

COOPERATIVE EDUCATIONAL SERVICES

**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 19, 2007**

RFP Number: RFP 2008-011

RFP Issue Date: Monday, November 19, 2007

RFP Commodity Titles:

| Commodity Titles | Category | Title |
|------------------|----------|-------------------------------------|
| 924. 961 | 1. | Web-Based Online Placement Services |

RFP Due Date **Friday, December 14, 2007**

Day / Date: Friday, December 14, 2007

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 Content 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, December 14, 2007, for: Category 1, Web-Based Online Placement Services

All proposals must be submitted in a sealed envelope marked "SEALED PROPOSAL – RFP 2008-011" on the front of the envelope. A list of qualifications and specifications, instructions to bidders and RFP forms can be obtained upon request by fax (505-344-9343), mail, email (bids@nmedu.org) or by telephone (505-344-5470) from 8:30 a.m. to 4:30 p.m., Monday-Friday, except holidays.

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

/s/ Max Luft,
Executive Director

PUBLISH: Sunday, November 18, 2007
Sunday, November 25, 2007

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 contractors 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 educational 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, Attn: Max Luft, Executive Director, email to bids@nmedu.org, fax 505-344-9343, or mail to 4216 Balloon Park Rd. NE, Albuquerque, NM 87109. 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 the 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 proposals, 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 contractor 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 and must have original signatures. The proposal will contain all descriptive literature, specifications, samples, etc. The proposal will be submitted in a three-ring binder.
- 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 contractor 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.
- d. In addition to a-c of this Section, the Offeror is to provide an electronic copy of the proposal on a CD-R or CD-RW in either or combination of the following file formats: Adobe PDF (pdf), Rich Text Format (rft), and Microsoft Word (doc) or Microsoft Excel (exe).

3. Contents of the Proposal

In order to ensure that every proposal receives a fair evaluation, it is required that each Offeror organize its proposal in the following manner and provide an electronic copy in the format as listed in Section I, D, 2, d:

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 and Acceptance, (Form B) (page 39)
 - The RFP Affidavit, (Form C) notarized signature required (page 40)
 - Offerors Declaration, (Form A) (page 38)
- 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, Section I-E (copy of each page in order)
 - Acceptance of Terms and Conditions, Form E (first line must be signed RFP page)
- Tab 4: Contractor Qualifications
- Answers to Questions from Section I-D-4 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 (Form E).
 - Required Categorical Responses for your category (written response to every part)
- Tab 6: Cost Quotation
- Prices for category Price information, price sheets from RFP (page 42) **Form D1**
 - Additional price information, price sheets from RFP (page 41) Form D
- Tab 7: Required Forms
- Offeror's Support for CES Prices, Form G (page 45)
 - Questionnaire for Offeror, Form H (pages 46-47)
 - Support and Maintenance Plans, Form F (page 44)
 - Manufacturer's Representative Form, Form I (page 48)
- 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 L (page 51)
- 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, December 14, 2007, 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. Offeror 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 contractor, 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, 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. Contractors 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 contractor. 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. See the insurance requirements in Section 1-E, LISTING OF THE GENERAL TERMS AND CONDITIONS.
 - 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 contractor who has an existing contract that would be more advantageous than a CES contract to sell/provide goods and 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 RFPs) 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 2008-011. Name your key sales people who will be assigned this contract and 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 contractor charges more than another for a product or service, justification is needed. Every CES contract must be for the public good, not for the benefit of a contractor. 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. Contractor 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 contractor for one percent (1%) less than the contractor's quote to the member.
4. The contractor provides the items or services and invoices CES for the amount of CES' purchase order to the contractor.
5. CES invoices the member.
6. The member pays CES.
7. After receipt of the member payment, CES pays the contractor 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: Contractor 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. Contractor will not add the administration fee to approved contract prices. CES' minimum administration fee on any individual purchase is Ten Dollars (\$10).

Advertising: Contractor will not advertise or publish information concerning this contract prior to the award being announced by CES. Once the award is made, CES encourages the contractor to advertise to 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 Offerors: Selection will be made via written communication to successful offerors.

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

Audit Rights: In accordance with applicable New Mexico law, the contractor'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 contractor to CES and will list the purchase order number(s) issued by CES and CES member on the invoice. The contractor will not invoice a member directly. CES will invoice the member with payment to be made to CES. The contractor will not accept 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 contractor to carry out any obligation, term or condition of the contract. CES may issue written notice to the contractor for acting or failing to act under the following conditions.

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

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

Contractor 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 contractor 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 contractor must furnish CES certification from insurer(s) for minimal coverage, to be maintained in full effect during the term of this contract. The certificate will be issued by the contractor's insurance

company and name CES as the certificate holder. In addition, contractor must be willing to provide, upon request, certification of insurance to any CES member using this contact. If the contractor will use vehicles and workers at the member's location, evidence of workmen's compensation and auto liability insurance must be provided.

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

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The contractor will not discriminate against any employee or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246).
3. The contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted offer.
4. The contractor 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 contractor 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 contractor. 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 contractors 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 multi-year 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: Offeror 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 contractor, and subsequently confirming such changes in writing. If such changes affect the cost and/or the time required for performance of this service, an equitable adjustment in the price or delivery or both will be made. No change by the contractor will be recognized without written approval of CES. Any claim of contractor for any adjustment must be made in writing within 30 days from date of receipt by contractor of notification of such change, unless CES waives this condition. Nothing in this section will excuse contractor from proceeding with performance of the service as changed hereunder.

Contract Type: Indefinite quantity with:

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.

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

Contractor Invoice: Contractor 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 contractor's invoice.

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

Contractor's Price List: The contractor will furnish CES with copies of the approved price list to facilitate eligible procurement agencies in placing orders. When contractor 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.

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 contractors 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 contractor 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 contractor’s invoice, it must collect payment from the member or political subdivision that received the product. CES believes it is better for the contractor if CES places the slow-paying agency on “credit hold”. If a contractor places CES on credit hold, agencies that pay promptly are penalized. If, on the other hand, CES places the offending agency on “credit hold”, payment is more likely to result and only the offender is punished.

Current Products: All 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: Contractor 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 contractor delivers nonconforming materials to any member of CES under this contract.

Defective Goods: Contractor agrees to pay for return shipment on goods that arrive in a defective or non-operable condition. Contractor 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. Contractor 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 contractor 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 contractor.

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

Federal Requirements: Contractor agrees, when working on any federally assisted projects with more than \$20,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act and the Equal Opportunity Employment requirements of Executive Order 11375. In such projects, the contractor agrees to post wage rates at the work site and submit a copy of their payroll to the CES member for their files. In addition, to comply with the Copeland Act, the contractor must keep records for three (3) years, and allow the federal grantor agency access to these records upon demand. All federally-assisted contracts to CES members that exceed \$10,000 may be terminated by the federal grantee for noncompliance by the contractor. In projects that are not federally funded, contractor 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 contractor or any agent or representative of the contractor, 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: Contractor 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, professional error, fault, mistake or negligence of contractor, its employees, agents, representative, or subcontractor, their employees, agents or representative in connection with or incident to the performance of this agreement, or arising out of Worker's Compensation claims, Unemployment Compensation claims or Unemployment Disability Compensation claims of employees of contractor, and/or its subcontractors or claims under similar such laws or obligations. Contractor's obligation under this section will not extend to any liability caused by the sole negligence of CES or its employees.

Information Systems: All contractors 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.

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 contractor will, at its own expense, purchase and maintain insurance that will protect it from claims that may arise out of, or as a result from, 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 contractor'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 are 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 contractor.

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

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

Licenses: The contractor will maintain in current status all federal, state and local licenses, bonds and permits required for the performance 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 contractor with the response to the RFP. The contractor 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 contractor 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, contractor must include with the proposal details of 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 contractor 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 contractors to offer its very best prices to CES members, nothing in this contract established a most favored customer relationship between CES and the contractor. The contractor can respond to any solicitation from any public procurement unit without regard to this contract. If contractor offers lower prices to any of its other customers, it can lower its prices to its CES customers at the same time by facsimile or written notice.

Multiple Awards: CES has determined that often contracts awarded to more than one supplier for comparable goods and services at various prices best 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 contractor will not have the right to substitute a conforming tender without written consent of all parties involved.

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

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

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

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

Offer Acceptance Period: In order to allow 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 online purchasing is not selected by the member, all orders accepted by the contractor must be issued by CES. CES members will submit signed purchase orders to CES. CES will then issue a purchase order to the contractor. When necessary, one or more orders may be combined. The contractor must agree never to accept a purchase order based on this contract, unless the purchase order is issued by CES, unless an online 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 contractor 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 contractor's actions under previously-awarded contracts to schools, local, state, or federal agencies. It includes the contractor's record of conforming to specifications and to standards of good workmanship; the contractor's record of containing and forecasting costs on any previously performed cost reimbursable contract schedules, including the administrative aspects of performance; the contractor's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interests of the customer.

Patent and Copyright Infringement: Contractor will, at its expense, defend CES and its members against any claim that any equipment or software supplied hereunder (even if such equipment or software 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 contractor prompt written notice of any such claim after becoming aware of such claim.
2. Allow contractor to control and fully cooperate with contractor in the defense and all related settlement negotiations.

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

are reasonable in contractor's judgment and satisfactory to CES, CES will request its members to return the equipment or software on written request by contractor at contractor's expense.

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

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

Payment: CES will make every effort to collect payment from 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 contractor. Any contractor, 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; and
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 contractor.

Prime Contractor: For the purpose of this solicitation, a contractor will be considered a prime contractor and not a subcontractor. Any contractor 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 contractor 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 contractor 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 Contractors: 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 contractor 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 contractor agrees to hold CES harmless for any deficiency of payment. If any payment is delayed beyond 45 days from the due date, the contractor agrees not to charge CES interest on the late payment. Any late charges will be the total responsibility of the CES member. The

contractor can extend any due date to avoid the requirement to pay interest. Acceptance of final payment is a waiver of all claims, except unsettled claims previously made in writing.

Project Director: The contractor will assign a project director to coordinate operational activities with the Executive Director of CES and 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: Contractors 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: Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

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

Shipping Terms: 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 contractor, as preferred. Contractor 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 contractor. All claims for the contractor will file visible or concealed damage. CES, or the receiving agency, will notify the contractor and/or freight company promptly of any damaged goods, and will assist the freight company/contractor in arranging for inspection. No F.O.B. vessel, car or other vehicle terms will be accepted.

Site Cleanup: Any successful contractor 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 contractor will begin a project for which the site is not prepared by the member, unless contractor 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 contractors and subcontractors must adhere to local smoking policies when inside a building working on this contract. Smoking will only be allowed in posted areas or on premises where permitted.

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

Suspension or Debarment Status: If any firm, business, person, or contractor 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 contractor 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 December 31, 2010, unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for Three (3), additional 12-month periods ending on December 31, 2011, December 31, 2012, and December 31, 2013. Since technology changes rapidly, CES may require a contractor 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 contractor's list. If an Offeror wishes to remain on the contractor'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 contractor and removed at the contractor's expense. The conditions of the trade-in equipment at the time it is turned over to the contractor will be the same as when the original agreement was made, except as affected by normal wear and tear from use between the time of the offer and the trade-in. Values placed on trade-in products are between the member purchasing the new unit and the contractor.

Warranty: Contractor 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 contractor, 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 & SPECIFICATIONS

A. SCOPE OF WORK:

1. 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 members both time and money. Time is saved by being able to purchase what is needed without having to wait through the bidding process (write bid, advertise bid, open each response, evaluate and have the board make a selection). Money is saved because each CES partner has already agreed that our members have the lowest prices it will offer to procurement units in the state.
2. 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 CONTRACTOR:

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

C. DUTIES OF CES:

The general duties of CES shall include:

1. Inform CES Members of vendors and obtain participation of members.
2. Inform contractor of participating members.
3. Process pay requests for payment.
4. Follow up as needed on problems.
5. Periodic review with contractor as to projects and 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 shall 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 might classify the proposal as non-responsive.

Research indicates that New Mexico has a high turnover rate for certified staff among its public school districts. Tenure is lower for certified staff than for other school personnel. Literature has also revealed that one key to student success is providing consistent and competent certified personnel. Human resource offices in the state have an ongoing struggle filling open certified

positions due to retirement, turnover and growth in student population. New Mexico loses about 25 percent of its new teacher graduates to other states. In addition, we are losing existing staff to better paying jobs both within and outside of New Mexico. This shortage includes teachers, counselors, therapists, coordinators, and administrators. Currently, there is no systematic or statewide initiative to address these needs.

Historically, when needs are identified by its members, CES has assisted and supported New Mexico public educational institutions in developing and maintaining a high quality educational environment, which promotes a positive benefit for student achievement. CES is soliciting vendor(s) to assist CES and its members in New Mexico to seek out, find and employ highly qualified individuals to fill specific vacancies to meet a particular need, which may include, but is not limited to, K-12 regular classroom teachers; K-12 special education teachers to meet special student needs; counselors; therapists such as speech, occupational, physical, etc.; program directors and coordinators for such programs as federal, transportation, food service, technology, etc.; classified personnel and administrators for such positions as business and finance, instruction, superintendent, etc. Currently there are 89 School Districts and 70 Charter Schools in the State of New Mexico with Charter Schools growing at a rate of approximately 5% per year.

Category 1: Web Based Online Placement Service

Oftentimes, the CES member and its boards of education are subject to local politics, community pressures, and the lack of time and expertise in advertising, seeking, obtaining and screening possible qualified individuals interested in a particular open vacancy. Because of this, CES is seeking a contractor who can provide an online placement service to create a more efficient networking system for job applicants and school district employers. The contractor will act as a consultant to bring both an external viewpoint and the skills/proficiencies necessary to assist CES members in this process utilizing local, regional, state or national sources based on the individual member's needs and wants. For example, some boards of education may choose a national search, others a more regional effort, and still others a search limited to the state. The complexity and type of services requested by the individual member may also vary in relation to the depth of the search. These may include, but are not limited to, years of experience, type and size of institution/organization, positions held, educational background, military background/record, criminal, financial, and other related information. It is understood the techniques, methods, instruments, and costs will vary according to the type, kind, and duration of services provided.

Categorical Terms and Conditions

1. The offeror must have in place and be able to demonstrate their facilities, human resources and ability to deliver the services/products requested herein.
2. The offeror must have a national website, or regional websites that share a common database, that can be utilized to post job openings, distribute and receive various types of forms and information and also provide for flexible and secure access for the CES members utilizing the system.
3. The offeror must have an established methodology for CES member administrators to post and update job listings, and for potential applicants to view and print listings, obtain information if necessary, and submit an application online through a secure website or other options.

4. The offeror must have in place a process where a potential applicant could register or put their name on a list for a particular type of job and stipulate the area(s) of the state in which they are interested. Once on this list, when a job listing for that position and location becomes available, they can opt to receive e-mail about the job.
5. The offeror shall assist CES in developing, establishing, hosting, implementing, and maintaining a secure New Mexico state website where CES members can place, update and maintain their own institutional profile. The offeror will provide and maintain links between these profiles and individual job listings in the national database. The offeror will provide to individual CES members the option to provide on their website a link to their job listings. The offeror will provide printed materials for districts, applicants and university placement centers to facilitate this program operation.
6. The offeror shall provide the use and access to the web application at no cost to the applicant.
7. The offeror shall modify the website to accommodate changes in license and/or application requirements by the New Mexico Public Education Department.
8. The offeror shall provide for regular enhancements and/or updates as identified by users, and to maintain competitiveness with other similar recruitment and placement services available online.
9. The offeror shall provide access to personnel for technical support to users of the website.
10. The offeror, if different from the current provider, shall provide:
 - a. Method of transition of applicant data and user information from the current provider to that of the new offeror.
 - b. Method to contact current applicants to change, or maintain, current usernames and passwords.
 - c. Implementation plan to include, but is not limited to, data conversion, hardware, software, maintenance, training, etc.
11. The offeror shall provide a product that is compatible with Apple Macintosh and PC formats using the latest operating systems of each.
12. The offeror shall provide a method for applicants, in addition to the employment application, to download additional documents such as copies of licenses, résumés, letters of reference, etc.
13. The proposed website/system shall provide for applicants to complete one employment application which would be accessible by member users.
14. The proposed website/system shall provide communication with applicants, reminding them to update applications on a regular basis.
15. The proposed website/system shall provide the opportunity for applicants to transfer their application into another category of employment within the system.
16. The offerer shall provide promotional materials (brochures, handouts, wallet cards, etc), as needed, at no additional cost to CES.

17. The proposed website/system shall provide a means of communicating updated features to users of the website/system.
18. The proposed website/system shall provide for nationwide searches outside of the “within state” applications.
19. The offeror shall provide a website that is tailored to utilize the specific licensure requirements of the State of New Mexico as a search criterion.
20. The offeror will assist CES in developing, establishing, securing and training a New Mexico Program Director to:
 - a. Oversee the implementation and day-to-day operation of the program on behalf of CES and its members.
 - b. Provide the CES member a list of characteristics of several search depths from which the member may choose. Assist the member in developing areas of verification, approximate time required and, if applicable, the related costs for type and/or level of search depth being requested.
 - c. Assist the CES member in finalizing a timeline for the recruitment and placement of the listing on the state and national website.
 - d. Assist the CES member in establishing a district profile, a profile of the desired candidate, criteria for selection including application and interview processes, and whether a search committee process or some other selection process is necessary.
 - e. Assist the CES member in determining the geographical scope of the search.
 - f. Coordinate, facilitate and assist the CES member in the placement of a job listing into the proposed system; also, the execution of a marketing plan for the recruitment, screening and the submission of and presentation of possible applicants produced by the utilization of the proposed system.
 - g. Assist both the CES member and potential candidates in utilizing the proposed system. Identify upon request a list of qualified candidates for the posted job listing and, if necessary, develop alternative plans to enhance their probability of success in finding an acceptable qualified and interested applicant applying for the position.
 - h. Assist New Mexico applicants in registering and submitting the proper information requested.
 - i. Coordinate and interface with college placement offices. This includes, but is not limited to, holding face-to-face meetings to explain the proposed CES system and providing written documents for distribution to candidates.
21. The proposed website/system must contain the relevant background, educational, work experience, and other related information on each potential candidate to allow full assessment of strengths and weaknesses of each candidate.
22. The proposed website/system must allow for electronic searches on various candidate attributes found within their individual profile. These attributes may include, but are not limited to, work experience by content area, certification by content area and level, position applying for, city and state preferences, individual names and New Mexico licensure identification number.
23. The proposed website/system must allow for sorting and listing candidates based on preferred certification, license, grade level, experience, etc. For example, the CES member could search

and list candidates based on positions preferred, license, applicant's rank order choice for the designated position, teaching certificates held (in-state and out-of-state), years of experience, undergraduate grade point average, graduate grade point average, student teaching grade, activities willing to sponsor.

24. The proposed website/system must allow for seamless two-way communication between potential candidates and individual CES members via e-mail. Also, it would be preferred to have the capability to utilize Net Meeting or similar software to conduct online interviews with candidates.
25. The proposed website/system shall provide a mechanism by which a member user can send the same e-mail to a number of prospective candidates.
26. The proposed website/system must allow for the keeping and maintaining of confidential personal and background information on a potential candidate. The criteria and access control of this information shall be done in accordance with all federal, state and local laws, regulations and policies.
27. The proposed website/system must be flexible and capable of customization to comply with the rules, regulations, and procedures governing this type of information established by the New Mexico Public Education Department.
28. The proposed website/system must allow for individual and confidential institutional codes and passwords, available directly to the superintendent or administrative officer of the CES member. All information is encrypted for the highest level of security, and codes and passwords will be distributed only as appropriate.
29. The proposed website/system must be user friendly and provide help screens to assist the utilization of the system. There shall be a documented user guide/manual that can be made available to each CES member.
30. The offeror must have and make available to all users of the system a toll-free technical support phone number.
31. The offeror must be able to have in place and maintain a backup system to protect the information stored on the national and state website. There must be an established procedure to archive and purge outdated information.
32. The offeror must be an experienced firm with project managers, financial resources, data collection and distribution facilities, website management, educational and human resource specialists with three or more years experience preferred.
33. Offeror will accept NTE (not to exceed) purchase order for as-needed services, if requested. If progress payments or any special financing is desired, it must be requested by the CES member on the purchase order to CES.
34. Offeror, as part of the final negotiations, will establish mutually agreed upon outcomes and project scope with CES and its member before a contract is issued.

35. In any survey or data gathering process of information relating to potential or existing teacher or certified staff, administrators and community members, the survey/collected data shall not violate the provisions of the FERPA (Family Educational Rights and Privacy Act) adopted by the state of New Mexico, nor disclose personally identifiable information.
36. The offeror shall provide for regular enhancements and/or updates as identified by users, and to maintain competitiveness with other similar recruitment and placement services available online.
37. The offeror shall explore and develop a means of transferring applicant data into CES members human resources and /or payroll data management system.
38. In the case that the contract is not renewed or cancelled, the offeror shall provide the data in a format that can be transferred to CES or its designee and supervise the transfer to CES or its designee.

Categorical Required Responses

1. The following numbered items describe the special specifications for this category. Offeror's must respond by providing a short statement that is related to each numbered item and place the responses after Tab 5. **Failure to respond to this section may render your proposal non-responsive.** If you do not provide a particular service, write, "do not offer" after the number. If a service that will match the specification may become available later, indicate that in your response. You may propose additional services you believe necessary to accomplish the scope of work.
2. Provide sample reports and listings that can be obtained from the proposed website/system by CES members on potential candidates with a sample profile that includes the various types of background and personal information available.
3. List the search depths and various levels available on the proposed website/system that can be utilized, and in each, state the specific verifications (i.e. credit history, criminal history, litigation, certification, etc) that will be used. List generic tasks that will be included in each search depth, assuming three geographical areas (state, regional and national).
4. Describe in general proposed website/system and services offered, their main and optional features, along with why you feel that your proposed solution to this RFP can and will meet CES and its members needs in recruiting and obtaining qualified certified personnel.
5. Based on your company's background, experience and what you know about the New Mexico educational system, provide a general overview and outline of what you and your staff would consider a basic project scope of work and timeline for configuring and setting up your proposed system for CES and its members, to obtain and establish basic CES member profiles and start the implementation process.
6. Provide a matrix identifying the various activities and procedures necessary to establish, operate and utilized your proposed website/system, and indicate who is involved and responsible for each activity and/or procedure.

Categorical Cost Considerations

1. Offeror will clearly state and identify any and all of its regular costs, indicate CES discount and the CES prices offered through cooperative purchasing after Tab 6. All costs, including hourly fees, paperwork fees, hardware, software costs, access fees and other related costs, per diem, travel, daily, weekly, and other charges, will be clearly described.
2. The cost proposals submitted for this category shall be based on the following assumptions:
 - a. Estimated utilization by CES members is at least 60 school districts.
 - b. CES is proposing a two (2) year contract with the option of three (3) one (1) year renewal periods.
 - c. CES would consider employing a statewide director/coordinator to assist and provide some of the services required.
 - d. CES is willing to provide facilities and services as part of this contract. Offerors must clearly identify and state what their expectations of CES are in these areas.
 - e. The specific terms, conditions and stipulation of any contract resulting from this RFP would be through negotiations and mutually agreed upon scope of work establishing all party's duties and responsibilities.
3. Cost proposals submitted shall be laid out in such a manner to indicate each of the various party's startup and ongoing operating costs. These costs shall include hardware, software, implementation, data conversion, training and other related services.
4. All options and alternative solutions shall be clearly identified so that they may be considered.
5. If more than one financial model is available, provide the above for each.

SECTION III: CONDITIONS LEADING TO AND INCLUDING CONTRACT AWARD

A. CONTRACT FORM

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

B. PROPOSAL SUBMISSION

Sealed proposals will be received until 1:30 p.m. local time, on Friday, December 14, 2007, either hand delivered to the agency office, 4216 Balloon Park Road NE, or mailed; documentation will be included and submitted in a binder unless the Colorado option is accepted and then one (1) additional original proposal must be included for each state selected.

C. PROPOSAL REVIEW

Commencing on Monday, December 17, 2007, 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, December 31, 2007.

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 (a-j pages 9-10)

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

- 30 points Your ability, willingness and proposed strategies to sell to CES and/or 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
- 70 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 timelines, 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 Offeror's RFP response and presentation of cost data

Part 3: Cost

250 points Cost (Schedule D).

-

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 contractor 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 educational institutions. Under CES policy, CES charges a fee to the educational institutions 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 members 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.

SECTION IV: PROPOSAL FORMS

Form A **Offerors Declaration Form**

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

Category 1 Web-Based Online Placement Services

OFFER AND ACCEPTANCE OF OFFER AND CONTRACT AWARD

PROJECT: As Defined in RFP 2008-011

| |
|-------------------------------------------------------|
| OFFER ACCEPTANCE OF OFFER and CONTRACT AWARD |
|-------------------------------------------------------|

OFFER TO BE COMPLETED BY CONTRACTOR

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 _____

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

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

The parties intend this contract to constitute the final and complete agreement between agency and contractor, 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 December 31, 2010, unless terminated, canceled or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods, ending December 31, 2013.

Authorized Signature

Contract Number

Awarded this ____ day of _____, 2007.

AGENCY
SEAL
or
STAMP

INDEFINITE QUANTITY UNIT PRICE SCHEDULE

Bid Submission Form: Web-Based Online Placement Services

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

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Form D-1 INDEFINITE QUANTITY UNIT PRICE SCHEDULE

RFP Submission Form: Category 1 - Web Based Online Placement Services

Instruction to Bidders:

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

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

| Description of Cost Factors | Cost Eval Points | Unit of Measure | |
|-------------------------------|------------------|-----------------|--|
| Hosting Web Based Application | 65 | \$ | |
| Software | 65 | \$ | |
| Maintenance fee | | \$ | |
| Base period for 2 years | 40 | \$ | |
| Year 3 | 10 | \$ | |
| Year 4 | 10 | \$ | |
| Year 5 | 10 | \$ | |
| Year 6 | 10 | \$ | |
| Year 7 | 10 | \$ | |
| Year 8 | 10 | \$ | |
| Training Material | 20 | \$ | |
| Total Points | 250 | | |

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 7**

except as listed below.

Signature (should match cover signature)

Form F **SUPPORT AND MAINTENANCE PLANS**

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

- 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 contractor 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 contractor agrees that the price charged through a CES contract will be the lowest that contractor 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 contractor receives many of the same benefits as a member. Rather than having to respond to dozens of individual proposals and RFP's (which is a big cost of doing business), a response to CES opens the door to over 150 procurement units. The business office of the contractor has the advantage of invoicing CES rather than each individual account. The contractor also has CES' service in collection (some public entities are slow in processing payments). If problems develop, the contractor has the mediation service of CES to settle difficulties.

The contractor provides a quote to the member, and the quote includes the CES one percent (1%) administration fee. If the quote is acceptable, the member issues CES a purchase order for the quoted amount. CES verifies the quote with the solicitation response and issues a purchase order to the contractor for one percent (1%) less than the contractor's quote to the member. The contractor provides the items or services and invoices CES for the amount of CES' purchase order to the contractor. CES invoices the member. The member pays CES. After receipt of the member payment, CES pays the contractor for items and services delivered and accepted by the member, not to exceed the purchase order amount.

Because CES asks the members to pay one percent for the services, CES also expects contractors, who are awarded contracts, to provide an incentive to the members to use a CES contract. If a contractor will sell a product to a member for the same price as on the CES contract, the member, in effect, is paying one percent 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 contractor 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 contractor. CES wants members to understand that when using a CES contractor, they are not only satisfying the procurement code, but are truly reducing the costs of education.

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

Prices will be **no different** from what we ordinarily offer to individual public educational institutions. (If this is checked, bid offeror's response will be considered **Non-Responsive**)

- | | | | |
|--------------------|--------------------------|--------------------|--------------------------------------------------|
| Prices are (check) | <input type="checkbox"/> | two percent (2%) | Lower than our best price to individual members. |
| | <input type="checkbox"/> | three percent (3%) | Lower than our best price to individual members. |
| | <input type="checkbox"/> | four percent (4%) | Lower than our best price to individual members. |
| | <input type="checkbox"/> | five percent (5%) | Lower than our best price to individual members. |
| | <input type="checkbox"/> | ten percent (10%) | Lower than our best price to individual members. |
| | <input type="checkbox"/> | other | Lower than our best price to individual members. |

Signature (must match signature on cover sheet)

Title

Form H **QUESTIONNAIRE FOR OFFEROR**

Company Name: _____

Circle Answers Where Appropriate

1. For products 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?

Contractor 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.*

QUESTIONNAIRE FOR OFFEROR

7. Where do you want payments sent?

Contractor 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? _____

Form I **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 contractors. 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 contractors. Multiple awards transfer these decisions in large part or in whole to the program agencies, where they are likely to be made with less impartiality and purchasing proficiency. Written policy and rules are necessary to guard against laxness and abuses in connection with multiple awards.”

Ibid., page 76

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

In contrast, CES is not a central purchasing office. Rather, we are a 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 contractors whose products and services have met a rigid standard and scope of work, and that have guaranteed a level of performance and service not always offered to the single 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 contractors 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 contractors to “bid against themselves” when a member elects to issue its own RFP.

When a contractor says “this is the lowest price I will offer in New Mexico to public agencies,” then the member knows that the only way to get a lower price is from other contractors. Competition is enhanced in this fashion. If a member awards a contract to a contractor not on a CES contract, for a product or service similar to that on a CES contract, the result will be an even bigger savings to the member and, hopefully, the eventual lowering of prices by the CES contractor, or an eventual 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 contractor preparing a response check off each required item as it is completed.

- | | | |
|-------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| _____ | 1. | Form A – Offerors Declaration Form (page 38) (PLACE BEHIND TAB 1) |
| _____ | 2. | Form B – The signed Offer and Contract Award (page 39) (PLACE BEHIND TAB 1) |
| _____ | 3. | Form C – The signed Affidavit (page 40) (PLACE BEHIND TAB 1) |
| _____ | 4. | Form D – Price List of the equipment/services offered (page 41-42) (PLACE BEHIND TAB 6) |
| _____ | 5a. | Form E – A list of any exemptions or modifications of <u>General</u> Terms and Conditions (page 43) (PLACE BEHIND TAB 3) |
| _____ | 5b. | Form E – A list of any exemptions or modifications of <u>Categorical</u> Terms and Conditions (page depends on category) (PLACE BEHIND TAB 5) |
| _____ | 6. | Form F – Support and Maintenance Plans (page 44) (PLACE BEHIND TAB 7) |
| _____ | 7. | Form G – Offeror’s Support for CES Prices (page 45) (PLACE BEHIND TAB 7) |
| _____ | 8. | Form H – Questionnaire for Offeror (pages 46-47) (PLACE BEHIND TAB 7) |
| _____ | 9. | Form I – Manufacturer’s Representative Form (page 48) (PLACE BEHIND TAB 7) |
| _____ | 10. | A point-by-point response for the 10 items (a–j) under Contractor Qualifications (pages 8-10) (PLACE BEHIND TAB 4) |
| _____ | 11. | A point-by-point response to each requested item to which the contractor is responding under Section II-Scope of Work, D. Specifications (page 29) (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 51) (PLACE BEHIND TAB 9) |
| _____ | 17. | Electronic Copy with proposal submission. |

Signature