schedule shall be prepared on 8-1/2-inch by 11-inch white paper.
4. Use the major subsections of the Detailed Scope of Work as the basis for schedule format. List sub-items of major products or systems as appropriate or when requested by the owner.
5. When requested by the owner, support values with data that will substantiate their correctness.
6. The sum of the individual values shown on the schedule must equal the total contract price.
7. If applicable, the schedule shall show the purchase and delivery costs for materials and/or equipment that the contractor anticipates they shall request payment for prior to their installation.

**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. The contractor shall comply with all laws and regulations governing disposal of construction and hazardous materials. Upon completion of the work, the premises will be left in a neat, unobstructed condition with everything in good repair and order.

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

**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.

**Stored Materials:** Upon prior written agreement between the contractor and member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other mutually acceptable location, for installation at a later date. An inventory of the stored materials must be provided to member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the contractor against loss and damage. Contractor agrees to provide proof of coverage and/or addition of member as an additional insured upon member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of buying member and be separated from other materials. Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

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

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

**State Wage Rates:** It is the contractor's responsibility to be acquainted with the New Mexico Department of Labor's rules, regulations, procedures and requirements relating to state wage rates, and to comply with state and federal regulations regarding payment of wages on public projects. The contractor, as established by the New Mexico State Labor and Industrial Commission, will pay wage rates for every job performed under this contract with a total project cost of more than 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.

**Stipulated Sum:** That amount indicated in a bid for a stipulated-sum contract for which the bidder offers to do the work and perform the contract, which Stipulated-sum becomes the contract sum if the offer is accepted and a contract is made.

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

1. In awarding subcontracts, the contractor agrees that any subcontract competitively solicited by contractor will not be awarded solely upon membership, non-membership or affiliation in a union or professional association or other organized group or agency, but on 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. 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.
6. Prior to commencing any work, any subcontractor shall procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime contractor. All subcontractors will provide worker's compensation insurance, which waives all subrogation rights against the prime contractor and member.

**Substantial Completion:** Is defined as a point in a project when the work required has been substantially and satisfactorily completed is deemed ready for the purpose of which it was constructed; some minor items may remain to be completed that do not significantly detract from its readiness for use; completion certified by the designer or other with contractual authority as substantial completion according to the terms of the construction contract.

**Suspension or Debarment Status:** If any firm, business, person or offeror submitting an offer has been debarred, suspended or otherwise lawfully precluded from participating in any public

procurement activity with any federal, state or local government, the offeror must include a letter with its response or offer setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter, or to not disclose in the letter all the pertinent information, will result in the cancellation of any contract. By signing the offer section, the offeror certifies that no suspension or debarment exists.

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

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

**Term of Contract and Extension:** The term of the agreement will commence on award and continue until July 30, 2008 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods ending on July 30, 2009, July 30, 2010 and July 30, 2011. Since technology changes rapidly, 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 offeror's list. If an offeror wishes to remain on the offeror'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, contractor 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.

**Value Engineering:** A process by which the owner, contractor and/or designer conduct a comparison, feasibility and economic evaluation of various alternative construction products and methods that might be considered for a given project.

**Warranty/Quality Guarantee:** The offeror warrants that all equipment, supplies, materials and services delivered under this solicitation conforms to the specifications of this solicitation and/or the specifications as defined in individual projects performed under this solicitation. The manufacturer has the primary responsibility to honor a manufacturer's warranty. The offeror must agree to assist the member in reaching a solution regarding a dispute with the manufacturer over a warranty's terms and comply with the following:

1. Contractor warrants that any equipment or material supplied to CES or its members will conform to all requirements of the contract and all representations of contractor and will be fit for all purposes and uses required and defined in each individual project. All work performed, equipment and materials must carry a minimum 12-month manufacturer's/contractor's warranty that includes parts, labor and reimbursable expenses.
2. Unless modified elsewhere in this solicitation, contractor warrants that for one year after acceptance of the individual project, the work performed, equipment and/or materials provided to the member will be:
  - a. Of a quality to pass without objection in the industry or trade normally associated with them.
  - b. Fit for the intended purpose(s) for which they are being purchased and/or being used;
  - c. Of even kind, quantity and quality within each unit and among all units, in the variations permitted by the contract;
  - d. Adequately contained, packaged and marked as the contract may require; and
  - e. Conform to the written promises or affirmations of fact made by contractor.
3. Any extended manufacturer's warrantee that is obtained to meet the 12-month requirement will be passed to the member without exception. CES reserves the right to cancel the contract if contractor charges the member for any product and/or services received at no cost under a warranty.

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

**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, 81 other public educational institutions which are all parties to the Reinstated and Amended 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, 170 public educational institution members use one or more of the CES provided programs or services each year.
2. Members and other local public bodies will individually elect to participate or not participate in each section of the provided scope of work. No estimate or guarantee of services is made to the offeror.
3. It is important that the offeror understands that CES is not a sales agency or a marketing firm. If you are awarded a contract, you must be committed to work your contract. Due to the scope of work solicited herein, the offeror must be willing, able and possess the man power to make one-on-one contact with members' business officers and buyers to ascertain their needs and requirements in order to develop and propose a solution that they can consider to meet their needs.
4. When you respond, CES is asking you to become a partner in providing quality goods and services to its members at competitive prices. Partnership with a contract awarded through competitive bidding saves members both time and money. Time is saved by being able to purchase what is needed without having to wade through the bidding process (write bid, advertise bid, open each response, evaluate and have the board make a selection). Money is saved because each CES partner has already agreed that our members have the lowest prices it will offer to procurement units in the state.

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

Once the award is made to the offeror, the offeror as contractor will assign a project director to coordinate operational activities with the designated representative of CES and will make monthly reports to this representative. It is the responsibility of the contractor to market the products or services to the 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 pay requests for payment.
4. Follow up as needed on problems.
5. Periodic review with contractor as to projects and any problems.

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

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

on an as-needed basis. The work may include but is not limited to design, installation, repair and alteration of a variety of educational buildings and facilities for members.

2. Under this solicitation, a master contract is established with standard specifications and pricing based upon a coefficient that is applied to the (R.S. Means) unit pricing or other pricing methodology established herein. When a specific project is requested, the member and the CES contractor agree on the scope and the cost is determined by the pricing methodology outlined in the contractor's response and subsequent award by CES.
3. Because all work under this solicitation is on a project-by-project basis, exact project specifications are not available. General specifications and requirements are listed herein. Firms whose statements of qualifications and offerings are accepted, approved and awarded will be used to develop and establish the specifications for any work to be performed under individual projects.
4. CES currently has contracts with providers who offer all of the services solicited herein to its members. The volume for these construction services during the past 12 months is around fifteen million dollars (\$15,000,000). 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. 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 an individual project performed under this RFB that is less than twenty-five thousand dollars (\$25,000).
4. For each individual project twenty-five thousand dollars (\$25,000) or greater the prime contractor agrees to provide all performance and payment bonds required by law to the CES member within five (5) business days from the receipt of the CES purchase order. If the prime contractor fails to deliver any required performance or payment bond, the bid security with CES will be enforced and the contract with CES canceled.

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

#### F. BONDS

1. Upon execution of a contract between a CES member and the prime contractor, performance and payment bonds will be provided the member as required by New Mexico law.
2. The prime contractor will execute a performance bond in an amount equal to one hundred percent (100%) of the price specified in the contract between the member and executed by a surety company authorized to do business in New Mexico and said surety to be approved in federal circular 570 as published by the United States treasury department.

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 and said surety to be approved in federal circular 570 as published by the United States treasury department. This bond will protect all persons supplying labor and material to the prime contractor for the performance of the work provided in the contract. Payment bonds between the member and the prime contractor will be on the standard form.
4. The prime contractor will deliver both the performance and payment bonds to the CES member and a copy 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. The prime contractor shall require of any subcontractor who will be providing construction items of one hundred twenty-five thousand (\$125,000) or more for an individual project to acquire a payment and performance bond, in an amount equal to one hundred percent (100%) of the price specified in the contract between the subcontractor and the prime contractor is executed. The bond must be from a surety company authorized to do business in New Mexico and a copy the bond must be on file with CES prior to the first payment request.
8. Performance and payment bonds for members outside New Mexico must be provided by a company to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department. Bid securities are always with CES and provided by New Mexico licensed companies.

#### G. PAYMENT RETENTION, PROGRESS PAYMENTS

1. It is CES' policy to not retain any funds on progress payments during any construction projects. Therefore, the prime contractor agrees to only request payment for goods and services delivered, received and accepted by the CES member.
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.

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

An agreement by CES, its member and a CES contractor for the purpose of procuring construction and professional services for a particular project must be completed for any construction project offered and performed under this RFB with a total value of Sixty Thousand Dollars (\$60,000) or more. This agreement must be signed by all parties prior to the contract starting any work.

1. Owner (member) is a New Mexico public educational institution which is a party to the aforementioned Reinstated and Amended Joint Powers Agreement or Participating Entity 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 State of New Mexico Procurement Code Sections 13-1-1 to 13-1-199

et. seq., N.M.S.A., 1978, the Public Works Contract Act 13-4-1 to 13-4-43 et. seq., N.M.S.A., 1978 and the Subcontractor Fair Practices Act 13-4-31 to 13-1-42 et. seq., N.M.S.A., 1978 in contracting for procurements from CES contractors.

3. Contractor is an offeror that 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 contractor of goods and services in the construction area.
4. The contractor will be responsible for providing CES with the information required to complete this form.
5. It is at the discretion of the owner and the contractor to determine if an additional industry standard owner/contractor contract is to be executed in addition to this contract.

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

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

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

perform such work will perform all disconnections and reconnections. Any damage caused by the disconnection, storage, or reconnection of equipment will be repaired at no additional cost to the CES member.

11. All work will be accomplished in conformance to Occupational Safety and Health Administration (OSHA) safety requirements and any additional federal, state, or local fire or safety requirement. Contractor must advise member contact person whenever work is expected to be hazardous to students, member employees and/or operators.
12. When work, loading, or unloading of equipment is repaired or is operating near an owner used area, the prime contractor will maintain a crewman in the area as a guard to keep students and adults from wandering in if the area is not protected.
13. Fire extinguishers will be maintained within easy reach whenever power tools and torches are being used. The prime contractor will advise the member contact person when volatile materials are to be used near air ventilation intakes, so that they can be shut down or blocked as directed.
14. The prime contractor will deliver materials to the worksite in new, dry, unopened, and well-marked containers showing product and prime contractor's name. Damaged or unlabeled materials will not be accepted. The prime contractor will deliver materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the members contact person.
15. The prime contractor must agree to treat its labor in keeping with its labor contract agreement and in the best interest of the CES member. Any overtime practices or retroactive agreements with labor unions that would be to the detriment of the CES member must be limited to only those approved by the CES member.
16. Change orders are to be avoided, if possible, since they often indicate poor planning. A mutually agreed upon system for establishing changes must be identified, including changes in scope and changes in compensation for the prime contractor. Because of cost, safety and scheduling considerations, the ability to make field change orders needs to be permitted, and mutually agreed upon paper work to document these changes, must be allowed. A change order that increases the contract amount in excess of Fifteen Thousand Dollars (\$15,000), or five percent (5%) of the contract amount, whichever is greater, must be approved, in writing, by the governing board of the CES member. A copy of the approval must accompany a revised purchase order to CES. No change order that increases the cost of the project will be permitted without a purchase order to CES from the member ordering the change. Minor changes mutually agreed upon between the member and the prime contractor that do not involve compensation may be made without informing CES, unless such change significantly modifies the scope and needs to be documented.
17. Compensation
  - a. Compensation for received goods, terms of progress payments, schedule of values and a schedule of payments will be described in the contract document. The agreement must state that CES will not be responsible for any late fees due the prime contractor by the CES member.
  - b. The CES member retains the right to extend the schedule of work or to suspend the work and to direct the prime contractor to resume work, when appropriate. The agreement must describe an equitable adjustment for added costs caused by any suspension. Any increases will be invoiced through CES as allowed in the agreement.
  - c. The prime contractor must agree that the CES member reserves the right to release information about the project, and that any advertising of the project by the prime contractor must be approved by an authorized official of the member.

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

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

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

K. QUALITY CONTROL ISSUES

1. During the course of the contract, the member's contact person may secure samples according to Construction Industries Division guidelines or industry standards of materials being used from containers at the job site, and submit them to an independent laboratory for comparison to specified material.
2. Should test results prove that a material is not functionally equal to or better than specified, the prime contractor will pay for all testing and any cost incurred to have materials installed to replace those found not to comply with the specifications and remove and dispose of the materials not complying.
3. Should test results prove that materials tested were functionally equal to specified material, the prime contractor will be notified of the results.
4. Upon completion of the project and prior to final payment being requested, the prime contractor will deliver to the CES member all close-out drawings and documents as required by this solicitation. If applicable 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. Depending of the type of products and services being offered, the cost proposals submitted to a CES member under this RFB must be based on one of the three (3) costing methods identified herein. If R. S. Means based proposals are utilized, the offeror must use the current year, standard cost data. Only the following cost data titles will be accepted:
  - a. Repair and Remodeling Cost Data
  - b. Building Construction Cost Data
  - c. Facility Construction Cost Data

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

M. NEW MEXICO STATE WAGE RATE DOCUMENTATION

1. The New Mexico Department of Labor (NMDOL) requires that certain forms be completed for every project that needs a wage decision issued. CES will submit for the wage decision and upon receipt of the decision will provide it to the prime contractor. The contractor is responsible for completing and submitting the required forms to the NMDOL and must provide CES with a copy of the following required forms: **NOTIFICATION OF AWARD, STATEMENT OF INTENT TO PAY PREVAILING WAGES, and AFFIDAVIT OF WAGES PAID.**
2. The prime contractor, must submit the Statement of Intent to Pay Prevailing Wages and the Notification of Award to the New Mexico Department of Labor, with a copy being mailed or faxed to CES, prior to the start of this project. The Affidavit of Wages Paid must be submitted to the New Mexico Department of Labor, with a copy being mailed or faxed to CES, at the conclusion of your work on this project. The minimum information required for the Notification of Award is: general contractor's name, address, telephone and fax numbers, approximate date work to start, estimated completion date, estimated cost of project and subcontractor list, being sure to provide name, address, telephone and fax numbers for each subcontractor. The prime contractor is responsible for insuring that the its subcontractor(s) also submit the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid to the New Mexico Department of Labor with a copy being mailed or faxed to CES.
3. CES **will not make any payments** until copies of the Notification of Award, Statement of Intent to Pay Prevailing Wages and, for projects \$25,000 or greater, the Payment and Performance Bond, are received by CES. **Final payment will not be released** until CES receives a copy of the Affidavit of Wages Paid.

N. RFB SCOPE OF WORK

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

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

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

#### O. RFB SPECIAL TERMS AND CONDITIONS

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

1. New Mexico is a large state geographically. For this solicitation CES is dividing the state into seven (7) service regions. Offerors will be required to indicate within their response which of these service regions of the state they wish to provide services to, and prioritize the areas in order, the areas that your firm intends to concentrate its efforts if given an award. The seven service regions are described below.
  - a. **Region One (1)** – Aztec, Bloomfield, Central, Dulce, Farmington and Jemez Mountain school districts.
  - b. **Region Two (2)** – Chama Valley, Española, Mesa Vista, Peñasco, Pojoaque Valley, Questa, Santa Fe and Taos school districts.
  - c. **Region Three (3)** – Cimarron, Clayton, Des Moines, Las Vegas City, Maxwell, Mora, Mosquero, Pecos, Raton, Roy, Springer, Wagon Mound and West Las Vegas school districts.
  - d. **Region Four (4)** – Albuquerque, Belen, Bernalillo, Cuba, Estancia, Gallup-McKinley, Grants-Cibola, Jemez Valley, Los Alamos, Los Lunas, Magdalena, Moriarty, Mountainair, Quemado, Rio Rancho, Socorro and Zuni school districts.
  - e. **Region Five (5)** – Clovis, Corona, Dora, Elida, Floyd, Fort Sumner, Grady, House, Logan, Melrose, Portales, San Jon, Santa Rosa, Texico, Tucumcari and Vaughn school districts.
  - f. **Region Six (6)** – Alamogordo, Animas, Capitan, Carrizozo, Cloudcroft, Cobre, Deming, Gadsden, Hatch Valley, Hondo Valley, Las Cruces, Lordsburg, Reserve, Ruidoso, Silver City, Truth or Consequences and Tularosa school districts.
  - g. **Region Seven (7)** – Artesia, Carlsbad, Dexter, Eunice, Hagerman, Hobbs, Jal, Lake Arthur, Loving, Lovington, Roswell and Tatum school districts.
2. 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 close-out documents have been received and approved by CES. Progress payments may be a part of any project and must be stipulated within a project's schedule of values.
3. In the construction, erection or repair of all buildings and structures under this award, the offeror is hereby required to use, whenever the species of lumber necessary for such construction or repair work is available in this state, such species of lumber produced from timber grown in the State of New Mexico.
4. The listing threshold for this RFB will be Five Thousand Dollars (\$5,000). The offeror will list all persons, businesses and contractors who the offeror anticipates to be a subcontractor under this RFB. This information will include: (a) name, address and county of the place of business; (b) category of product and services that will be performed by each subcontractor; (c) their NMCID license number; and (d) if applicable NMDOL registration verification.
5. 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.

6. If after the award of the contract the offeror sub-contracts any portion of the work in excess of the listing threshold to an unlisted subcontractor, the offeror will be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided therein.
7. Progress payments may be made to the offeror on the basis of a duly certified and approved estimate of work performed during a designated period of time or percentage of project completed. The offeror must agree to pay all subcontractor or material suppliers for work completed, accepted and billed within seven (7) days of their receipt of the progress payment from CES, unless otherwise agreed on in writing between the parties.
8. A subcontractor to the offeror may request, in writing, that the subcontractor be notified by CES within five (5) days from payment of each progress payment made to the offeror. It is the responsibility of the offeror to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract and that the CES member must make payments before CES can issue progress payments. The offeror must provide CES with all subcontractors and suppliers information utilized for any individual project performed under this RFB.
9. The offeror and the CES member will agree upon a schedule of payments based on identifiable milestones of the project and include these timelines in project contract documents.
10. In any contract between the offeror and a CES member based on this RFB, the terms and conditions of the RFB will prevail. A contract between the CES member and the offeror for construction will be an industry standard agreement. The parties may agree to use the American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201 as a guide.
11. In any contract between the CES member and the offeror, a scope of work (a description of the work to be performed by the offeror) will include all specifications, drawings and other final documents. All applicable codes around which the contract is made will be included, as will any technical specifications and general conditions.
12. Work to be performed by the CES member must be clearly described and agreed to by the offeror and CES member prior to project start up. Any agreements on liquidated damages and early completion incentives will be between the CES member and the offeror and must be agreed upon in writing prior to start up. If the CES member declines a liquidated damages, the offeror 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 offeror 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 offeror may offer extended warranties available at extra cost to Members that agree to a maintenance contract. The maintenance contract must be offered as a separate line item. Upon request, no-cost training must be offered by the prime contractor for the maintenance staff of the member and will be arranged before installation as part of the purchase contract.
16. Even if final payment is made, if the member discovers an unfinished job that should have been completed, the offeror will complete the work in a timely fashion at no additional cost.

17. The offeror will perform all warranty work and remain available to the member should continued service be required after warranty obligations are met.
18. The offeror must possess a New Mexico contractor's license that enables him to undertake, or purport to have the capacity to perform, supervise others, to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any road, land, public educational facility/structure/building or to do any part thereof. This also includes the erection of any structure or facility within the limitations of this RFB, to connect such structures or improvements to utility service lines and metering devices and sewer lines; to provide mechanical service for new or improvement of a facility, etc. The contractor agrees to keep any required license current and in compliance with the rules and regulations of the New Mexico CID.
19. The offeror will ensure that all individuals, firms or subcontractors being used to perform or supervise work under this contract hold a current contractor's license, as required by NMCID and by law. All subcontractors to be utilized under this contract must be clearly identified with the name, address, trade or type of work, New Mexico license number and New Mexico State Tax ID.

P. PRICE AND COST SUBMITTAL

1. The R. S. Means Company publishes a CD Rom and books covering a wide range of the various construction services and products that may be required under this RFB. The current CD/books will be the basis for all construction services and products provided within a quote or proposal that is not clearly stated and identified within an established published price list provided as part of the offeror's response.
2. The offeror represents what portion of the R.S. Means total cost (including overhead and profit) will be charged the CES member for construction costs. If overtime is required to meet the CES member's timelines, the additional cost must be clearly identified.
3. Factors affecting cost, including quality of materials, productivity of labor force, size of project and location have been included in the Means calculation. R.S. Means allows adjustment factors for items such as weather conditions, safety and environmental concerns, if any of the adjustment special factors are utilized they must be identified communicated and justified to the CES member for their approval.
4. The labor cost table must be completed showing contractor's CES rates. These rates will be used to determine overtime and other chargeable time that may occur.
5. Goods and services provided under this contract that are not part of an R.S. Means portion of a quote/proposal, the cost of these items will be calculated by taking the list/retail price less the CES discount. Any items not covered by R.S. Means or a published price list must be submitted in advance and approved by CES prior to being included in any quote or proposal.
6. If a product/service is found not to be listed on a manufacturer and/or retail price list and is custom designed, manufactured and is provided for a unique application or project, the offeror must issue a written request for quote to three (3) or more manufacturers, providers and suppliers of such products/services. All written responses to the offeror's written quote must be submitted to and accepted by CES prior to the cost of said item(s) being included in any quote or proposal submitted to a CES member. CES and/or its member reserve the right to accept or reject any quote or proposal including such items.
7. If a product or services is required as part of the performance under this contract that can only be obtained and/or manufactured from a single source and fall under the sole source provision of the New Mexico Procurement Code (13-1-126), the offeror must provide CES with the necessary documentation to substantiate the purchasing method.

8. Cost evaluation will be based on a point system with points being awarded for being low to high bidder for each cost evaluation item, that is, contractor, discount off R.S. Means, overhead and profit percentage markup, mileage charge, per diem rate, travel time, etc. If an offeror leaves out an item that is required, CES will allot zero (0) points to that item, and if awarded a contract, cannot be used in providing products or services. The low bidder will receive the full point value and all other bidders will receive points calculated as follows:

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

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

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

Q. TOPICS RELATING TO PRODUCTS AND SERVICES BEING SOLICITED

CES prepares and issued a number of RFB's during its fiscal year and therefore, has established a common solicitation document layout and inserts specific information relating to the products and services being requested into the common document. This information has been broken down into the following areas:

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

## **Products and Services Being Solicited      GB98 General Construction Services**

### **Scope of Work**

New Mexico educational institutions are continually modifying, renovating, remodeling and updating existing facilities to meet their current and future educational program needs. CES is seeking a general contractor with a GB98 license to provide construction products and services that may include but is not limited to:

1. Assisting CES members in assessing, evaluating, developing and designing remodeling and renovating projects of existing facilities.
2. Minor remodeling of individual classrooms, offices, restrooms for ADA compliance, storage and common areas, etc., that involves and requires multiple construction trades such as plumbing, electrical, carpentry, utilities, mechanical, masonry, site work, etc.
3. Major renovation of and updating of a variety of educational, administrative, vocational, athletic, activity, storage, etc., that involves and requires multiple construction trades such as plumbing, electrical, carpentry, utilities, mechanical, masonry, site work, etc.
4. New construction of additions such as classrooms, administrative, athletic, storage land development, etc., that involves and requires multiple construction trades such as plumbing, electrical, carpentry, utilities, mechanical, masonry, site work, etc.
5. Providing various types of construction related services to CES members involving heavy maintenance and repair of existing facilities or to supplement or assist the member's own maintenance crews in completing projects on which they are working.

New Mexico currently requires public school districts to have in place and update on an annual basis a facility master plan. Likewise, on an ongoing basis, public schools submit applications to the PSCOC and receive state funds to maintain, update and construct new facilities. Therefore, educational leaders are continually seeking and asking for assistance in assessing existing facilities and developing and looking at available options to provide and meet their short and long term educational facilities needs. CES and its members are seeking contractors who are willing and able to assist them in this endeavor and provide timely and cost effective construction products and services to meet these ongoing needs.

In order to better serve and meet its members needs and provide greater opportunity for contractors who specialize in a particular construction trade for example plumbing, electrical, roofing, mechanical etc., CES has established multiple solicitation documents for construction product and services in the following categories: (1) GB98 General Construction Services. The offer should note that under this RFB that CES has limited and stipulated what construction products and services can or can't be provided under each RFB solicitation document. Therefore it should be noted by the offeror, it needs to prepare and submit individual responses for each solicitation document covering those areas of construction products and services they wish to offer.

CES currently has established contracts in the following areas: athletic facilities; food services equipment; portable and pre-engineered buildings; fire and security alarms and systems; low voltage, telecommunications, sound systems and network infrastructure; removal and disposal of hazardous materials; landscaping, playground and flooring. It has been CES's experience that by breaking out these specialized products and services into different categories it has allowed CES

members greater choice and flexibility in identifying and obtaining cost effective products and services to meet their special facility's needs and requirements.

Due to existing contracts, the projects covered under this bid are limited to construction projects which require and/or involve multiple disciplines. For example, construction related to a new building or remodeling or renovating of an existing facility that requires electrical, plumbing, doors and windows, mechanical etc. If the offeror desires to provide construction products and services where the major cost (51% percent or greater of total project costs) is made up of an individual discipline, that is, roofing, mechanical, electrical systems, athletic fields, etc., the offeror must hold an existing CES contract in that discipline or respond to a future CES solicitation covering that individual discipline.

## **Definitions**

**AA** – Aluminum Association Inc. (The) [www.aluminum.org](http://www.aluminum.org)

**AAMA** – American Architectural Manufacturers Association [www.aamanet.org](http://www.aamanet.org)

**ACI** – American Concrete Institute [www.aci-int.org](http://www.aci-int.org)

**ADA** – Americans with Disabilities Act

**AGA** – American Gas Association [www.aga.org](http://www.aga.org)

**AGCA** – Associated General Contractors of America (The) [www.agc.org](http://www.agc.org)

**AI** – Asphalt Institute [www.asphaltinstitute.org](http://www.asphaltinstitute.org)

**AIA** – American Institute of Architects (The) [www.aia.org](http://www.aia.org)

**AISC** – American Institute of Steel Construction [www.aisc.org](http://www.aisc.org)

**AISI** – American Iron and Steel Institute [www.steel.org](http://www.steel.org)

**AITC** – American Institute of Timber Construction [www.aitc-glulam.org](http://www.aitc-glulam.org)

**ANSI** – American National Standards Institute [www.ansi.org](http://www.ansi.org)

**APA** – Architectural Precast Association [www.archprecast.org](http://www.archprecast.org)

**ASCE** – American Society of Civil Engineers [www.asce.org](http://www.asce.org)

**ASME** – American Society of Mechanical Engineers [www.asme.org](http://www.asme.org)

**ASTM** – American Society for Testing and Materials [www.astm.org](http://www.astm.org)

**AWS** – American Welding Society [www.aws.org](http://www.aws.org)

**AWWA** – American Water Works Association [www.awwa.org](http://www.awwa.org)

**BHMA** – Builders Hardware Manufacturers Association [www.buildershardware.com](http://www.buildershardware.com)

**BIA** – Brick Industry Association (The) [www.bia.org](http://www.bia.org)

**Builders Work** – Work done in conjunction with and subsidiary to work performed by mechanical, electrical, or other trades such as installations requiring cutting and patching of others work

**CAD** – Computer Assisted Design for graphical representations and calculations

**CISCA** – Ceilings and Interior Systems Construction Association [www.cisca.org](http://www.cisca.org)

**CFR** – Code of Federal Regulations [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)

**Change Order Document** – Issued by the member to the contractor to make a specific change in the work that may result in a change in the scope of the contract’s work, the contract sum, or the contract time

**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.

**Consumables** – Items used, worn, or consumed such as fuel and lubricants, and parts of tools such as saw blades

**CPSC** – Consumer Product Safety Commission [www.cpsc.gov](http://www.cpsc.gov)

**CRSI** – Concrete Reinforcing Steel Institute [www.crsi.org](http://www.crsi.org)

**CSI** – Construction Specifications Institute (The) [www.csinet.org](http://www.csinet.org)

**DOE** – Department of Energy [www.energy.gov](http://www.energy.gov)

**EIA** – Electronic Industries Alliance [www.eia.org](http://www.eia.org)

**EPA** – Environmental Protection Agency [www.epa.gov](http://www.epa.gov)

**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 [www.fcc.gov](http://www.fcc.gov)

**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

**HVAC System** – An EPA approved vacuum system. The abbreviation for heating, ventilation, and air conditioning systems used in building design and construction.

**IAPMO** – International Association of Plumbing and Mechanical Officials [www.iapmo.org](http://www.iapmo.org)

**ICBO** – International Conference of Building Officials [www.icbo.org](http://www.icbo.org)

**ICC** – International Code Council [www.iccsafe.org](http://www.iccsafe.org)

**IEEE** – Institute of Electrical and Electronics Engineers [www.ieee.org](http://www.ieee.org)

**IESNA – Illuminating Engineering Society of North America** – Organization which establishes recommendations and practices for sports lighting facilities [www.iesna.org](http://www.iesna.org)

**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 [www.iso.com](http://www.iso.com)

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

**MBMA** – Metal Building Manufacturers Association [www.mbma.com](http://www.mbma.com)

**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.

**MFMA** – Metal Framing Manufacturers Association [www.metalframingmfg.org](http://www.metalframingmfg.org)

**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.

**MPI** – Master Painters Institute [www.paintinfo.com](http://www.paintinfo.com)

**MVIP** – Multi-Vendor Integration Protocol

**NAAMM** – National Association of Architectural Metal Manufacturers [www.naamm.org](http://www.naamm.org)

**NAMA** – North American Insulation Manufacturers Association [www.naima.org](http://www.naima.org)

**NBFU** – National Board of Underwriters

**NCMA** – National Concrete Masonry Association [www.ncma.org](http://www.ncma.org)

**NEC** – National Electrical Code

**NECA** – National Electrical Contractors Association [www.necanet.org](http://www.necanet.org)

**NEMA** – National Electrical Manufacturers Association [www.nema.org](http://www.nema.org)

**NETA** – National Electrical Testing Association [www.netaworld.org](http://www.netaworld.org)

**NFPA** – National Fire Protection Association [www.nfpa.org](http://www.nfpa.org)

**NFS** – National Sanitation Foundation [www.nsf.org](http://www.nsf.org)

**NIST** – National Institute of Standards and Technology [www.nist.gov](http://www.nist.gov)

**NMDOL** – New Mexico Department of Labor [www.dol.state.nm.us](http://www.dol.state.nm.us)

**NMPED** – New Mexico Public Education Department [www.ped.nm.us](http://www.ped.nm.us)

**NMPSFA** – New Mexico Public School Facilities Authority [www.nmschoolbuilding.org](http://www.nmschoolbuilding.org)

**NMSHD** – New Mexico State Highway Department [www.nmshtd.nm.us](http://www.nmshtd.nm.us)

**NRCA** – National Roofing Contractors Association [www.nrca.net](http://www.nrca.net)

**NSSGA** – National Stone, Sand and Gravel Association [www.nssga.org](http://www.nssga.org)

**OSHA** – Occupational Safety Hazard Administration [www.osha.gov](http://www.osha.gov)

**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.

**PDI** – Plumbing and Drainage Institute [www.pdionline.org](http://www.pdionline.org)

**PLANET** – Professional Landcare Network [www.landcarenetwork.org](http://www.landcarenetwork.org)

**PPCI** – Precast/Prestressed Concrete Institute [www.pci.org](http://www.pci.org)

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

**TIA** – Telecommunications Industries Association

**UBC** – Uniform Building Codes

**UFSA** – Uniform Federal Accessibility Standards [www.access-board.gov](http://www.access-board.gov)

**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. [www.ul.com](http://www.ul.com)

**USGBC** – United States Green Building Council [www.usgbc.org](http://www.usgbc.org)

### **Terms and Conditions**

The following are specifications, conditions and stipulations for which offerors must be aware of and comply. They are in addition to the Listing of General Terms and Conditions. Please review them and sign the acceptance of Special Terms and Conditions form. Place after Tab 5.

1. At no cost to CES or its member, and upon request of the member, the offeror will visit with the member to assess and review the type of and scope of construction services to be provided, project’s location, conditions and timelines, along with the member’s requirements, expectations and desired outcomes, and be able to prepare, provide and submit all of the necessary paperwork and cost proposal in order for the member to make a decision to proceed with the proposed project.
2. As part of the contractor’s preliminary investigation and project development, the contractor shall make themselves aware if the designated project is being funded in part or in hole by NMPSFA. If so, the contractor shall involve and communicate with both the member’s representative and the NMPSFA’s regional manager assigned to that school district.
3. Based on the information received from the member’s designated representative, if applicable, the NMPSFA’s regional manager and the contractor’s own evaluation and review of the project’s documentation and scope of work, the contractor will prepare a clear and detailed proposal covering the services, supplies, materials, equipment and other related items needed to obtain, provide, perform and complete the proposed project’s scope of work. This will include but is not limited to the estimated timelines, terms, conditions of performance, warranties to be issued, etc.
4. The contractor will clearly identify each individual product, service and its CES cost in accordance with the price and cost submittal required by this RFB and will submit it to the member as part of its proposal.

5. In its' proposal, the contractor clearly identify and state which of the proposed products and services will be provided by its own employees and which items it intends to subcontract.
6. The contractor will provide a list of all subcontractors with their contact information, NMCID license information, type of product/services provided and dollar value of work to be performed, and if applicable include the subcontractors NMDOL registration.
7. The member, upon receipt of the contractor's proposal, will review, evaluate and determine if changes or modifications need to be made or if it is acceptable. The member reserves the right to accept or reject any project proposal submitted by contractor.
8. The contractor may be asked by the member to work with them to refine, modify or adjust the proposal to meet their needs and available resources. It should be noted that decrease in project cost should be directly related to a change in scope, quality or level of products and materials if so, these changes should be clearly identified, stated and approved by the member in writing.
9. On the acceptance of the project proposal and based on the proposal's total cost, the member and the contractor will generate and file all required documents with CES, the appropriate state and local governing authorities, permits and authorization. If required, the contractor will complete and sign a CES and/or CES/NMPSFA third party agreement between the buyer, contractor and owner. The member and contractor may mutually agree to also enter into a standard AIA owner/contractor contract. If so, the contractor will submit a copy of the signed industry standard contract along with its project and cost proposal to CES. CES will verify the pricing to be in accordance with the RFB pricing and will issue a CES purchase order to the contractor.
10. In any contract between the contractor and a member, the terms and conditions of this RFB will prevail. A contract between a member and the contractor for construction will be an industry standard agreement. The parties can use the American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201 as a guide.
11. The contractor must provide the member, prior to a purchase order being issued under this RFB, a scope of work (a description of the work to be performed either by the contractor, subcontractor and/or member). It will include all specifications, drawings and other related documents, as well as any technical specifications, applicable codes which the contract is made and general conditions that may affect the outcome of the project.
12. Temporary electrical service and the cost for power, the cost for water and other member costs will be identified and agreed upon in writing.
13. The prime contractor, upon receipt of the CES purchase order, will, if required, provide CES with a copy of the performance and payment bond, finalized project timelines, the NMDOL paper work and other documents in accordance with this RFB.
14. The prime contractor will provide the proposed products and services to the member in accordance with the project documents. Any change orders or modifications to the project will occur only with written approval of CES, the member and the contractor.
15. All work will be in compliance with OSHA safety requirements and any additional applicable federal, state or local fire and safety requirements. When specifications or scope of work will result in a violation of a code or result in an unsafe condition, the contractor must inform the member's representative of the situation. The contractor will not construct any sub-assembly, structure, device or produce any condition that intentionally violates a fire, safety or UBC code or safety standard.
16. If progress payments are called for in the project documents, the contractor will submit and receive approval from the member and, if applicable, the NMPSFA's representative for each pay request and submit the request along with an invoice to CES for processing.

17. Upon obtainment of substantial competition, the contractor, member and, if applicable, NMPSFA's representative will develop a punch list of those items that need to be completed or resolved. The contractor will complete the punch list and provide required close-out documents, applicable certificates of compliance of codes from the various state and local governing authorities prior to requesting final payment.
18. When the job is completed and accepted by the member, the prime contractor will close out the project with CES and receive final payment.
19. Even if final payment is made, if the member discovers an unfinished job and/or improperly installed product, materials or piece of equipment during the first year after acceptance, that should have been completed as part of the original project scope of work, the contractor will complete the work in a timely fashion at no additional cost.
20. The listing threshold for this RFB is Five Thousand Dollars (\$5,000). The contractor will list all persons, businesses and contractors who the contractor anticipates to be a subcontractor under this RFB. This information will include:
  - a. Name, address and county of the place of business
  - b. Category of product and services that will be performed by each subcontractor
  - c. Their NMCID license numbers
  - d. NMDOL registration if applicable. CES' release of lien form each subcontractor must be obtained and submitted to CES within 10 business days from date of payment.
21. If a contractor fails to list a subcontractor in excess of the listing threshold, and it does not state that the provider is a sole source or that it will put all work that exceeds the threshold to individual bid each time, it is stipulating and stating that it is fully qualified to perform the proposed products and services and that it will perform all work.
22. In its' response, the offeror must demonstrate its' ability to perform under this bid by providing the information, documentation, track record and prior performance with New Mexico public educational institutions or public agencies. (Offeror Qualifications Tab 4 and required responses, Tab 5)
23. Offerors responding to this bid will be authorized to perform only those GB98 construction services referenced in this RFB and/or other CES existing contracts for those individual components or building systems. Example, CES has an existing contract for low voltage cabling. Therefore offerors under this RFB will not be allowed to perform individual low voltage projects. However, if the low voltage work is within a comprehensive renovation or remodeling project, then it will be allowed.
24. If awarded a contract under this bid, the contractor understands and agrees that it will offer and accept only projects in which it has done its own due diligence in assessing, evaluating, exploring and determining existing site conditions, the level, quality and appropriateness of the construction products and services being requested and whether or not the project, as requested, allows the contractor to comply with all existing federal, state or local laws, codes and regulations. During the contractor's due diligence, if a concern or issue arises, the contractor must immediately notify CES and the member, in writing, so that it can be corrected or properly addressed.
25. In the construction, erection or repair of buildings and structures under this RFB, the contractor is required to make itself aware of and comply with all New Mexico Procurement Codes, NMCID Building Codes and NMPSFA standards and requirements, if applicable.
26. The offeror must agree to the following relating to change orders:
  - a. Adherence to specifications and drawings: The contractor, prior to submitting its' project proposal to CES and the member, has access to and the opportunity to bring to CES and its member's attention any concern or issues discovered during their due

- diligence as required herein. The contractor will follow the requirements of all specifications and drawings as closely as actual construction and work of contractor's permits. Should unforeseen conditions or limitations require a major change, it will be allowed only upon review, evaluation of proposed solutions and issuance of a written change order.
- b. Once an established change has been submitted and approved, the changes order must clearly identify and state any changes in the scope of work, why, justification for change and any associated increase/decrease in cost to the prime contractor due to the change. Because of cost, safety and scheduling considerations, the ability to make field change orders needs to be permitted, however, proper documentation of member's review and approval must be documented and submitted by the contractor in a timely manner (as soon as possible after the occurrence).
  - c. Costs for changes orders associated with improper due diligence, coordination, any change in construction due to improper checking of site and/or other conditions, or coordination by contractor, will be borne by the prime contractor. The contractor will not be entitled to reimbursement for such costs.
27. During all phases of a project, the contractor will have a qualified and experienced foreman or supervisor in the area of construction being performed be in charge of the worksite and control of all construction activities being performed on the project. The foreman or supervisor must be knowledgeable and aware of all aspects, specifications and requirements of the project and provide continuous supervision, coordination and inspections in order to assure that quality control standards or project outcomes are met.
  28. For a public building built in an area that has not adopted local codes, the building will be designed or constructed according to the UBC and fire codes adopted by the state of New Mexico and, if applicable, the standards established by NMPSFA. Public buildings are subject to those codes that apply and are in effect when the buildings were originally designed and constructed. The contractor must be knowledgeable of all the current state, NMPSFA, and local building requirements and codes that are in force and must be complied with for the individual project the member has requested. Failure of the work provided and/or performed to comply with the currently adopted codes and requirements when a project is inspected and a certificate of occupancy is required, it will be corrected by the contractor at no additional cost of the member.
  29. All equipment, tools and machines used in the performance of this work by either the prime contractor or subcontractors will be maintained in satisfactory working condition and meet or exceed industry standards at all times.
  30. If a contractor intends to subcontract any part of an individual project, the contractor will be responsible to furnish and provide the subcontractor the following:
    - a. A description of the products to be provided, the tasks to be performed, the project's drawings, standard specifications, requirements and timelines the subcontractor must meet.
    - b. The contractor will require subcontractors to complete their own investigation, assessment and carefully examine all elements of a project before it submits a quote or proposal to provide construction products and/or perform construction services for the project. The subcontractor will promptly notify the prime contractor if it finds any discrepancies in, or omissions from, any plans, drawings, specifications and/or any other documents associated with the project. The prime contractor will immediately issue written notification to the member. The member's representative will work with all parties to resolve the concerns or issues raised and issue written instructions to the prime contractor on how the matters raised are to be handled. The prime contractor will be responsible for ensuring the subcontractor is aware of and

- incorporates any modifications into its quote/proposal. The member will not be responsible for communicating instructions and/or information to subcontractors.
- c. All cost quotes/proposals submitted by subcontractors must be in a format that the prime contractor will prepare and submit its cost quote/proposal in compliance with one of three CES cost methods defined herein.
  - d. All subcontractors' quotes/proposals received as part of the project cost development process must be provided to CES prior to the issuing of the CES purchase order.
31. The standard of quality and performance required in the specifications and scope of work by the member will be minimum requirements only, unless otherwise stated in the final project specifications, drawings, product manufacturer's instruction, industry standards or as identified in the CES three party agreement or addendums.
  32. Contractor will pay for any failure to conform or for any defect. In addition, contractor will fix any damage to owned or controlled real or personal property when that damage is the result of contractor's failure to conform to contract requirements or any defect in equipment, material, workmanship, or design furnished or compliance with federal, state and local laws, codes, regulations and standards. Contractor's warranty with respect to work done, repaired or replaced under these conditions will run for one (1) year from the date of repair or replacement or completion.
  33. If contractor fails to remedy any failure, defect or damage within a reasonable time after receipt of notice, the member will have the right to replace, repair or otherwise remedy the failure, defect or damage at the contractor's expense in accordance with New Mexico state law.

## **Specifications**

Identified in R.S. Means

## **Required Responses**

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

- A. Identify by name and title all managers, foremen, supervisors and professional personnel to be assigned to work under this contract and furnish their resumes indicating their qualifications, current New Mexico licenses held if applicable and work experience. Place after Tab 5)
- B. Offeror must, through written documentation, demonstrate its ability to perform general construction services requested herein by providing prior experience with educational institutions/public agencies. The documentation shall include:
  1. For each region selected on (Form A) list five (5) previous projects performed involving at least three (3) different public agencies which has been occupied and in use by the owner for one or more years.
  2. The general scope of work for each project and the size and type of i.e. new construction, renovation, remodel, etc.

3. For each project the original project total/bid price and the final project total including all change orders.
  4. The institution's name, address, phone number, contact person's name and title for each project.
  5. Provide the original time line for each project listed to be completed and provide information relating to if those time lines were met and if not why.
- C. Provide a brief narrative of three (3) projects that you have done for educational institutions, which through your evaluation of existing conditions and your input into the design, development and you completing the work resulted in a high quality, cost efficient and better facility. For each project provide a brief narrative why you feel your input was most advantageous to the final outcome.
- D. Provide a narrative of your company's policies, procedures and strategies to ensure quality control and assurance while response to concerns before, during and after the project. Indicate what follow-up, review and oversight process your management team has in place to ensure member satisfaction.

### **Price and Cost Submittal**

- A. The R.S. Means Company publishes a CD Rom and books covering the areas specified in the General Terms and Conditions of this RFB. The current CD/books will be the basis for all quotes and proposals.
1. For individual construction cost items within the R.S. Means cost-book (including labor, overhead and profit) will be charged the member for construction items. Please note that costs relating to non-construction items/assemblies (general condition items) such as season of the year; home office costs; insurance; project management and supervision; office and storage trailers; pickup trucks, mileage, per diem, transportation/delivery; safety equipment, weather conditions, etc., must be included as part of the contractor's multiplier/factor to be applied to the R.S. Means cost proposal to achieve the CES cost for the project. Note the following:
    - a. When using the R.S. Means assembly cost items, the contractor must for each individual cost item/assembly indicate and document any of the R.S. Means special factors that are applicable, including factors affecting cost, quality of materials, productivity of labor force, size of project and location.
    - b. No R.S. Means (General Conditions Items) such as contract management/supervision, home office costs, travel, per diem, pickup trucks, office trailers, storage facilities etc., are to be included in a project's cost proposal unless it has been requested and approved by the CES member.
    - c. Any costs associated with permits, state gross receipts and tribal taxes, performance and payment bond costs and other applicable reimbursable cost approved in advance by the member will appear as separate line items on the contractor's quote/proposal.
    - d. As noted above the most recent edition of the R.S. Means will be utilized and this will adjust for inflation, material cost and labor rates effective January 1 of each year
    - e. The contractor's R.S. Means bid factor/multiplier will be adjusted on the contractor's CES contract anniversary date by applying the escalation/de-escalation as measured by the Construction Cost Index (CCI) published in the ENR (formerly known as Engineering News and Record).
- B. If there are goods and services provided under this contract that are not covered by R.S. Means, then the cost of these items will be calculated by utilizing the alternative costing method defined herein. Any items not covered by R.S. Means must be obtained by issuing,

receiving and evaluating three (3) written quotes which shall be submitted in advance and approved by the CES member prior to being included into any final contract documents. CES and its members reserve the right to accept or reject any quote or proposal including such items and may obtain these items through other procurement means (existing CES contracts). The CES price will be determined by utilizing two percentages.

1. Based on the most advantageous and cost effective quote received by the contractor. The contractor will apply its normal and customary overhead and profit percentage to the total cost submitted by the subcontractor and add that amount to obtain the normal and customary retail price. (Item cost multiplied by percent for overhead/profit equals the amount of profit and overhead to be added to item cost equal retail price).
  2. Taking the normal and customary retail price as established in item 1 above, the contractor will apply the CES discount percentage and subtract this amount from the normal and customary retail price to obtain the CES price. (Items retail price multiplied by percent of CES discount equals the amount of discount to be subtracted to obtain CES price)
- C. If products or services are required as part of the performance under this contract that can only be obtained and/or manufactured from a single source and fall under the sole source provision of the New Mexico Procurement Code (13-1-126), the contractor must provide CES with the necessary documentation to substantiate the purchasing method.
- D. In most projects covered under this bid, labor costs are included as part of the R.S. Means construction item costs and/or the offeror's R.S. Means multiplier/factor. However, a situation and/or project condition may arise that the contractor is asked by the CES member to provide the services of qualified, trained and experienced tradesmen and/or labors for example to assist their own crews on completing an owner self-performed project. Therefore, the offeror is asked to provide state and non-state labor rates for listed positions. Labor rates provided must include all employer costs, benefits, overhead and profit.
- E. Cost evaluation will be based on a point system with points being awarded for being low to high bidder for each cost evaluation item, that is, contractor, discount off R.S. Means, overhead and profit percentage markup, mileage charge, per diem rate, travel time, etc. If an offeror leaves out an item that is required, CES will allot zero (0) points to that item, and if awarded a contract, cannot be used in providing products or services. The low bidder will receive the full point value and all other bidders will receive points calculated as follows:

(Lowest Bid / Other bid) x point value

### **Cost Evaluation Information**

#### **A. General Cost Items**

1. Performance and Payment Bond Costs – This represents the cost the contractor incurs to provide a performance and payment bond to the member for an individual project when it is required. The offeror is to indicate the percentage rate charged on the total cost of an individual project to obtain a bond, and the documentation to substantiate the rate, that is, two percent (2%).
2. Bonding Capacity – This represents the offeror's maximum level of bonds that it can obtain at any one time. Offeror is to indicate its bonding capacity and provide documentation from a surety company to substantiate the amount.
3. Alternative Method of Costing – percentage of overhead and profit. This method includes custom manufactured items, items not covered by other R.S. Means or sole source items. Offeror is to indicate the percent of overhead and/or markup to be

- applied to these costs to obtain the retail cost. Note that this percentage has no relationship to the R. S. Means costing method indicated above.
4. Alternative Method of Costing - Percentage of CES discount to obtain CES Price. (Item retail price multiplied by percent of CES discount equals amount of discount to be subtracted from retail price to obtain CES price). Example: Item retail cost \$1,200 multiplied by percent of 10% CES discount equal discount of \$120. Retail cost \$1,200 less the CES discount \$120 equal the CES price of \$1,080. Note this percentage has not relationship to the percentage of discount of manufacturer's/suppliers price sheets or catalogs indicated below.
  5. Offeror's Bid Factor/Multiplier off R.S. Means costing of products and services relating to construction projects during **Normal Hours** (Monday through Friday 7:30 a.m. to 4:30 p.m.) and not covered by other costing methods.
  6. Offeror's Bid Factor/Multiplier off R. S. Means costing of products and services relating to construction projects during **Outside Normal Hours** (Monday through Friday 4:30 p.m. to 7:30 a.m., Saturday and Sunday) and not covered by other costing methods.
  - g. Offeror's Support for CES Pricing – This is the percent of difference between what the offeror's price to CES and the price that the offeror would offer the same products directly to any public educational institution in New Mexico. The offeror's CES price is \$100, the offeror's direct price to CES members is \$103. The difference is 3% percent.
2. Labor Rates – Hourly rates for individual(s) who perform services on an as-needed basis specializing in the following areas. Rates provided must be loaded (includes benefits, payroll taxes, overhead and profit).
    - a. Project Design/Development Consultant – A professional with experience and background in surveying, evaluating, consulting, designing and developing proposed solutions as pertain to this bid.
    - b. Labor rate certified draftsman to develop and provide project documentation.

**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, **October 5, 2007** 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. Commencing on **October 5, 2007** at 1:30 p.m. local time, bids will be publicly opened and reviewed by the designated CES representative. It should be noted that due to the solicitation requirements and evaluation process outlined herein no awards will be indicated at this point in time. However, the responses received will become public information and available for public inspection.

**C. BID REVIEW**

Commencing on **October 8, 2007** CES procurement staff and designated evaluation committee members will start reviewing, verifying and evaluating each respondents submittal to determine if the responses is complete, and is in conformance with, meets and/or exceeds the solicitation requirements. Recommendation of award and notification to all respondents will be made by **November 9, 2007**, unless otherwise communicated.

**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 offeror will be held responsible therefore. Deviations or exceptions stipulated in offeror responses, while possibly necessary in the view of a particular offeror, may result in a penalty assessment being assigned during the evaluation process. Language to the effect that the offeror does not consider this bid to be part of a contractual obligation will result in that offeror's bid being disqualified. Due to the unpredictable nature of what any particular offeror may wish to stipulate with regard to exceptions, exclusions, or limitations of liabilities, offerors 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. Offeror's required responses "yes" are responsive or "no" are non-responsive.

1. Determining Whether Offeror's Response is Responsive or Non-Responsive

**Tab 1: Contract Documents**

- Yes No Completed Bidders Declaration Form **Form A**  
Yes No Provided appropriate \$25,000 Bid Security  
Yes No Provided Signed Acceptance of Offer **Form B**  
Yes No Provided RFB Affidavit, notarized signature required **Form C**

**Tab 3: General Contract Terms and Conditions**

- Yes No Inserted Listing of General Terms and Conditions from the solicitation document **Form E**  
Yes No Provided completed and signed Acceptance of all General Terms and Conditions (first line must be signed **Form E**  
Yes No Noted and Justified any exceptions to General Terms and Conditions and these were acceptable to CES and its members **Form E**

**Tab 4: Offeror's Qualification**

- Yes No Responded to and provided required information and documentation required on **Form J**  
Yes No Based on the information provided in response to **Form J**, does respondent meet or exceed minimum offeror's qualifications?
  - Demonstrated it has the required human, financial and physical assets required to perform under this solicitation
  - Provided completed and detailed answers to questions asked
  - Sub-Contractors List
  - Copies of Contractor's NMCID Licenses
  - Confirmation of NMDOL Registration
  - Copy of New Mexico Preference Certificate
  - Provided appropriate documentation from offeror's security company
  - Provided written proof of insurance coverage.
  - Written statements regarding employment procedures and background checks
  - Demonstrated ability and intention to provide CES and its members with the most advantageous and cost effective cooperative procurement vehicle/contract. – Offeror's Support for CES Prices **Form G**

**Tab 5: Demonstrated Background, Ability, Capacity, Past Performance and Products Proposed to Meet Minimum Requirements?**

- Yes No Inserted Documents: Scope of Work, Definitions, Terms and Conditions, Specifications, Required Responses, Price and Cost Submittal and Cost Evaluation Information  
Yes No Provided completed and signed Acceptance of Special Terms and Conditions **Form E**  
Yes No Required Responses
  - Provided complete and detail information, documentation and written narrative describing relating to the type and level of

construction products and services offered in response to this solicitation

- Provided and demonstrated their ability and capacity to be responsive to and resolve construction concerns and problems
- Provided reasons why they feel they bring added value and solutions that will best meet CES member's individual needs
- Written evidence and documentation relating to the manufacturers they have contractual relationship with and/or are manufacturer's authorized agent/dealer/installer

**Tab 6: Costs**

Yes No Provided a completed Indefinite Quantity Price Schedule **Form D, D-1 and D-2** with backup documentation

Yes No Provided complete and detailed listing of supplies, materials, equipment, accessories and services that meet or exceed specifications of this RFB if applicable

2. Cost Scoring Evaluation

After offerors have been determined to be responsive, their cost submittal will be evaluated in accordance the cost evaluation point system defined herein. Once the cost evaluation points have been assigned to each responsive bidder, only offerors scoring greater than 60% of the total points possible will be considered for a possible award. CES reserves the right to make a single or multiple awards if it feels that a multiple award is in the best interest of its members.

E. COST CONSIDERATIONS

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

F. IMPORTANT NOTICE TO OFFERORS

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

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

**SECTION IV                    PROPOSAL FORMS**

**Form A            BIDDERS DECLARATION FORM**

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

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

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



**Form C      AFFIDAVIT**

1. The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing bid (such persons, firms and corporations hereinafter being referred to as the offeror), being duly sworn, on his oath, states that to the best of his belief and knowledge, no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing bid, has directly or indirectly entered into any agreement or arrangement with any other offerors, or with any official of CES, or any employee thereof, or any person, firm or corporation under contract with CES, whereby the offeror, in order to induce the acceptance of the foregoing bid by CES, has paid or is to pay to any other offeror or to any of the aforementioned persons anything of value whatever, and that the offeror has not, directly or indirectly entered into any arrangement or agreement with any other offeror or offerors, which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing bid.
2. This is to certify that the offeror, or any person on his behalf, has not agreed, connived, or colluded to produce a deceptive show of competition in the manner of the bidding or award of the referenced contract.
3. This is to certify that neither I, nor to the best of my knowledge, information and belief, the offeror, nor any officer, director, partner, member or associate of the offeror, nor any of its employees directly involved in obtaining contracts with the State of New Mexico, Cooperative Educational Services, or any subdivision of the state has been convicted of false pretenses, attempted false pretenses, or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985.
5. This is to certify that the offeror, or any person on its behalf, has examined and understands the terms, conditions, scope of work and specifications and other documents of this solicitation.
6. This is to certify that if awarded a contract, the offeror will provide the equipment, commodities, and/or services to members and affiliate members of Cooperative Educational Services in accordance with the terms, conditions, scope of work and specifications and other documents of this solicitation in the following pages of this bid.

\_\_\_\_\_  
Authorized Representative (Please print or type)

\_\_\_\_\_  
Position (Please print or type)

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

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Phone Fax

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

\_\_\_\_\_  
By: Signature of Authorized Representative Date

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Notary Public in and for County of \_\_\_\_\_, State of \_\_\_\_\_.

My commission expires: \_\_\_\_\_

**INDEFINITE QUANTITY UNIT INSTRUCTIONS FOR  
COMPLETION OF PRICE PAGES**

1. Before you begin, make duplicate copies of the price pages provided below.
2. CES and its members are requesting construction related products and services and therefore, have identified and assigned points to a number of cost evaluation factors that will be utilized to determine the low bidder based on the defined criteria as defined herein.
2. Depending on the type of construction products and services being solicited the offeror may need to provide manufacturer's published price lists, catalogs and/or other related cost information. Additional pricing must use the price form provided and normally use one sheet per manufacturer/brand of product. If you have an exceptionally large price list or a price catalog, you may attach the data to the form or by in electronic format but, it must be categorized and indexed in a way that the following information is clearly identified:
  - A. Product Brand
  - B. Product Description
  - C. Retail Price or Standard Education/Government Price
  - D. Percent Discount
  - E. CES Price
  - F. Volume Discounts Available
  - G. Any Special Pricing (bundles, time-limit sales, etc.)
  - H. Installation/Labor Costs, if any
  - I. Mileage/Travel Costs, if any
  - J. Freight/Shipping, if any
  - K. Special Warranty Information
3. Once your offer is accepted, any future price adjustments must be made in the same manner.
4. It is your responsibility to keep your contract current in every way. Auditors review our contracts and everything must be legal.

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

**Form D-1 INDEFINITE QUANTITY UNIT PRICE SCHEDULE**

**Bid Submission Form**

**GB98 General Construction Services**

**Instructions to Bidders**

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

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

Description of Cost Factors	Cost Evaluation Points	Unit of Measure	Base Cost
Performance and Payment Bond - bonding rate (percent of project)	70	Percent	_____ %
Bonding Capacity - total amount of capacity available	40	Dollar Amount	\$_____
Alternative Methods of Costing - percent of overhead/markup and profit added to cost equals list/retail price.	100	Percent	_____ %
Alternative Method of Costing - CES discount (cost plus profit and overhead) Less CES Rate of Discount	100	Percent	_____ %
Offeror's Support for CES Pricing, taken from Form G Offeror's Support for CES Pricing	60	Percent	_____ %
R.S. Means Multiplier/Factor for Normal Working Hours (Total R.S. Means cost quote multiplied by CES multiplier/factor equals CES price)	300	Percent	_____ %
R.S. Means Multiplier/Factor for Outside Normal Working Hours (Total R.S. Means cost quote multiplied by CES multiplier/factor equals CES price)	200	Percent	_____ %

**Form D-1 INDEFINITE QUANTITY UNIT PRICE SCHEDULE (Continued)**

<b>Regular and Customary Non-State Loaded (includes benefits and overhead) Labor Rates for</b>	<b>Cost Evaluation Points</b>	<b>Unit of Measure</b>	<b>CES Rate</b>
Design, Project Development, consultant	100	Per Hour	\$ _____
Certified Draftsman	30	Per Hour	\$ _____

**INDEFINITE QUANTITY UNIT PRICE SCHEDULE**

**Bid Submission Form: Additional Products and Services**

Use this form, or duplicate it, to price all equipment, services, supplies, and other commodities you wish to place on contract. If you have a printed price list or catalog, you can attach it in an appendix.

Description	Retail	%Discount	CES Price

# 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 Terms and Conditions for Products and Services being requested except as listed below:

---

Signature (should match cover signature)

**Form F            SUPPORT AND MAINTENANCE PLANS**

CES and its members are looking for contractors that will respond to not only warranty issues but also provide continued technical support and maintenance services on an as-needed basis throughout the end product's life cycle. Provide the requested information below.

A. 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: \_\_\_\_\_

B. Describe the steps a buyer should take to activate the warranty and what type of assistance can be expected from your firm.

- What assistance do you provide to the owner in activating and in receiving warranty products and service?
- What manufacturers are you authorized to provide repair parts and perform warranty work?

C. The best maintenance program offer quick response time and the provider has the appropriate resources (staff, facilities, equipment, supplies and materials) located within a reasonable distance in order to respond effectively.

- Service and Maintenance Number \_\_\_\_\_

Contact Person: \_\_\_\_\_

- Technical Help Phone Line: \_\_\_\_\_

Contact Person: \_\_\_\_\_

- Current average response time upon request: \_\_\_\_\_

Number of service technicians available within each region being bid.: \_\_\_\_\_

- Describe any maintenance plan available beyond the one-year warranty, including costs.
- Describe your maintenance facilities: Location, type of services delivered from each, number of technicians, value of parts inventory normally on hand.

Note: If required, please attach additional pages to provide the information requested.

## Form G 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 contractor 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 offeror agrees that the price charged through a CES contract will be the lowest that offeror 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 contractor receives many of the same benefits as a CES member. Rather than having to respond to dozens of individual RFB's, which is a big cost of doing business, a response to CES opens the door to over 170 public educational institutions. The business office of the contractor has the advantage of invoicing CES rather than each individual account. The contractor also has CES service in collection as some public entities are slow in processing payments. If problems develop, the contractor 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 contractor asking the contractor 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 expects contractors, who are awarded contracts, to provide an incentive to the members to use a CES contract. If a contractor 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 contractor offer prices on CES contracts lower than the price it offers to members that 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 contractor. CES wants members to understand that when using a CES contractor, 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 individual public educational institutions. (If this is checked bid offeror's response will be considered **Non-Responsive**)

Reward – The checked box below indicates the percent lower our CES bid price is when compared to our best price to individual CES members.

Prices are (check)	<input type="checkbox"/>	Three percent (3%)	Lower than our best price to individual members.
	<input type="checkbox"/>	Four percent (4%)	Lower than our best price to individual members.
	<input type="checkbox"/>	Five percent (5%)	Lower than our best price to individual members.
	<input type="checkbox"/>	Ten percent (10%)	Lower than our best price to individual members.
	<input type="checkbox"/>	Other	Lower than our best price to individual members.

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

\_\_\_\_\_  
Title

**Form H QUESTIONNAIRE FOR OFFEROR**

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

*Circle Answers Where Appropriate*

1. For products and parts on your price list not part of a construction project but provided to CES members for their own, is shipping/handling included in the price? YES NO

If PP & A, estimate S/H on purchases \_\_\_\_\_

2. If applicable, are the manufacturer's products you offer marketed by anyone else in New Mexico or do you have exclusivity? YES NO

3. Do you guarantee that prices in the RFB are the lowest you will offer to public educational institutions and other procurement units in New Mexico during the time of any contract between CES and your company? (Not including manufacturer's GSA contracts). Do you also agree to immediately reduce any price to CES equal to or lower than a price quoted to any other New Mexico procurement unit? YES NO

4. If applicable, list any New Mexico contractor's licenses held by your company.

Name of Qualifying Agent	Classification	Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Describe your return policy?

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

What is your restock fee, if any? \_\_\_\_\_

6. Where should CES mail purchase orders?

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

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

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

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

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

Email POs to: \_\_\_\_\_ Fax POs to: \_\_\_\_\_

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

Email Address (to verify prices): \_\_\_\_\_

Website (to verify prices): \_\_\_\_\_ User Name/Password: \_\_\_\_\_

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

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

\_\_\_\_\_

7. Where do you want payments sent?

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

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

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

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

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

Telephone Number for AR: \_\_\_\_\_ Fax Number AR: \_\_\_\_\_

Email Address Accounts Receivable Contract \_\_\_\_\_ Name: \_\_\_\_\_

If you want CES to send payments by a private, NEXT DAY carrier, please identify the carrier and your

\_\_\_\_\_

8. Additional contacts for CES.

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

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

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

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

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

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

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

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

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

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

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

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

**Form I MANUFACTURER'S REPRESENTATIVE FORM**

**Offeror has attached the appropriate documentation from each manufacturer that certifies and demonstrates the following: (check each)**

\_\_\_\_\_ Offeror is a bona fide dealer/distributor for the goods and services offered under this bid.

\_\_\_\_\_ Offeror is a bona fide, certified and authorized installer of the manufacturer's products offered under this bid.

\_\_\_\_\_ Offeror is a bona fide and authorized to provide warranty parts and services during the manufacturer's warranty provided for the products offered under this bid.

\_\_\_\_\_ Offeror is authorized to submit a bid on behalf of the manufacturer's products and services offered in response to this bid.

\_\_\_\_\_ The manufacturer will either assume or assign to another dealer the obligations in this bid should the offeror fail to execute, perform and/or complete the contract and/or individual projects covered by this solicitation.

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

\_\_\_\_\_  
Date

Note: Place backup documentation behind this form.

If the offeror is the manufacturer, please sign below.

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

\_\_\_\_\_  
Date

REFERENCES: List five (5) New Mexico businesses, suppliers and/or subcontractors who you have done business with during the last year (including firm's name, contact person(s) and phone numbers). (Please print or type)

1. \_\_\_\_\_

2. \_\_\_\_\_

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

4. \_\_\_\_\_

5. \_\_\_\_\_

**Form J          Response to Offeror's Qualifications (Tab 4)**

**This is reprinted from Section I, 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

- 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 company headquarters 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, 2007, 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 June 30, 2007.
  - 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-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 contractor. 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 contractor 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 contractor. 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**                    **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 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 contractors. 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 10 contractors 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 contractors 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 contractors considerable money, since it frees them from individual bids from the 170 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 offerors 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 member knows that the only way to get a lower price is from other contractors. Competition is enhanced in this fashion. If a member institution awards a contract to a contractor 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 member 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.

