

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

**REQUEST FOR PROPOSALS
(RFP)**

RFP Issue Date **Monday, November 29, 2004**

RFP Number: RFP 2005-011

RFP Issue Date: Monday, November 29, 2004

RFP Commodity Titles:

- | | |
|-----|--|
| 924 | 1. Special Education Management and Tracking Software |
| 265 | 2. Window Coverings, Shades, Blinds, Curtains, Sunlight Control Devices and Accessories |
| 204 | 3. Computer Hardware, Peripherals, Accessories and Software |
| 906 | 4. Educational Facility Evaluation, Capital Outlay Long Range Planning and Project Management |
| 918 | 5. School Safety Audit, Inspection, Consulting and Training Services |
| 595 | 6. Consulting Services and Products for Turf Management, Including Evaluating, Testing, Analyzing and Treating Soils, Lawns, Bushes, Trees and Other Landscaping Areas |

RFP Due Date **Friday, January 7, 2005**

Day / Date: Friday, January 7, 2005

Time: 1:30 p.m. local time

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

Directions: In Albuquerque, take I-25 North. Take Exit 229, Jefferson and proceed 4/10^{ths} of a mile west. Turn left on Balloon Park Road NE. The CES offices will be the third building on the left. The office manager will receive proposals.

RFP Contents Overview

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

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

Section I Outlines the RFP; 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 Categorical Responses.

Section III Indicates how the proposals will be evaluated and how the awards will be made.

Section IV Incorporates the forms used in the proposal response.

Legal Advertisement

ADVERTISEMENT FOR PROPOSAL

Cooperative Educational Services, 4216 Balloon Park Road NE, Albuquerque, NM 87109, will receive sealed proposals until 1:30 p.m. local time, Friday, January 7, 2005, for: 1. Special Education Management and Tracking Software; 2. Window Coverings, Shades, Blinds, Curtains, Sunlight Control Devices and Accessories; 3. Computer Hardware, Peripherals, Accessories and Software; 4. Educational Facility Evaluation, Capital Outlay Long Range Planning and Project Management; 5. School Safety Audit, Inspection, Consulting and Training Services; 6. Consulting Services and Products for Turf Management, Including Evaluating, Testing, Analyzing and Treating Soils, Lawns, Bushes, Trees and Other Landscaping Areas.

All proposals must be submitted in a sealed envelope marked "SEALED PROPOSAL – RFP 2005-011" on the front of the envelope. A list of qualifications and specifications, instructions to bidders and bid forms can be obtained upon request by fax (505-344-9343), mail, e-mail (bids@nmedu.org) or by telephone (505 344-5470) from 8:30 a.m. to 4:30 p.m., Monday-Friday, except holidays.

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

/s/ Max Luft,
Executive Director

PUBLISH: Sunday, November 28, 2004
Sunday, December 5, 2004

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

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SECTION I INSTRUCTIONS TO OFFERORS

A. INTRODUCTION

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

B. EXAMINATION OF DOCUMENTS

Offeror will carefully examine the Request for Proposals, which includes Instructions to Offerors, Scope of Work and Specifications, Conditions Leading To and Including Contract Award and Proposal Forms.

C. QUESTIONS

Submit all questions about the Request for Proposals (RFP) in writing to Cooperative Educational Services, Max Luft, Executive Director. Replies will be made via the website (www.nmedu.org/ces/jobrfp/rfprfb_lst.asp) as addenda and will become part of the proposal documents. Those not having access to the Internet can call CES, either to determine if addenda have been issued, or to request of CES by phone or fax that copies of the addenda be mailed. Questions received less than seven (7) days prior to proposal due date will not be answered.

D. PROPOSAL SUBMISSION

1. Preparation of the Proposal

- a. Proposals will be submitted on either unaltered proposal forms furnished by CES or a reasonable facsimile thereof. Telegraphic offers, electronic mailgrams or facsimile machine offers will not be considered.
- b. The Offer, Acceptance of Offer and Contract Award document must be submitted with original ink signature by the person authorized to sign the same. If a company or corporation submits the proposal, an official or duly authorized agent will sign the proposal. Powers of Attorney, which authorize agents or others to sign proposal, must be properly certified by resolution of the board of directors, attested to by the secretary of the corporation, and attached to the proposal. Mistakes can be corrected prior to opening but must be initialed by the person signing the proposal. Corrections and modifications received after the opening time will not be accepted.
- c. In case of an error in extension of prices in the offer, unit prices will govern.
- d. Periods of time stated as a number of days will be in calendar days, not business days.
- e. It is the responsibility of all offerors to examine the entire RFP package and seek clarification of any item or requirement that may not be 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.
- f. The offeror's ability to follow the proposal preparation instructions set forth in this solicitation will also be considered to be an indicator of the offeror's ability to follow instructions, should they receive an award as a result of this solicitation. Any contract

between CES and a vendor requires the delivery of information and data. The quality of organization and writing reflected in the proposal 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 proposal will be evaluated as a sample of data submission. Subjective judgment on the part of CES evaluators is implicit in this process.

2. Format of the Proposal

- a. One (1) original of the proposal will be submitted on the forms and in the format contained in the RFP. If you choose to extend your offer to schools in Colorado and/or Texas (see Section III H. and I.), include an additional original proposal, with original signatures for each state selected. The proposal will contain all descriptive literature, specifications, samples, etc. All proposals will be submitted in three-ring binders.
- b. The forms as contained in and format as requested in the RFP 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 proposals 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 proposal, a vendor must present a point-by-point response to each relevant term, special consideration, or specification. A response that says "See Appendix," "Acknowledge," or "Understood" is not acceptable and may be sufficient to render the proposal 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 RFP, a summary of those items must be included in the response to be considered valid. Exceptions can be accepted, negotiated, or rejected by CES.

3. Contents of the Proposal

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

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

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

- Tab 1: The Offer
- Signed Offer (page 85)
 - The RFP Affidavit, notarized signature required (page 86)
 - Offerors Declaration Form (page 83)
- 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 Terms and Conditions (first line must be signed RFP page 88)
- Tab 4: Vendor Qualifications
- Answers to Questions a-j (pages 8 - 10)

- Tab 5: Category
 - Categorical Terms and Conditions page(s) only for your category (copy of each page in order)
 - Acceptance of Categorical Terms and Conditions (third line must be signed)
 - Required Categorical Responses for your category (written response to every part)
- Tab 6: Cost Quotation
 - Prices for category
 - Additional price information, price sheets from RFP
- Tab 7: Required Forms
 - Offeror's Support for CES Prices (page 90)
 - Questionnaire for Offeror (pages 91)
 - Support and Maintenance Plans (page 89)
 - Manufacturer's Representative Form (page 93)
- Tab 8: Additional Information
 - Additional information that you wish to include
 - Additional support pages requested in each specific category
- Tab 9: Submission Check-off Form
 - Make certain everything is included, and then sign form (page 96)
- Tab 10: Literature, slicks, samples and supporting printed material

Step Three: Go to the last page of this RFP and prepare the Submission Check-off Form. Sign it and place it after Tab 9. Send your proposal to CES so that it arrives on or before Friday, January 7, 2005, at 1:30 p.m. local time.

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

Step Four: Before you seal your proposal, 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 proposal for yourself. Submit your proposal to CES.

4. Vendor Qualifications

All proposals must contain answers or responses to the 10 items listed below. Any offeror failing to answer these questions completely may be considered non-responsive. Please arrange your responses by placing them after Tab 4. One essential part of the evaluation process is for the evaluators to have information about the company being evaluated. For the evaluators to know if the proposal 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 members considering the purchase. This is your opportunity to present your company to those interested evaluators and, if awarded, member staff of our members.

- a. Write a brief history of your company that includes its philosophy of doing business. 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 this business or a closely related business, please provide written verification. CES reserves the right to accept or reject newly formed companies solely based on information provided in this response and from its own investigation of the company. Since any contract awarded by CES is a recommendation to members to do business with the vendor, organizations with little or no demonstrated ability to perform may be placing members at risk.
- b. Indicate where the headquarters of the company are located. Provide address, city, and state, and if there are branch offices in New Mexico please also supply those. Note how long your company has provided these services/products in New Mexico. If you are offering after-sales services to CES members, state the qualifications of your service staff. Provide the name, title, qualifications and experience of the key people who will support this contract. Describe your service facilities in terms of square feet, service equipment, number of technicians, inventory in stock, and service response time.
- c. Almost every business has professional organizations and associations that provide standards and/or produce evaluations/comparisons for sales use and for other competitive purposes. If any of the products/services you are offering have received an evaluation by any of these groups, and they have issued a report of their findings or any awards or nominations for excellence, provide or cite that documentation. If the products you offer in this contract meet or exceed industry standards if submitted for evaluation, please submit copies of the reports and a written narrative describing the standards and/or awards your products/services or company has received. Also, place copies of articles, sales slicks, catalogs, news clippings, or news bulletins that describe these awards and standards after Tab 10.
- d. Vendors for products and services offered on this contract must be factory authorized dealers, distributors or agents with the ability to offer products and services in New Mexico. Include written evidence of factory authorization, either by letter from the manufacturer stating the terms, conditions and authority to speak for it, or by a copy of your franchise/contractual agreement. If you are a manufacturer, describe who, from where, if or how, you will provide and support your dealer network with this contract, or if you will sell directly to CES.
- e. A major problem often facing companies awarded a CES contract is rapid growth followed by cash flow difficulties. For purposes of evaluation, attach a letter from your financial institution that indicates the line of credit available to you. This letter does not need to identify a dollar amount. Instead, a credit range should be indicated. (For example, "credit in the low six figures" or "a credit line exceeding five figures.") Indicate if you will assign payments to financial institutions. 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 proposal if you intend to use these financial services. The fact that a company uses these services will not reflect on the credit stature of the CES vendor. Since CES requires a 45 day term rather than the more traditional 30 days, such payment arrangements may be necessary.

- f. Describe your company's policies and procedures in regards to complying with the New Mexico State mandated security and background checks for individuals working and providing services within public school buildings. Please provide a sample of the type of background check that you are willing to perform for these purposes.
- g. Unfortunately, the United States of America is now a very litigious society. Provide with this RFP, a certificate of verification of insurance listing minimum and maximum coverage for liability, vehicle and property damage. CES is not asking you to acquire additional or special insurance for this contract. CES needs proof that you are insured. Before any work can commence, you must provide a certificate that names CES as a certificate holder. Normally, this is a free service provided by an insurance company.
- h. CES is the administrative agency of the Joint Powers Agreement to Establish an Educational Cooperative. Its members are the public educational institutions in New Mexico. Our sole purpose is to support these institutions in their day-to-day procurement. Describe in writing your ability, willingness and means to sell, deliver and provide support to the educational agencies in New Mexico. No offeror will be denied a contract simply because sales are limited to New Mexico. However, CES will not enter into a contract with a vendor who has an existing contract that would be more advantageous than a CES contract to sell/provide goods/services to New Mexico agencies. Do you currently have or plan to have such state contracts, that is, SPD with the State Procurement Division? If so, why do you wish to secure a CES contract, and how would the CES contract be more advantageous in pricing or other services over other cooperative contracts?
- i. It has been CES' experience that a gap exists between the management (those who respond to RFP's) and sales staff (those who contact the schools and political subdivisions) which results in problems. Will your sales staff sell a product or service to a CES member that it knows will not meet the member's needs? What training does your sales staff have that gives you confidence in their ability to serve the needs identified in RFP 2005-011? Name your key sales people who will be assigned this contract; provide a brief description of each person's qualifications that includes title, work experience, educational background and related skills.
- j. Although CES is not required to base an award strictly on the lowest price, any time one vendor charges more than another for a product or service, justification is needed. Every CES contract must be for the public good, not for the benefit of a vendor. Having said that however, CES is totally committed to two basics in the American way of business, profit and competition. Please provide, in writing, reasons why your products and goods are worth the prices or fees you are charging. List any "added value" received by the customer when purchasing through you rather than a competitor, and report whether your major benefit is price alone.

E. LISTING OF GENERAL TERMS AND CONDITIONS:

The flow of transactions for procurement under this contract will be as follows:

1. Vendor provides quote to member and the quote includes the CES one percent (1%) administration fee.
2. If acceptable, the member issues CES a purchase order for the quoted amount.
3. CES verifies the quote with the solicitation response and issues a purchase order to the vendor for one percent (1%) less than the vendor's quote to the member.

4. The vendor provides the items or services and invoices CES for the amount of CES' purchase order to the vendor.
5. CES invoices the member.
6. The member pays CES.
7. After receipt of the member payment, CES pays the vendor for items and services delivered and accepted by the member, not to exceed the purchase order amount.

For the purposes of this REQUEST FOR PROPOSALS, the following terms shall 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. 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 delivered/installed, CES reserves the right to cancel the contract following the procedures described in this RFP (*caveat venditor*).

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

Accounts Payable: Vendor agrees not to contact the accounts payable department, business manager, or superintendent of a school or agency which owes CES payment for a product or service delivered to the school or agency by the contractor as a result of a contract through this RFP, unless CES has specifically requested assistance in collecting a past due payment.

Administration Fee: CES' one percent (1%) administration fee shall be included in offeror's net price. Vendor will not add the administration fee to approved contract prices. CES' minimum administration fee on any individual purchase is Ten Dollars (\$10).

Advertising: Vendor 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 vendor to advertise to CES members that products/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 RFP.

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

Applicable Law: This contract will be governed by the laws of the State of New Mexico, both as to interpretation and performance. Suits pertaining to this contract can be brought only in courts in the State of New Mexico. Offerors doing business with CES must be in compliance with the Federal Civil Rights Acts of 1964 and Title VII of that Act, Rev. 1979. All work under this contract will be done in strict accordance with the most recent edition of any relevant regulation, standard, document or code that relate to these laws. Where conflict among the requirements or with 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 vendor within 15 days of receipt of written notice by the vendor.

Audit Rights: In accordance with applicable New Mexico law, the vendor's books and records related to this contract may be audited at a reasonable time and place.

Authority: This RFP, 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 contract to one responsible offeror, or to reject one or all proposals. A response to the RFP is an offer to contract with CES based upon the terms, conditions, scope of work and specifications contained in this request for proposal. An RFP does not become a contract unless, and until, CES signs the Acceptance of Offer and Contract Award document, eliminating the need for a formal signing of a separate contract.

Best and Final Offer: After initial receipt of proposals, CES reserves the right to conduct discussions with responsible offerors who submit responsive proposals.

Billing: All invoices will be from the vendor to CES and will list the purchase order number(s) issued by CES and CES member on the invoice. The vendor will not invoice a member directly. CES will invoice the member with payment to be made to CES. The vendor will not accept a purchase order from a member or other procurement unit based on this contract.

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

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 can, by written notice stating the extent and effective date, cancel the contract issued as a result of this RFP for convenience in whole or in part, at any time. CES shall pay offeror as full compensation for performance until such termination as follows:

1. The unit or pro-rata order price for the delivered and accepted portion; and
2. A reasonable amount, not otherwise recoverable from other sources by offeror as approved by CES with respect to the undelivered or unaccepted portion of the service; provided compensation shall 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 vendor to carry out any obligation, term or condition of the contract. CES may issue written notice to the vendor for acting or failing to act under the following conditions.

1. The vendor provides material that does not meet the specifications of the contract.
2. The vendor fails to complete the services set forth in the specifications of the contract.
3. The vendor fails to complete the work required or to furnish the materials required within the specified time.
4. The vendor fails to make progress in the performance of the contract and/or gives CES cause to believe that the vendor will not or cannot perform the requirements of the contract.
5. The vendor fails to observe any or all the terms and conditions of the contract.
6. The vendor 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 vendor will have 10 days to provide a satisfactory response in writing to CES. Failure on the part of the vendor to satisfactorily respond can result in CES canceling the contract.

Cancellation 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 shall be effective when written notice from CES is received by the parties to this contract, unless the notice specifies a later time.

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

Captions, Headings, and Illustrations: The captions, headings and subheadings in this RFP 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 vendor 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 vendor's insurance company and name CES as the certificate holder. In addition, vendor must be willing to provide, upon request, certification of insurance to any CES member using this contact. If the vendor 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 vendor certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The vendor will not discriminate against any employee, or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246).
3. The vendor 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.
4. The vendor agrees to promote and offer to members of CES 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 RFP, clarification means communication with a vendor for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. It is achieved by explanation or substantiation, either in response to an inquiry by CES, or as initiated by the vendor. Unlike "Discussion" (see below), clarification does not give the offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision.

Competitive Range: Since CES often receives many proposals for one solicitation, it may be necessary to establish, as part of the evaluation process, a competitive range of acceptable proposals for the purpose of further discussions. Proposals not in the competitive range are unacceptable and not considered further.

Competitive Sealed Proposals: As required in the Procurement Code, CES has determined that competitive sealed bids are neither practical nor advantageous for this solicitation. These CES contracts will be awarded through competitive sealed proposals for the following reasons:

1. CES desires to conduct oral or written discussions with potential offerors prior to an award;
2. CES desires to allow vendors to revise proposals;
3. CES wishes to award contracts on which price is only one of many determining factors;
4. CES realizes that over the period of a multiyear contract, certain prices may change.

Confidential Information: If an offeror believes that any part of its proposal 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 and the proposal may be rejected.

Construction: Offerors can sell and install finished products, materials or articles of merchandise, which are fabricated into, and become a permanent fixed part of a structure. If the removal of the finished products, materials or articles of merchandise would cause

damage to the structure or render the structure unfit for its intended use, the offeror must indicate this on its response. No construction activities will be permitted under this RFP.

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

Contract Changes: CES can make changes within the general scope of this contract by giving notice to the vendor, 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 vendor will be recognized without written approval of CES. Any claim of vendor for any adjustment must be made in writing within 30 days from date of receipt by vendor of notification of such change, unless CES waives this condition. Nothing in this section will excuse vendor from proceeding with performance of the service as changed hereunder.

Contract Type: Indefinite quantity with:

1. Fixed discount off retail or off published education/catalog price list; or
2. Fixed price with economic adjustment (offeror must identify in writing in this RFP any contingencies prior to approval).

Note: A cost-plus-a-percentage-of-cost contract is prohibited. Request for a price adjustment must be submitted 30 days prior to the yearly anniversary date of the contract (first two years) and prior to the annual renewal date (remaining years). Justification for any adjustment shall 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.

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 institutions and other procurement units. Although vendors can restrict sales to certain public units (for example, to state agencies or local government units), any contract that restricts sales from being made to public educational institutions will not be considered.

Cost of Proposal Preparation: CES will not reimburse the cost of developing, presenting, or providing any response to this solicitation.

Credit Hold: The vendor must agree not to place CES on "credit hold" without 10 days advanced notice in writing, either by letter or facsimile. Before CES can pay a vendor's invoice, it must collect payment from the member or political subdivision that received the product. CES believes it is better for the vendor if CES places the slow-paying agency on "credit hold". If a vendor 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 offers will be for equipment, supplies, commodities and software in current production and marketed to the general public and educational/governmental agencies.

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

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

Delivery: Delivery is desired to be made within 30 days of receipt of the purchase order. Vendor agrees to notify CES if an order cannot be processed and delivered within the 30 day period. The school placing the order will then have the option of canceling the purchase order. Ownership of goods occurs only upon receipt of delivery in good condition.

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

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

Discontinued Products: In the event that a product or model is discontinued by the manufacturer, CES will allow the vendor to substitute a new product or model if the pricing discount is equivalent to the discontinued product or model.

Discussions: Discussions occur, when oral or written communications between CES and the offeror are conducted for the purpose of minor clarifications involving information essential for determining the acceptability of a proposal or that provides the offeror an opportunity to revise or modify its proposal. CES will not help an offeror bring its proposal up to the level of other proposals through discussions. CES will not disclose technical information pertaining to a competing proposal. CES will neither indicate to an offeror a cost nor price that it must meet to obtain further consideration, nor will it provide any information about other offerors' proposals or prices. CES is willing to discuss with an offeror, having a proposal in the competitive range, any weaknesses, excesses, or deficiencies in its proposal.

Eligible Agencies: Any CES member can use the services of Cooperative Educational Services. CES reserves the right to reject any purchase authorizations it receives from New Mexico schools and 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 CES members and on the marketing expertise of the vendor.

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

Federal Requirements: Vendor agrees, when working on any federally assisted projects with more than \$20,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland “Anti-Kickback” Act, and the Equal Opportunity Employment requirements of Executive Order 11375. In such projects, the vendor agrees to post wage rates at the work site, and submit a copy of their payroll to the CES member for their files. In addition, to comply with the Copeland Act, the vendor must keep records for three (3) years, and allow the federal grantor agency access to these records, upon demand. All federally assisted contracts to CES members that exceed \$10,000 may be terminated by the federal grantee for noncompliance by the vendor. In projects that are not federally funded, vendor 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 shall be liable to the other nor deemed in default under this contract, if and to the extent that such party’s performance of this contract is prevented by reason of force majeure. The term “force majeure” means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence, including, but not limited to, the following: acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; 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 shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure, and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement. Force majeure shall not include late deliveries of software or materials caused by congestion at a manufacturer’s plant or elsewhere, an over-sold condition of the market, inefficiencies and poor management practices, or similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party in writing of such delay within 48 hours.

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

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

Indemnification: Vendor shall indemnify, defend, and save harmless CES for any and all claims, demands, suits, proceedings, loss, cost and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may 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 vendor, 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 vendor, and/or its subcontractors or claims under similar such laws or obligations. Vendor's obligation under this section will not extend to any liability caused by the sole negligence of CES or its employees.

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

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

Installation: Equipment that requires professional installation will be installed within two (2) weeks of product delivery, unless CES or the CES member asks that installation be delayed, or an extended installation time is noted in this proposal.

Insurance: On contract, the vendor 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, activities under this contract, where those activities are performed by it, or by any subcontractor or 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 successful offeror must furnish Certificate of Insurance to the CES procurement office prior to official award. If policy changes occur during the life of the contract, it is the vendor's responsibility to provide updated proof of coverage to the CES procurement office. Offerors will submit proof of coverage under the Workman's Compensation Insurance as required by the Labor Laws and New Mexico Statutes. Offerors 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 \$1,000,000 combined single limit for bodily injury and property damage or \$500,000 bodily injury and \$250,000 property damage (each occurrence). The offeror will name CES and the member as co-insured up to the limits of the Tort Claims Act. Additional punitive damages liability to \$500,000 will be provided naming CES as co-insured.

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

Lease and Rentals: Offeror can allow CES members to enter into rent, lease or lease purchase agreements, providing such agreements are in compliance with New Mexico statutes and Public Education Department policies, rules and regulations. CES must receive a copy of the executed leasing documents prior to processing 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 proposal with interest rates described as related to a government standard. Offeror must indicate in its response to this solicitation if the shipping costs for the return of leased or rented equipment is the responsibility of the CES member, and what that cost will be. No sale of a contract to a third party will be made without informing CES and the CES member of the transfer. If offeror sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original vendor.

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

Liability: The vendor 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 vendor’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 vendor, 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 vendor’s liability pursuant to this indemnification provision will not be greater than that portion of the total liability in the same proportion as vendor’s negligence bears to the entire negligence giving rise to the liability.

Licenses: The vendor will maintain in current status all federal, state and local licenses, bonds and permits required for the performance of the contract. Any offeror using subcontractors must hold a current general contractor’s license, as required by law. Copies of licenses will be submitted by the vendor with the response to the RFP. The vendor agrees to keep any required license or bond current, and in compliance with the New Mexico rules and regulations.

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

Local Education Agency: The public school districts within the state of New Mexico.

Local Public Body: Every political subdivision of the state and the agencies and institutions thereof.

Maintenance: Each potential vendor of high technology electrical/mechanical equipment must have maintenance facilities and 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, vendor must include with the proposal details any such arrangement. Factory certified and trained technicians shall be available to cover all parts of the state. Maintenance service in metropolitan areas of New Mexico should be available within eight (8) hours, service in rural areas within 24 hours, or next day. Any maintenance facility must have sufficient parts inventory to provide quality service on units sold to CES members. On small pieces of equipment mail-in service may be offered by out-of-state manufacturers, if normal turn around time is 48 hours.

Manufacturer's Representative: Dealers of high technology electrical/mechanical equipment, who, if permitted by the Scope of the Work, submit an offer as a manufacturer's representative must be able, if asked, to supplement the offer with a letter from the manufacturer certifying that the vendor is a bona fide dealer for the specific equipment presented, that the contractor is authorized to submit an offer on such equipment, and which guarantees that should the dealer 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 dealers for the balance of the contract period. Dealers of software, mechanical devices, electronic goods and other commodities must be able, upon request, to provide the same information from a manufacturer.

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

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

Most Favored Customer: Although CES expects vendors to offer its very best prices to CES members; nothing in this contract established a most favored customer relationship between CES and the vendor. The vendor can respond to any solicitation from any public procurement unit without regard to this contract. If vendor 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 meets the many needs of its member districts. Hence, when an award to one supplier would be impractical or fail to meet the total requirements of comparison or evaluation, multiple awards may be made.

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

Negotiations: Where there is not competition that would result in a better contract, negotiation may be conducted until a detail agreement is reached.

New Technology and Products: New products announced by the manufacturer may be added to the existing contract. Pricing shall 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 if the products meet the requirements of the original RFP. No products may be added to avoid competitive procurement procedures. CES can reject any additions, without cause.

No Replacement of Defective Tender: Every tender of materials must fully comply with all provisions of this contract. If tender is made which does not fully conform, this will constitute a breach, and vendor 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 requirements for this solicitation is considered non-responsive.

Notation: If the original vendor 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 vendor being obligated if the new party fails to perform. A simple change of name agreement will not change the contractual obligations of the vendor.

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 opportunity to evaluate the proposals offered, CES requires that an offer in response to this solicitation to be valid and irrevocable for 90 days after opening time and date.

Offeror Qualifications: The offeror must have extensive knowledge and experience with the installation and maintenance of the equipment, service or software offered with at least three (3) years experience.

Options: Optional equipment or products can be added to the contract at the time it becomes 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: When on-line purchasing is not selected by the member, all orders accepted by the vendor must be issued by CES. CES members will submit signed purchase orders to CES. CES will then issue a purchase order to the vendor. When necessary, one or more orders may be combined. The vendor must agree never to accept a purchase order based on this contract, unless the purchase order is issued by CES, unless an on-line agreement has been approved in writing by CES.

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 vendor hereby assigns to CES any and all claims for overcharges as to the goods or services used to fulfill the contract.

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

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

Patent and Copyright Infringement: Vendor 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 are modified by CES or its members, subject to the last paragraph of this section) infringe a patent or copyright in the United States, or a U.S. territory, and will pay all costs, damages and attorney's fees that a court finally awards as a result of such a claim. To qualify for such a defense and payment, CES must:

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

CES will be reimbursed for all expenses incurred by CES in fully cooperating with vendor as specifically requested by contract. CES is not required to incur any expenses specified in this paragraph, which are not reimbursable, by the vendor. If any CES member is involved by any party in any way, the same provisions that apply to CES in this paragraph will apply to the member. Vendor's obligation under this section is conditioned on CES' agreement that if the subject of such a claim, CES will permit the vendor, 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 vendor's judgment and satisfactory to CES, CES will request its members to return the equipment or software on written request by vendor at vendor's expense.

Vendor agrees to refund CES and/or its members a refund for returned equipment as depreciated unless otherwise mutually agreeable in writing. The depreciation will be an equal amount per year over six (6) years. In the event that vendor's written request for return is made after full depreciation, the vendor 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 vendor is not obligated to that member under this clause.

Vendor 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 vendor. However, one members' action, will not preclude vendor's obligation to others not having modified their equipment or software.

Payment: CES will make every effort to collect payment from members for the purchase of goods and services within 30 days after the receipt of goods or services and a correct invoice of amount due, unless 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 shall not be considered.* CES must first receive payment from the schools in order to process payment to the vendor. Any vendor, whose business would be in jeopardy due to slow payments, is encouraged not to respond. It has been CES' experience that schools always pay, but many are slow in processing payments.

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 shall be deducted from the proposal price to determine low price.

Peripheral Items: Offerors may include various peripheral equipment and software that function with the primary offering.

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

1. The price reduction is available to all members equally.
2. The price reduction is for a specific time period.
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%) administration fee and while this contract is in effect, prices offered will be at least two percent (2%) below the lowest price offered by the offeror to New Mexico schools and local/state procurements units for a similar volume. Should a lesser cost be provided to any other client, 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 proposal. If the offeror has a leasing department or a leasing company, the cost of leasing can be included in the proposal. However, CES members reserve the right to choose a different leasing company. Leases with options to purchase must be described. Rental plans should not contain end-of-rental-term buy out information.

CES members pay an administration fee equal to one percent (1%) of the purchase price of goods and services purchased from CES contracts. Offerors will include the administration fee in all prices in the Discount and Price Schedule. CES will deduct the one percent (1%) administration fee prior to issuing its' purchase order to the vendor.

Prime Contractor: For the purpose of this solicitation, a vendor will be considered a prime contractor and not a subcontractor. Any vendor paid directly by the buyer is a prime contractor; a subcontractor is paid by another contractor. Prime contractors using subcontractors are responsible for all actions of their subcontractors.

Product Discontinuance: In the event that a product or model is discontinued by the manufacturer, the vendor can 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: Contracts will be awarded to offerors able to provide its complete product line of equipment, software and services described in the specifications. Offerors with a published catalog 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 good or service under the following conditions:

1. The member and the vendor agree to the terms of the progress payments prior to issuing a purchase order to CES.
2. The purchase order describes the amounts to be paid and the date of payment.
3. The member has a satisfactory method of verifying progress described in writing a letter to CES or on the purchase order.
4. Payments will be made only after actual goods and/or services are verified/received.
5. Payments will be made in full compliance with members' local board rules and any and all other applicable state rules and regulations.

Progress Payments for Vendors: All progress payments must be invoiced through CES. It is the responsibility of the member to review and approve any estimates of work completed. If the member issues a written statement to the vendor that the estimate of work is not approved and certified, the member can withhold an amount from the progress payment the member reasonably expects to incur in correcting the deficiency set forth in the written finding. In such cases, the vendor agrees to hold CES harmless for any deficiency of payment. If any payment is delayed beyond 45 days from the due date, the vendor agrees not to charge CES interest on the late payment. Any late charges will be the total responsibility of the CES member. The vendor 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 vendor will assign a project director to coordinate operational activities with the Executive Director of CES and shall make monthly reports to the Executive Director.

Protests: Protests will be filed and resolved in accordance with the State of New Mexico Procurement Code. Venue for any and all legal actions regarding or arising out of the transactions covered herein shall 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 RFP and resulting transactions.

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

Public Record: All proposals submitted in response to this invitation will become the property of CES and be a matter of public record available for review, subsequent to the award notification, 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: In order to qualify, an offeror must be licensed as required by the New Mexico Regulation and Licensing Department. All work under this contract will be done in strict accordance with the most recent edition of any relevant regulation, standard, document or code in effect. Where conflict among the requirements, or with these specifications exists, the most stringent requirements will be used.

Request for Proposals or RFP: All documents, including those attached or incorporated by reference, which are used for soliciting proposals.

Responsible Offeror: An offeror who submits a responsive proposal 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 satisfactory delivery of the services or items of tangible personal property described in the proposal.

Responsive Proposal: An offer which conforms in all material respects to the requirements set forth in the Request for Proposals. Material respects of a request for a proposal include, but are not limited to, 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, it may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within 10 days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

Safety Measures: Vendors will 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 of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), American National Standards Institute (ANSI), and National Fire Protection Association Standards (NFPA).

Serial Numbers: Offers must be for equipment on which the 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: Vendor 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: Vendor agrees that shipping errors will be at the expense of the vendor. For example, if a vendor ships a product to a member that was not ordered, it is the responsibility of the vendor to pay for return mail or shipment, at the convenience of the member.

Shipping Terms: Prices that include shipping to any location in the State of New Mexico, delivered to the specific receiving point as identified in the purchase order issued by CES to the vendor, as preferred. Vendor will retain title and control of all goods until they are delivered and received. All risk of transportation and all related charges will be the responsibility of the vendor. All claims for the vendor will file visible or concealed damage. CES, or the receiving agency, will notify the vendor and/or freight company promptly of any damaged goods, and will assist the freight company/vendor in arranging for inspection. No F.O.B. vessel, car or other vehicle terms will be accepted.

Site Cleanup: Any successful vendor will clean up and remove all debris and rubbish resulting from its work from time to time as required or directed by the member securing the materials or service. Upon completion of the work, the premises will be left in a neat, unobstructed condition with everything in good repair and order.

Site Preparation: No vendor will begin a project for which the site is not prepared by the member, unless vendor decides to do the preparation work at no cost, or until the member has included the cost of site preparation in a purchase order to CES. Site preparation includes

things like moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

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

Specifications: All Scope of Work specifications in this RFP are designed to enable a vendor 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 vendor believing a specification is unnecessarily restrictive, and submits a proposal, must indicate such in its initial response.

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

Tare: If the vendor requires the member 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 can 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 February 11, 2006 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three, additional 12-month periods ending on February 11, 2007, February 11, 2008 and February 11, 2009. Since technology changes rapidly, CES may require a vendor to respond to a new RFP rather than extend a contract secured under this RFP.

Termination of RFP: The Request for Proposals (RFP) 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 can be terminated without penalty or obligation at any time prior to the signing of a contract. CES reserves the right to cancel this RFP at any time and for any reason and to reject any or all proposals.

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

Trade-In Equipment: Equipment for trade-in shall be dismantled by the vendor and removed at the vendor's expense. The conditions of the trade-in equipment at the time it is turned over to the vendor 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 vendor.

Vendor: Offeror who has been awarded contract for delivery of material goods or completion of services in response to this document.

Vendor Invoice: Vendor will invoice CES after delivery of goods and/or services. Goods and services will be invoiced at applicable contract prices, less the CES one percent (1%) administration fee and not to exceed the amount of the CES purchase order. CES will invoice member after receiving and reviewing vendor's invoice.

Vendor Payment: CES will issue payment to vendor after receipt of member's payment. Vendor will be paid its invoice amount for goods and services, less CES' one percent (1%) administration fee. Vendor will credit CES an amount equal to the deducted administration fee, if required to provide a zero balance on CES' account.

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

Warranty: Vendor warrants that all equipment, software and services delivered under this contract will conform to the specifications of this contract. All equipment must carry a minimum twelve (12) month manufacturer's warranty that includes parts and labor unless otherwise stated in Categorical Terms and Conditions. The manufacturer has the primary responsibility to honor a manufacturer's warranty. A distributor or dealer must agree to assist the purchaser in reaching a solution regarding a dispute with the manufacturer over a warranty's terms.

Withdrawal of Offer: An offeror can withdraw its proposal, 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 vendor, goods must be delivered and services must be completed five (5) days prior to the end of the school's fiscal year (June 30th). CES must receive all invoices dated for the prior school year by the 10th of July. The member can cancel purchase orders not completed by June 25th. The member can issue revised purchase orders dated after July 1st for any goods not delivered or services not completed by June 25th.

SECTION II SCOPE OF WORK AND SPECIFICATIONS

A. SCOPE OF WORK

1. Cooperative Educational Services (CES), which is based in Albuquerque, New Mexico, is composed of all of the 89 New Mexico public school districts and other public educational institutions that are parties to the Joint Powers Agreement to Establish an Educational Cooperative. CES was organized in 1979 as a direct response to the needs of small and rural Local Education Agencies (LEA's). CES offers numerous programs and services. Currently, 152 public educational institutions are members and most use one or more of the CES provided programs or services each year.
2. It is important that all vendors realize that CES is not a sales agency or marketing firm. If you are awarded a contract, you must work your contract. Some vendors with powerful mail campaigns have been able to market to schools through CES, but normally mail alone is not sufficient. Member buyers like to meet and talk with a sales agent when making decisions on large orders.
3. When you respond, CES is asking you to become a partner in providing quality goods and services to members at competitive prices. Partnership with a contract awarded through competitive bidding saves school districts both time and money. Time is saved by being able to purchase what is needed without having to wait through the solicitation process (write solicitation, advertise proposal, 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.
4. Read through the section that concerns you as an offeror. Next, prepare a rough draft of your offer, fill out the forms necessary and gather all the advertising slicks you want to send along with your proposal. Finally, print a final offer, write the executive summary and organize everything into a three-ring binder.

B. DUTIES OF THE VENDOR

Once the award is made to the offeror, the offeror, as vendor, 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 vendor to market the products or services to the member.

C. DUTIES OF CES

The general duties of CES include:

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

D. SPECIFICATIONS

CES has provided General Terms and Conditions. In the following part of this section, CES is providing additional Categorical Terms and Conditions that apply. In case of conflict between the General Terms and Conditions and Categorical Terms and Conditions, the latter will apply. Additional items may be requested in the specific Categorical Terms and Conditions.

Each category contains three areas that will be weighed in accordance with Evaluation Factors. Not providing required items could classify the proposal as non-responsive.

E. LISTING OF CATEGORIES

CES has prepared one (1) RFP document that includes six (6) proposal requests. Select the category that you choose to respond and prepare the response only for that category. You do not need to respond to all categories. Each category is divided into sections, including:

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

Category 6

Consulting Services and Products for Turf Management, Including Testing, Evaluating, Analyzing and Treating Soils, Lawns, Bushes, Trees and Other Landscaping Areas

The maintenance, upkeep and management of the public education institutions' grounds is often overwhelming. These grounds have many different kinds of lawns, trees, bushes, flowers and other surfaces. The types of inclement environments and conditions vary greatly from mountainous and high moisture to desert and the shortage of water. When it comes to ground and landscape care products, needs range from weed control, shrubs and tree care to keeping athletic fields and other grassed areas in good condition. Likewise, communities are passing ordinances controlling and regulating the landscaping. Due to all these variables, members have requested that CES seek vendors to provide assistance in determining the best way to test, control, treat and maintain their landscaping.

Categorical Scope of Work

CES is seeking vendors to perform evaluation and analysis services; assist in designing and implementing an action plan and provide the necessary soil treatments, fertilizers, chemicals, seeds and other products needed to meet the identified conditions to establish, maintain and control grounds, fields and landscape areas found in New Mexico educational institutions' facilities. Services and products offered may include, but are not limited to:

1. Working with and assisting members with site inspections, soil sampling and analysis on an ongoing basis to ascertain their landscaping needs, along with the interpretation and evaluation of such test(s) to determine and develop a plan of action to achieve the desired outcome. Recommendation of fertilizers, chemicals, seeds and other products and analytical analyses must include computerized printouts identifying both the existing soil situation and the needed supplements.
2. Services relating to designing, developing and implementing grounds and landscaping short and long range maintenance plans.
3. Training and orientation services relating to selecting, storing, handling and applying seeds, fertilizers, chemicals and other landscaping products.
4. Supplying products such as algae, aquatic weed control, turf/brush/tree/plant fertilizers, and maintenance products, fungicides, herbicides, insecticides, specialty chemicals, grass seed, greenhouse and nursery products, vegetation management products.
5. The evaluation of existing conditions and/or problems that may exist to determine the needed course of action to resolve and mediate the problem.
6. Assist the member in maintaining and caring for existing landscaping by providing a well rounded product line of products to treat and care for various types of flowers, vegetation and lawns.
7. General consulting may include, but is not limited to:
 - a. Turf management programs

- b. Water management programs
- c. Landscape management programs
- d. Specification writing
- e. General plan review
- f. Irrigation

Services requested under this category **DO NOT** include any services that would be classified as construction services by NMCID.

Categorical Definitions

ANSI – American National Standards Institute

ASTM – American Society for Testing and Materials

EPA – Environmental Protection Agency

HEPA – Is a term used to identify materials, equipment and regulations that relate to hazardous materials, processes, procedures and standards governed and controlled by EPA.

ISO – International Standards Organization

NMCID – New Mexico Construction Industries Division

NMPSFA – New Mexico Public School Facilities Authority

OSHA – Occupational Safety Hazard Administration

UBC – Uniform Building Codes

USPHS – United States Public Health Service

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

Categorical Terms and Conditions

The following are specifications, conditions and stipulations that offerors must be aware of and comply with under this category. They are in addition to the Listing of General Term and Conditions. Please review them and sign the acceptance of Categorical Terms and Conditions form. Place after Tab 5.

1. The offeror must provide the landscaping services requested herein.

2. Offeror will ensure that all individuals, firms and subcontractors used to perform or supervise work under this solicitation will have the qualifications, certifications and expertise necessary for them to perform and provide products that meet or exceed federal, state, local and industry standards.
3. The offeror must provide a written narrative, together with documentation to demonstrate its' ability to perform under this solicitation.
4. If, as part of any project performed under this category, the member is required to perform or provide man power in conjunction with the vendor, it must be clearly described, agreed to and put in writing as part of the vendor's project proposal to the member.
5. The vendor will use only materials that meet or exceed those standards established for public facilities by local, state, federal and industry associations, organizations and governing bodies.
6. The vendor will assume full responsibility for communicating and providing all MSDS and safety information to the member relating to the storage, application and use of fertilizers, chemicals and products.
7. The vendor must ensure that individuals working in and around the educational institutions are of good and moral character and meet or exceed the standards set by the Safe School Act.
8. The vendor must comply with all federal, state and local laws. Adjoining property owners must not be annoyed by noise, pollutants and material hauling operations. Procedures for dealing with fire and theft must be established. Methods used to guarantee safe job practices relating to the health, safety and welfare of the member's students, employees and community must be clearly stated.
9. Consulting services in the general areas of turf grass management must include, but are not limited to, soil analysis, pest analysis, irrigation analysis, site preparation, silt seeding, proper fertilization, dragging, core aerification, slicing aerification and top dressing application, etc.
10. If the member requests, the vendor must provide a written site survey, including but not limited to the review of existing grounds management problems such as landscaping, drainage and usage.
11. The vendor must be willing and able to provide training for member's staff in lawn, grounds care and other related areas.
12. Vendor, upon request of the member, will establish mutually agreed upon performance based outcomes, timelines and project specifications before an agreement and/or purchase order is sent to CES for the project.
13. The vendor must advise the CES member's contact person whenever work or products offered is expected to be hazardous to children, employees or others within the immediate area of work.
14. The vendor will deliver materials to the project site in new, dry, unopened and well-marked containers showing product and vendor's name. The containers must meet or exceed OSHA/EPA standards. Damaged or unlabeled materials will not be accepted or stored on project site.
15. The offeror must demonstrate that it is an authorized manufacturer's representative and has training and experience working with and around the products being proposed herein.

16. Since the products are to be utilized in an educational environment where children and adults of various ages must work and play, the offeror must have policies and procedures in place to ensure that the end user is aware of and understands all shipping, storage, handling and application requirements, conditions and potential problems that may exist and the options and remedies if special requirements exist or must be met.
17. The offeror should note that the knowledge, background experience and expertise levels of the members' warehouse, maintenance, grounds and custodial personnel will differ from member to member. Therefore, the offeror must be prepared to provide various levels of support and assistance that are appropriate to the application and products as dictated by the member's needs and situation. It is important that the offeror carry a variety of product lines that will allow the members to meet their individual and various needs. The offeror is encouraged to offer as many and as varied a product line as possible.

Required Categorical Responses

1. Through written documentation, the offeror must clearly identify the services they are proposing.
2. Offeror must, through written documentation, demonstrate its' ability to perform those services offered herein by providing:
 - a. Prior experience
 - b. The type, kind and level of services provided to New Mexico public educational institutions
 - c. Examples of training and consulting services offered, which resulted in better managed and kept grounds/facilities.
3. Offeror must provide examples of project documents prepared and submitted to facility owners, which included the evaluation of existing facilities, their conditions and the design and implementation plan for a complete solution.
4. The offeror must provide samples of:
 - a. Charts for turf management control, indicating suggested applications by time of the year
 - b. Soil analysis printouts with recommended plans of action
5. Through a written narrative, discuss your company's background, knowledge, resources, experience and attributes that you feel makes the products and services you propose to offer the most advantageous, cost effective solutions to meet the diverse needs and requirements of the members. Why do you feel the product line you are proposing has the most potential of meeting the members' needs?
6. Discuss your company's strategies in obtaining and ensuring that the products recommended for use on trees, bushes, shrubs, grass fields, flowers/plants and other vegetation covered by this category are of high quality and appropriate for New Mexico's various climates and soil conditions and are safe for our environment.

Categorical Price Considerations

1. Due to the scope of work and the type and level of services requested, the costs submitted must be broken out by line items to their lowest denominator, that is, per foot, yard, gallon, hour, container, etc. All units must be clearly stated.
2. Price sheets, catalogs and other pricing forms must clearly identify and describe the supplies or materials in its unit of measure offered and its stated price. Within the terms of this RFP, the response documents must indicate the CES discount off the price sheet, catalog, etc.
3. The offeror must provide all consulting and labor costs associated with testing, evaluating, training end users and other related services that may be offered. **These prices must be expressed in per man hour costs.**

SECTION III: CONDITIONS LEADING TO AND INCLUDING CONTRACT AWARD

A. CONTRACT FORM

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

B. PROPOSAL SUBMISSION

Sealed proposals will be received until 1:30 p.m. local time, on Friday, January 7, 2005, either hand delivered to the agency offices, 4216 Balloon Park Road NE, documentation will be included and submitted in a binder, unless the Colorado/Texas option is accepted and then one (1) additional original proposal must be included for each state selected.

C. PROPOSAL REVIEW

Commencing on Monday, January 10, 2005 proposals will be reviewed by the Executive Director and a committee designated by the CES Board of Directors. Notification to all respondents will be made by Friday, February 11, 2005.

D. EVALUATION FACTORS

To qualify for evaluation, a proposal must be responsive, must have been submitted on time, and materially satisfy all mandatory requirements identified throughout the RFP. To be considered responsive, a proposal must reasonably and substantially conform to all of the specified requirements in the RFP in the judgment of the evaluation committee. Any deviation from requirements indicated herein must be stated on an attached sheet(s). Otherwise, it will be considered that proposals 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, can result in a penalty assessment being assigned during the evaluation process. Language to the effect that the offeror does not consider this proposal to be part of a contractual obligation will result in that offeror's proposal 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 RFP 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 proposal clearly and concisely as exceptions and/or deviations.

Part 1: Offeror Qualifications – 300 Total Points

- 45 points A brief history of your company that includes its philosophy of doing business.
- 40 points Company location, key people, facilities, ability to perform.
- 40 points Documentation, narrative describing the standards, testing and/or awards of products or services.
- 25 points Documentation, written evidence of factory/distributor authorization.
- 40 points Letter from your financial institution that indicates the line of credit.
- 15 points Verification of insurance.

- 30 points Your ability, willingness, proposed strategies to sell to CES member agencies and current status with other cooperative contracts in New Mexico.
- 35 points Key sales people who will be assigned this contract and resources available to the operation of the contract.
- 30 points Reasons/justification of why your products and services are worth the prices or fees you are proposing and added value available to CES members.

Part 2: Responses to specific requests in each category (placed after Tab 5) - 450 Total Points

- 175 points Responses as to how well total proposed solution meets our request as evidenced in time lines, product information and performance specifications, and requested presentations provided in Tabs 5 and 10.
- 150 points Response to categorical required written responses and/or comments requested placed behind Tab 5.
- 125 points Responses to items related to customer service, support, warranty and after the sale items proposed as stated in requested forms in the vendor's RFP response and presentation of cost data.

Part 3: Cost

- 250 points Cost with responses submitted to a shopping cart technique of at least 25 randomly selected items available from majority of the responses.
- 1,000 points TOTAL POINTS POSSIBLE

E. NEGOTIATIONS

In order to obtain the most favorable price and support for member schools, CES reserves the right to enter negotiations with responsible offerors (see also Best and Final Offer, Section I.E).

F. COST CONSIDERATIONS

The negotiated contract between CES and the vendor will be for a firm, fixed discount off current price with indefinite quantity. CES will not be liable for any cost in proposal application or for the interview session.

G. IMPORTANT NOTICE TO OFFERORS

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

Finally, offerors should keep in mind that CES desires to provide for small, rural New Mexico public educational institutes the same prices that larger members 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.

H. COLORADO EXTENSION

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

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

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

Colorado BOCES Association
John Tillman
President
c/o San Luis Valley BOCS
P. O. Box 1198
Alamosa, CO 81101-1198

Phone: (719) 589-5851

Fax: (719) 589-8012

E-mail: jtillman@slvbocs.org

I. TEXAS EXTENSION

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

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

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

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

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

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

E-mail: drupe@esc4.net

SECTION IV: PROPOSAL FORMS

Form A **Offerors Declaration Form**

Offeror must indicate each category (1 through 7) it is responding to below by placing an “X” beside it. Failure to complete and return this form will cause the proposal to be considered non-responsive.

- Category 1 Special Education Management and Tracking Software**

- Category 2 Window Coverings, Shades, Blinds, Curtains, Sunlight Control Devices and Accessories**

- Category 3 Computer Hardware, Peripherals, Accessories and Software**

- Category 4 Educational Facility Evaluation, Capital Outlay Long Range Planning and Project Management**

- Category 5 School Safety Audit, Inspection, Consulting and Training Services**

- Category 6 Consulting Services and Products for Turf Management, Including Evaluating, Testing, Analyzing and Treating Soils, Lawns, Bushes, Trees and Other Landscaping Areas**

Offerors must indicate the regions in New Mexico they 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, Truth or Consequences and Tularosa school districts.

- Region Seven (7)** – Artesia, Carlsbad, Dexter, Eunice, Hagerman, Hobbs, Jal, Lake Arthur, Loving, Lovington, Roswell and Tatum school districts.

OFFER AND ACCEPTANCE OF OFFER AND CONTRACT AWARD

PROJECT: As Defined in RFP 2005-011

OFFER
ACCEPTANCE OF OFFER
and
CONTRACT AWARD

OFFER TO BE COMPLETED BY VENDOR

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

Company Name _____ Contact Person _____
Address _____ Authorized Signature _____
City _____ State ___ Zip _____ Printed Name _____

OFFER EXTENDED TO COLORADO AND TEXAS SERVICE AGENCIES



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



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

ACCEPTANCE OF OFFER AND CONTRACT AWARD TO BE COMPLETED ONLY BY AGENCY

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

The parties intend this contract to constitute the final and complete agreement between agency and vendor, and no other agreements, oral or otherwise, regarding the subject matter of this contract, will bind any of the parties hereto. No change or modification of this contract will be valid unless it is in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract will not be affected thereby. The term of the agreement will commence on award and continue until February 11, 2006 unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods, ending February 11, 2009.

Authorized Signature Contract Number

Awarded this _____ day of _____, 2005.

AGENCY
SEAL
or
STAMP

INDEFINITE QUANTITY UNIT PRICE SCHEDULE

Bid Submission Form: All Categories

Use this form, or duplicate it, to price all equipment, services, supplies, and other commodities you wish to place on contract. 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 may sign the statement below. Any exceptions must be listed on this page (additional pages may be attached, if necessary).

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

Printed Name and Title

Signature (should match cover signature)

I accept the additional Categorical Terms and Conditions for Category

1 2 3 4 5 6

except as listed below.

Signature (should match cover signature)

SUPPORT AND MAINTENANCE PLANS

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

- o Toll Free Number _____
Contact Person _____
- o Collect Calls Accepted at this Number _____
Contact Person _____
- o Service and Maintenance Number _____
Contact Person _____
- o Technical Help Phone Line _____
Contact Person _____

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

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

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

OFFEROR'S SUPPORT FOR CES PRICES

Cooperative Educational Services (CES) is a school service agency established as a JPA. All school service agencies in New Mexico are 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 school district or local procurement unit using one or more of our contracts. There is no cost or fee paid by the vendor to CES.

There are many reasons the members use CES contracts. Because each of CES' contracts is based on a sealed proposal, members are exempt from having to issue a proposal or RFP. This saves them a great deal of time and a large amount of money. In addition, because each vendor agrees that the price charged through a CES contract will be the lowest that vendor will offer, the member knows that issuing its own proposal 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 can issue one to CES. If problems occur, the member has the assistance of CES in reaching a satisfactory solution.

A vendor receives many of the same benefits as a CES member. Rather than having to respond to dozens of individual proposals and RFPs (which is a big cost of doing business), a response to CES opens the door to over 100 procurement units. The business office of the vendor has the advantage of invoicing CES rather than each individual account. The vendor also has CES' service in collection (some public entities are slow in processing payments). If problems develop, the vendor has the mediation service of CES to settle difficulties.

Purchase orders from the members are sent to CES. CES then issues its purchase order to the vendor asking the vendor to ship directly to the member, but to send CES the invoice. Next, CES invoices the member, and adds a one percent administration fee to that invoice. This fee (\$10 minimum) is CES' income. The state does not give CES any funds to provide procurement services for schools.

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

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

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

- Prices will be **no different** from what we ordinarily offer to schools.
- Prices are (check) two percent (2%) lower than our best price to individual members.
 three percent (3%)
 four percent (4%)
 five percent (5%)
 ten percent (10%)
 other

Signature (must match signature on cover sheet)

Title

QUESTIONNAIRE FOR OFFEROR

Company Name: _____

Circle Answers Where Appropriate

1. For products on your price list, is shipping/handling included in the price? YES NO

If pre-paid authorization, estimate shipping/handling on purchases _____

2. Is your product marketed by anyone else in New Mexico? YES NO

3. *Do you guarantee that prices in the RFP are the lowest you will offer to schools and other procurement units in New Mexico during the time of any contract between CES and your company?** Do you also agree to immediately reduce any price to CES equal to or lower than a price quoted to any other New Mexico procurement unit? YES NO

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

Name of Licensee	Classification	Number

5. Describe your return policy? What is your restock fee, if any? _____

6. Where should CES mail purchase orders?

Vendor Name _____

Attention Line _____

UPS Address _____

Mailing Address _____

City _____ State _____ Zip _____

Email Address _____

Telephone (to verify prices) _____ Fax _____

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

**not including manufacturer's GSA contracts.*

7. Where do you want payments sent?

Vendor Name _____

Attention Line _____

UPS Address _____

Mailing Address _____

City _____ State _____ Zip _____

Telephone (invoice questions) _____ Fax _____

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

8. Additional contacts for CES

New Mexico Representative _____

Telephone _____ Fax _____

Email Address _____

Contact for RFP/Contract _____

Telephone _____ Fax _____

Email Address _____

9. Sales Support by Region

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

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

11. Will you offer CES a quick pay discount? If YES, what is the discount? _____ days? _____

MANUFACTURER'S REPRESENTATIVE FORM

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

_____ Offeror is a bona fide dealer for the equipment in the proposal.

_____ Offeror is authorized to submit a proposal for the equipment.

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

Signature (must match cover signature)

Date

If the offeror is the manufacturer, please sign below.

Signature (must match cover signature)

Date

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

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

INSTRUCTIONS FOR COMPLETION OF PRICE PAGES

1. Before you begin, make duplicate copies of the price page.
2. All pricing must use the price form, normally using one sheet per brand of product. If you have an exceptionally large price list, or a price catalog, you may attach the data to the form, but it must be categorized and indexed in a way that the following information is clearly identified:
 - A. Product Brand
 - B. Product Description
 - C. Retail Price or Standard Education/Government Price
 - D. Percent Discount
 - E. CES Price
 - F. Volume Discounts Available
 - G. Any Special Pricing (bundles, time-limit sales, etc.)
 - H. Installation/Labor Costs, if any
 - I. Mileage/Travel Costs, if any
 - J. Freight/Shipping, if any
 - K. Special Warranty Information
3. Once your offer is accepted, any future price adjustments must be made in the same manner.
4. It is your responsibility to keep your contract current in every way. Auditors review our contracts, and we want to keep everything 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 RFP TO AGREE TO A LOWER PRICE WITH A CUSTOMER, AND THEN LATER NOTIFY CES. CES ENCOURAGES ALL OFFERORS TO OFFER THE LOWEST PRICES POSSIBLE, BUT AT NO TIME MAY THE OFFEROR GIVE A PRICE TO ONE CES MEMBER THAT IS NOT AVAILABLE TO OTHERS.

**COMMENTS ON MULTIPLE AWARDS AND
"MOST-FAVORED-CUSTOMER" CONTRACTS**

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

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

State and Local Government Purchasing, Third Edition, page 13

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

Ibid., page 76

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

In contrast, CES is not a central purchasing office. Rather, we are a school service agency. Each district that joins CES is not yielding its own purchasing authority. Unlike state agencies that must use state awarded contracts, each school district 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 district with choices among vendors whose products and services have met a rigid standard and scope of work, and that have guaranteed a level of performance and service not always offered to the single district. In the past few years, CES has rejected more offers than have been awarded; when we multiple award, it is a limited award.

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

CES is one of the agencies that insist on a “most favored customer” clause in its contracts. CES does not believe such a clause has “negative effects on competition throughout all public contracting...(by setting) a floor on prices and is favored by firms which enjoy commanding positions in the market place.” First, many of CES' contracts are with very small companies without any “commanding position” in the New Mexico market. Secondly, CES knows that a contract with them will save vendors considerable money, since it frees them from individual proposals from the 89 school districts, 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 schools if they allowed their contracted vendors to “bid against themselves” when a member elects to issue its own RFP.

When a vendor 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 vendors. Competition is enhanced in this fashion. If a member awards a contract to a vendor not on a CES contract, for a product or service similar to that on a CES contract, the result will be an even bigger savings to the member and, hopefully, the eventual lowering of prices by the CES vendor, or an eventual rebidding by CES to secure better contracts for its members.

SUBMISSION CHECK-OFF FORM

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

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

- _____ 1. **Form A** – Offerors Declaration Form (pages 83-84) (**PLACE BEHIND TAB 1**)
- _____ 2. **Form B** – The signed Offer and Contract Award (page 85) (**PLACE BEHIND TAB 1**)
- _____ 3. **Form C** – The signed Affidavit (page 86) (**PLACE BEHIND TAB 1**)
- _____ 4. **Form D** – Price List of the equipment/services offered (page 87) (**PLACE BEHIND TAB 6**)
- _____ 5a. **Form E** – A list of any exemptions or modifications of General Terms and Conditions (page 88) (**PLACE BEHIND TAB 3**)
- _____ 5b. **Form E** – A list of any exemptions or modifications of Categorical Terms and Conditions (page depends on category) (**PLACE BEHIND TAB 5**)
- _____ 6. **Form F** – Support and Maintenance Plans (page 89) (**PLACE BEHIND TAB 7**)
- _____ 7. **Form G** – Offeror’s Support for CES Prices (page 90) (**PLACE BEHIND TAB 7**)
- _____ 8. **Form H** – Questionnaire for Offeror (pages 91) (**PLACE BEHIND TAB 7**)
- _____ 9. **Form I** – Manufacturer’s Representative Form (page 93) (**PLACE BEHIND TAB 7**)
- _____ 10. A point-by-point response for the 10 items (a–j) under Vendor Qualifications (pages 8-10) (**PLACE BEHIND TAB 4**)
- _____ 11. A point-by-point response to each requested item to which the vendor is responding under Section II-Scope of Work, D. Specifications (page number depends on category) (categorical responses) (**PLACE BEHIND TAB 5**)
- _____ 12. Letters of financial stability and credit limit (**PLACE BEHIND TAB 4**) (requested in No. 10 above)
- _____ 13. All miscellaneous forms that apply (**PLACE BEHIND TAB 8**) (requested in No. 10 above)
- _____ 14. Copies of all licenses (**PLACE BEHIND TAB 4**) (requested in No. 10 above)
- _____ 15. Appendix with catalogs, slicks, model information, etc. (**PLACE BEHIND TAB 10**)
- _____ 16. **Form L** – Submission Check-Off Form (page 96) (**PLACE BEHIND TAB 9**)

Signature