

# **Invitation for Bid** **AEPA IFB # 021-B** **HARDWOOD & SYNTHETIC FLOORING**

**A \$25,000 Bid Bond Is Required For This IFB**

## **Part B – Technical Specifications**

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#### **1. Scope of Bid**

AEPA is seeking qualified, an experienced contractor(s) who possess the necessary resources and capabilities to acquire, deliver and perform the required supplies, materials equipment, and labor to all participating member states (up to 29) necessary to:

- a. Consult and work with individual educational institutions to assess and evaluate existing indoor and/or outdoor, athletic, recreational and auditorium hardwood and synthetic flooring systems found within gymnasiums, locker rooms, weight training rooms, multipurpose rooms, and related facilities to determine and develop a complete and comprehensive solution to install, maintain, repair, restore, renovate, resurface or replace existing flooring systems to a condition that meets or exceeds federal, state, local and/or industry standards.
- b. Assist and work with individual educational institutions in planning, designing, and implementing a construction program that meets or exceeds the institution's requirements and industry standards for that type of project/facility concerning the installation of hardwood and/or synthetic flooring.
- c. Acquire and perform the required work/services to prepare the individual project site to have the hardwood or synthetic flooring system installed. Such work may include, but is not limited to clearing, demolishing, scraping, removing, filling, leveling, sanding or constructing new, etc., to prepare the sub-floor or existing floor to be ready for the installation of the final hardwood or synthetic flooring system.

- d. Perform the necessary work required to restore, repair, and/or renovate an existing facility's hardwood or synthetic flooring system to good working conditions so that it meets or exceeds the institution's program requirements, manufacturer's specifications, industry standards, and other governing agencies and organizations rules, regulations and requirements.
- e. Provide the necessary manpower, supplies, materials, and equipment to properly and professionally strip, line, and provide the entire event markings required for all of the athletic/recreational events to be held on and/or within the project facility.
- f. Provide the necessary athletic event hardware, equipment, and accessories required to properly conduct the identified events following the national and/or state organizations that govern and oversee those athletic/sport activities identified.
- g. Provide the necessary athletic event hardware, equipment, and accessories required to properly conduct the identified events following the national and/or state organizations that govern and oversee those athletic/sport activities identified.
- h. Offer and make available upon request the necessary products and services for the owner to make minor repairs and to maintain the athletic/recreational facility in good condition throughout its life cycle.
- i. Offer and provide the institution's staff with the training, technical support, maintenance instructions, supplies, and equipment for them to properly operate, maintain, and protect their investment throughout its life cycle.

The offeror should note that AEPA member states prefer providers/contractors that can provide and perform the scope of work as indicated in items one (1) through nine (9) above as a turn-key solution. However, it is also recognized that some providers/contractors specialize in only providing and installing just hardwood flooring systems or synthetic flooring systems or striping, lining, and marking of these types of facilities. Responses can be made for any of the major components of assessing, designing, developing, constructing, renovating, repairing, and maintaining the various types of athletic, recreational, and auditorium facilities requested and described herein. If subcontractors are to be used, they are to be identified in Part D. Under the terms of this solicitation, AEPA reserves the right to accept or reject offeror responses that do not offer a turn-key solution for the complete scope of work indicated above.

## 2. Type of Bid

**This bid is considered a:**

YES	NO	TYPE OF BID
	<b>X</b>	<b>CATALOG:</b> A catalog bid is utilized when the products and/or services solicited are clearly identified with set and specific characteristics, attributes, and configurations that are identifiable as a stand-alone single unit and can be listed and priced as a single unit with options that can be added to enhance and/or improve its operation and functionality. The Bidder offers a fixed discount(s) off retail price or prices in a Commercially Available Catalog. The discounts may be for the entire Commercially Available Catalog, for specific products, product lines, manufacturers, or categories of products as determined by the Bidder. See the Pricing section for detailed information on Catalog Pricing.
<b>X</b>		<b>LINE ITEM:</b> A line-item bid is utilized when the products and services solicited cannot be identified or listed as a single unit; consists of several different variables and configurations, it is necessary to identify the specific project or application; the end product or solution is made of individually priced elements or components and the end product's or solution's cost is derived by the Vendor Partner specially prepared and providing a quote based on the project's terms, conditions and requirements. See the Pricing section for detailed information on Line-Item Pricing.

### 3. Anticipated AEPA Member Agency Participation

State	Participate? Yes/No/ Undecided	Other States Member Sells In
California	Yes	AZ, NV
Colorado	Yes	
Connecticut	Yes	MA, ME, NH, NY, RI, VT
Florida	Yes	AL
Georgia	Yes	
Illinois	No	
Indiana	Yes	
Iowa	No	IL, SD
Kansas	Yes	OK
Kentucky	Yes	AL, LA, MS, NC, SC, TN, WV
Massachusetts	No	
Michigan	Yes	
Minnesota	Yes	SD
Missouri	Yes	AR, IL, LA, SD
Montana	Yes	ID
Nebraska	Yes	
New Jersey	Yes	
New Mexico	Yes	
North Dakota	Yes	
Ohio	Yes	
Oregon	No	
Pennsylvania	Yes	DE, HA, MD, NY
South Carolina	Yes	
Texas	Yes	
Virginia	Yes	
Washington	No	AK, ID
West Virginia	Yes	
Wisconsin	Yes	
Wyoming	Yes	SD, UT
<b>Total</b>	<b>24</b>	

Please note that individual AEPA Member Agencies that have indicated that they intend to participate in any contract approved under this solicitation, does not guarantee or mean that the individual AEPA Member Agency will enter into a contract with any AEPA approved Vendor Partner. Each AEPA Member Agency will make that determination after reviewing Vendor Partner responses and AEPA's recommendation for acceptance and bid award. The AEPA Member Agency's contracting decision shall be final.

### 4. Anticipated Volume

Hardwood and Synthetic Flooring is a currently held category for AEPA. The resulting bid will be an Indefinite Delivery, Indefinite Quantity (IDIQ) contract(s). AEPA Member Agencies estimate approximately \$5 million in sales in the first contract term. AEPA Member Agencies anticipate that purchase volume will increase over contract years two (2) through four (4). This information is provided as an aid to Bidders in preparing responses only. It is not to be considered a guarantee of volume under this IFB. The successful Vendor Partner's discount and pricing schedule shall apply regardless of the volume of business under the contract.

### 5. Voluntary Pre-Bid Conference Call

AEPA will host a voluntary pre-bid conference call on August 12, 2020, for any interested Bidders or potential Bidders. The conference call times are set in the following schedule for each of the four

contiguous United States time zones. No pre-registration will be required. Recording of the conference call will be posted on the AEPA Website.

#### Voluntary Pre-Bid Conference Call Schedule (All Categories)

IFB	Eastern	Central	Mountain	Pacific
AEPA 021-A Athletic Facility Lighting	10:00 AM	9:00 AM	8:00 AM	7:00 AM
AEPA 021-B Hardwood & Synthetic Flooring	10:30 AM	9:30 AM	8:30 AM	7:30 AM
AEPA 021-C Digital Multi-Function Devices, Printers, Document Lifecycle Accessories & Services	11:00 AM	10:00 AM	9:00 AM	8:00 AM
AEPA 021-D Roofing & Building Envelope Services	11:30 AM	10:30 AM	9:30 AM	8:30 AM
AEPA 021-E HVAC & Mechanical Products and Solutions	12:00 PM	11:00 AM	10:00 AM	9:00 AM
AEPA 021-F Disaster Recovery Services	12:30 PM	11:30 AM	10:30 AM	9:30 AM
AEPA 021-G Security & Safety Solutions	1:00 PM	12:00 PM	11:00 AM	10:00 AM

#### Conference Call Meeting Link:

<https://us02web.zoom.us/j/85033448242?pwd=VERNWnBwd3JGNy9SK09aZ3JOVk4xQT09>

**Conference Call Meeting ID:** 850 3344 8242

**Conference Call Password:** 2siNB5

#### Join by Phone:

**DIAL:** 929-436-2866 **OR** 312-626 6799 **OR** 669-900-6833

**Meeting ID:** 850 3344 8242 **Passcode:** 544934

#### 6. Glossary of Terms and Abbreviations

Abbreviations and Acronyms for Standards and Regulations: Where abbreviations and acronyms are used in specifications or other contract documents, they shall mean the recognized name of the organizations responsible for the standards and regulations in the following list. Names, telephone numbers, and websites are subject to change and are believed to be accurate and up-to-date as of the date of the contract documents.

- a. **AAU:** Amateur Athletic Union, [www.aauathletics.org](http://www.aauathletics.org)
- b. **ACI:** American Concrete Institute, [www.aci-int.org](http://www.aci-int.org)
- c. **ADA:** Americans with Disabilities Act, [www.ada.gov](http://www.ada.gov)
- d. **Adhering:** The process of bonding the flooring system or its components to the substrate to include the following:
  - i. Fully adhered – the floor is 100% bonded to the substrate with an adhesive or primer.
  - ii. Partially adhered – the floor is adhered to the substrate, usually at the seams and/or at the end joints, but not over its entire surface.
  - iii. Loose laid – the floor is not bonded to the substrate.
- e. **ANSI:** American National Standards Institute, [www.ansi.org](http://www.ansi.org)
- f. **APA:** The Engineered Wood Association, [www.apawood.org](http://www.apawood.org)
- g. **ASTM:** American Society for Testing and Materials International, [www.astm.org](http://www.astm.org)
- h. **CPSC:** U.S. Consumer Products Safety Commission, [www.cpsc.gov](http://www.cpsc.gov)
- i. **DIN EN 14904:2006:** European Standard specifies requirements for surfaces for indoor facilities for multi-sports use. It also covers surface systems which include both their supporting and upper layers whether prefabricated, produced in situ, or a combination of the two. It also provides for the evaluation of conformity of products to the requirements of this European Standard. This European Standard does not apply to indoor tennis courts.
- j. **DIN 18032 Part 2:2001:** Measures a variety of performance sports floor surface characteristics.
- k. **Drawings and Specifications:** Term for bidding documents and contract documents.
- l. **ISO:** International Organization for Standardization [www.iso.ch](http://www.iso.ch) Available from ANSI, [www.ansi.org](http://www.ansi.org)
- m. **MFMA:** Maple Flooring Manufacturers Association, Inc., [www.maplefloor.org](http://www.maplefloor.org)

- n. **NCAA:** National Collegiate Athletic Association (The), [www.ncaa.org](http://www.ncaa.org)
- o. **NFHS:** National Federation of State High School Associations [www.nfhs.org](http://www.nfhs.org)
- p. **OSHA:** Occupational Safety and Health Administration
- q. **Performance Specification:** Specifies the subsequent performance of completed construction work rather than prescribing how the work shall be constructed and installed.
- r. **R.S. Means:** A division of Reed Business Information that provides cost information to the construction industry so contractors in the industry can provide accurate estimates and projections for their project costs. (800) 448-8182, [www.reedconstructiondata.com/rsmeans/](http://www.reedconstructiondata.com/rsmeans/)
- s. **UL:** Underwriters Laboratories Inc., [www.ul.com](http://www.ul.com)
- t. **Value Engineering:** The comparison and economic evaluation of alternate construction methods for a given project.
- u. **Waste Construction Material:** That is extra to the actual net quantity required by the work, but that is nevertheless required by or used in performing the work, or is somehow lost as a result of doing the work, and therefore contributes to the material cost.

## 7. Special Terms and Conditions

Item	Description
7.1.1.	By responding to this solicitation, the bidder agrees to and will be solely responsible for researching to ascertain that its solutions offered meets or exceeds all federal, state, local and industry regulations, rules, standards and/or requirements.
7.1.2.	The successful bidder and any subcontractor must abide by applicable federal, state, and local laws, codes, and ordinances governing any area(s) in which any products and/or services covered by this solicitation. Also, the bidder and any subcontractor must have all required permits, licenses, bonding, and insurance required by the same. No claims for additional payment will be approved for changes required to comply with any such requirements.
7.1.3.	The contractor shall hold AEPA member and its member agencies harmless from damage from trespassing on the property of others. There shall be no dumping of construction debris or other material on member's property. Any material that requires special handling as dictated by federal or state law shall be removed in compliance with the requirements of those laws. All such materials shall be removed from the site and properly disposed of by the contractor.
7.1.4.	The bidder will familiarize itself with the site to obtain a complete and comprehensive knowledge and understanding of its conditions and to anticipate unseen problems that may develop as the work progresses. Failure to have visited the site before submitting a job order/quote/cost proposal shall in no way relieve the bidder from furnishing any materials or performing any work required to complete the project following the contract documents, without additional cost to the AEPA member and its member agencies.
7.1.5.	All offerors will need to comply with the building codes for a commercial building established by the AEPA member state.
7.1.6.	When required by an AEPA Member State or local jurisdiction, building permits maybe required. It is the offeror's responsibility to secure all required building permits for the construction services offered unless otherwise specified in the contract between AEPA member and contractor.
7.1.7.	Any work or services that do not comply with the currently adopted AEPA member state building codes and requirements when a project is inspected and a certificate of occupancy are required will be corrected by the contractor at no additional cost of the owner.
7.1.8.	For any project contracted under this solicitation, the proposer must comply with the Americans with Disabilities Act (ADA) (42 USC Section 12101 et seq.) and the Americans with Disabilities Act Architectural Guidelines (ADAAG), as well as the implementing requirements, 28 CFR Part 36, Federal Register, Vol. 56, No. 144, July 26, 1991, as amended.
7.1.9.	Cost for temporary utility services electrical, water, gas, etc., that is part of or utilized during the construction process will be identified and agreed upon in writing by the AEPA member and its member agencies. Utility services (electrical, water, gas, etc.) utilized by the contractor to maintain a project office trailer, maintenance shop, storage facilities, security lighting, etc., will be the responsibility of the contractor and can only be transferred to the AEPA member and its member agencies on written agreement specifically stating what contractor's utilities it will be responsible for. Copies of such agreements shall be provided to the AEPA member and its member agencies before a

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	purchase order being issued.
7.1.10.	All work will comply with OSHA safety requirements and any additional applicable federal, state, or local fire and safety requirements. When specifications or scope of work result in a violation of a code or result in an unsafe condition, the contractor must inform the AEPA member and its member agencies representative of the situation. The contractor will not construct any sub-assembly, structure, or device or produce any condition that intentionally violates a fire, health, safety, or building codes or safety standard.
7.1.11.	Any contract awarded under this Category is an indefinite-quantity contract for work requested. All costs associated with preparing quotes/job orders/cost proposals shall be the responsibility of the bidder and must be based on a detailed scope of work and in compliance with one of the approved pricing methodologies.
7.1.12.	The contractor understands and agrees that it will offer and accept only projects in which they have done their due diligence in assessing, evaluating, exploring and determining existing site conditions, the level, quality and appropriateness of the construction products and services being requested, and whether or not the project, as requested, allows the contractor to comply with all existing federal, state or local laws, codes and regulations. During the contractor's due diligence, if a concern or issue arises, the contractor must immediately notify the AEPA Member and its Member Agencies representative in writing, so that it can be corrected or properly addressed.
7.1.13.	During all phases of a project, the contractor will have a qualified and experienced foreman, supervisor, and/or superintendent in the area of construction being performed, and in charge of and full control of the worksite and all construction activities being performed on the project. The individual assigned must be knowledgeable, qualified, and aware of all aspects, specifications, and requirements of the project and provide continuous supervision, coordination communication, and inspections to assure that quality control standards or project outcomes are met.
7.1.14.	All equipment, tools, and machines used in the performance of this work by either the prime contractor or subcontractors will be maintained in satisfactory working conditions and meet or exceed industry standards at all times.
7.1.15.	The contractor will need to provide performance and payment bonds on any project. The bonds need to be executed by a surety company authorized to do business in the AEPA member state and are approved in federal circular 570 as published by the United States Treasury Department or the state board of finance or the local governing authority in an amount equal to one hundred percent (100%) of the price specified in the contract. The AEPA Member or its Member Agencies representative may waive this requirement.
7.1.16.	<p>If a contractor intends to subcontract any part of an individual project, the contractor will be responsible for notifying and furnishing subcontractor the following:</p> <ul style="list-style-type: none"> <li>• If performance and payment bonds are required and the amount for bonding.</li> <li>• A description of the products to be provided, the tasks to be performed, the project's drawings, standard specifications, requirements, and timelines the subcontractor must meet.</li> <li>• The contractor will instruct subcontractors to complete their investigation, assessment, and careful examination of all elements of a project before it submits a quote or proposal to provide construction products and/or perform construction services for the project. The subcontractor will promptly notify the contractor if it finds any discrepancies in, or omissions from, any plans, drawings, specifications, and/or any other documents associated with the project. The contractor will immediately issue written notification to the AEPA member and its member agencies representative. The involved parties' representatives will jointly work with each other to resolve the concerns or issues raised and issue written instructions to the contractor on how the matters raised are to be handled. The contractor will be responsible for ensuring the subcontractor is aware of and incorporates any modifications into its quote/proposal. The AEPA Member and its Member Agencies representative will not be responsible for communicating instructions and/or information to subcontractors.</li> <li>• All cost quotes/proposals submitted by subcontractors must be in a format that the contractor needs to prepare and submit its cost quote/proposal in compliance with one of the pricing methodologies defined.</li> </ul>
7.1.17.	The successful bidder must be willing and agree to provide AEPA members the benefit of all general price reductions extended to its other customers at any time during the period of this contract or any extension thereof. Likewise, the bidder may during the annual contract renewal process submit to



Item	Description
	AEPA any additional products or services covered by their award and may request price adjustments on published price lists. The R.S. Means price shall be adjusted when the new updates (usually January 1 of each year) become available. Any request must be in writing and submitted to the oversight committee chairman who has been designated by AEPA for that solicitation/category. The chairperson will process the request and submit it to the AEPA board of directors for their approval/disapproval. If approved each AEPA state agency will be responsible for notifying its participating members. In the event of a decrease in the prevailing contract price, the oversight committee may approve the change and it will become effective immediately upon notification.
7.1.18.	If the bidder intends to utilize independent agents/distributors, subcontractors and/or third- party agents to perform and/or provide any part of the products and services offered herein the bidder must ensure that the price from these parties is following the terms, conditions, and pricing submitted and approved by AEPA.
7.1.19.	Responses must identify all charges and components necessary for the performance of the contract even if such are not specifically addressed in any paragraph, subparagraph, or forms that are a part of this solicitation.
7.1.20.	Additional and optional products and services must be identified separately and must include clear descriptions and specifications of proposed items.
7.1.21.	Bidders are asked to make available new products and services as they become available and have been tested and proven to be reliable, suitable, and appropriate for use within educational and governmental athletic facilities. It shall be communicated to and detailed information provided to the individual owners indicating that the product and/or service is new technology and any test results or past performance history necessary to allow the owner to make an informed decision on accepting the product/service for the proposed project.
7.1.22.	The bidder must have the resources necessary to provide comprehensive training, maintenance support program to any individual owner within the 29 AEPA states which will allow the owner to properly and successfully utilize and maintain the installed facility through its stated life cycle. The programs offered must be appropriate for the owner's staff that will be responsible for and using the facility. The bidder must provide documentation that proves these resources and programs do exist and can be successfully delivered on a national basis. If there are associated cost terms, conditions, and stipulations relating to the programs offered they must be identified and stated within the bidder's response.
7.1.23.	<p>Applicability of industry standards, unless the individual project contract documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the project's contract documents to the extent referenced. Such standards are made a part of this solicitation by reference provided under item 3 Glossary of Terms above.</p> <ul style="list-style-type: none"> <li>• Publication Dates: Comply with standards in effect as of the date of the individual project's contract documents unless otherwise indicated.</li> <li>• The contractor and any subcontractors engaged in the construction project covered by this solicitation should be familiar with industry standards applicable to its construction activity being performed. Copies of applicable standards are not provided as part of this solicitation and when copies of standards are needed to perform a required construction activity, they may be directly obtained from publication source as identified herein.</li> <li>• Where abbreviations and acronyms for standards and regulations are used within this solicitation, individual project's specifications or other contract documents, they shall indicate the recognized name of the organizations/agency responsible for the standards and regulations utilized.</li> </ul>
7.1.24.	<p>The offeror must demonstrate and present the necessary evidence within its response to communicate its knowledge, experience, willingness, and ability to adhere to, utilize, and ensure the following:</p> <ul style="list-style-type: none"> <li>• The contractor must hold and maintain a current and valid contractor's license for any of the AEPA states that allows it to supervise others, to construct, alter, repair, add to, subtract from, improve, move, or demolish any athletic facility covered by this solicitation and found within those states that have such requirements.</li> <li>• The contractor will ensure that all individuals, firms, or subcontractors being used to perform or supervise work performed, materials and equipment installed under this contract hold a current contractor's license, as required by those individual AEPA states. All</li> </ul>

Item	Description
	<p>subcontractors to be used for each project performed under this contract must be identified and a list submitted with the name, address, trade or type of work, contractor's license number, if applicable, and their federal ID number included.</p> <ul style="list-style-type: none"> <li>• Upon request by an AEPA Member Agency's local member, the contractor shall schedule a meeting with the member/owner to ascertain and develop a comprehensive and complete understanding of the scope of work being requested by the member. The contractor shall conduct and perform the necessary site investigation to be aware of any existing site conditions that may require as part of the proposed project additional products and/or services to address identified site conditions and properly complete the project following the project's contract documents.</li> <li>• Any contract between the individual owner and the contractor under this solicitation shall consist of a detailed scope of work (a description of the work to be performed and the products to be provided by the contractor) will include all specifications, drawings, contractor's cost proposal, and other project-related documents. All applicable industry standards, manufacturer's instructions, and requirements, technical specifications and general conditions, federal, state, and local codes around which the contract is made shall be included as if they were physically part of the contract documents.</li> <li>• A schedule for performance of work that can be met without planned overtime is the responsibility of the contractor unless otherwise requested and approved by the owner.</li> <li>• Terms for what constitutes project completion and acceptance by the owner and taking title to work finished must be identified, described, and agreed upon and made a part of any contract. If any part of the construction requires the owner to assume control before the completion, this needs to be defined with all of the agreed-to terms, conditions, and stipulations. Both parties must agree on the definition of what constitutes total acceptance of the project and that must be obtained before final payment is made to the contractor. Upon completion of the project, the worksite will be left in a condition equal to or better than before the project.</li> <li>• The contractor will pay for any failure to conform or for any defect. The contractor will fix any damage to AEPA Member controlled, real or personal property when that damage is the result of contractor's failure to conform to contract requirements or any defect in equipment, material, workmanship, or design furnished or in compliance with federal, state and local laws, codes, regulations, and standards. The contractor's warranty concerning work done, repaired, or replaced under these conditions will run for one (1) year from the date of repair or replacement or completion.</li> <li>• If the contractor fails to remedy any failure, defect or damage within a reasonable time after receipt of the notice, the AEPA Member will have the right to replace, repair or otherwise remedy the failure, defect or damage at the contractor's expense following laws of the AEPA Member state.</li> <li>• Upon completion of the work, the contractor will present the owner with all documents necessary to close out the project. Including but not limited: <ul style="list-style-type: none"> <li>• Certificate of occupancy;</li> <li>• Maintenance manuals;</li> <li>• Up to four (4) complete sets of "as-built" project drawings;</li> <li>• Two (2) copies each of the procedures of using and maintaining the materials and equipment installed;</li> <li>• Executed warranties on installed products and equipment; and/or</li> <li>• Safety Data Sheets for any materials supplied.</li> </ul> </li> <li>• As part of the close-out process or upon request, no-cost training must be offered for the maintenance staff of the owner and must be included as part of the purchase contract.</li> </ul>
7.1.25.	<p>The prime contractor must warrant the work performed, materials, equipment installed for not less than six (6) years against defects, and poor workmanship. Even if the final payment is made, if the owner discovers an unfinished and/or improperly installed component, defect or poor workmanship that should have been identified and noted during final inspection, the contractor will complete the work in a timely fashion at no additional cost to the owner. This warranty does not cover damage caused by fire, winds, floods, chemicals, or owners' negligence of reasonable precaution to provide adequate ventilation during hot and humid weather. Furthermore, this warranty does not cover</p>



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	<p>damage to floors caused by ordinary wear and tear, faulty construction of the building, separation of concrete slab, or settlement of walls.</p> <ul style="list-style-type: none"> <li>The bidder may offer extended warranties or maintenance agreements if available at an additional cost to members. The extended warranties or maintenance contract must be offered as a separate line item.</li> </ul>
7.1.26.	<p>If the offeror submitting a response to this solicitation to provide construction products and services relating to and for athletic, recreational, performing arts, multi-purpose and other educational facilities with specialty hardwood and synthetic flooring systems and is not the product/system manufacturer; then the offeror must provide written documentation between it and the manufacturer indicating that the product manufacturer(s), for this solicitation, is aware of the offeror's intent to offer the manufacturer's product line(s) and both parties are jointly committed and are aware of the terms, conditions, and stipulations in this IFB, and that the manufacturer acknowledges and agrees to and will stand behind the contractor's performance under this IFB. Failure of non-manufacturers to submit sufficient documentation to meet this requirement can result in a non-responsive bid.</p>
7.1.27.	<p>The offeror must within their response provide a complete listing/catalog of all products offered with their associated cost that are not to be covered by R.S. Means. This will enable an owner's staff, architect, or general contractor to verify the offeror's project quotes for new construction, renovation, retrofit, or general maintenance and repair. This listing/catalog must provide complete specifications on each product/service. (This information is required in electronic format.)</p>
7.1.28.	<p>Inspection:</p> <ul style="list-style-type: none"> <li>The bidder shall conduct a pre-inspection before any construction meeting or final inspection where the owner is expected to accept and/or sign-off on work that has been completed. This is to ensure that all work meets or exceeds the specifications and requirements of the project. Any discrepancies shall be corrected and/or communicated to the owner.</li> <li>The date of final inspection shall be scheduled in advance, with appropriate notice and agreed upon by all parties. The contractor shall provide the owner or owner representative, with copies of the printed check-off list, proposed pay application, state, and local inspector's sign-off/reports acquired since the last meeting. Any discrepancies will be noted as a punch list item and corrected before the next meeting or within the time specified in the contract documents.</li> <li>Before final payment being made and during the project close-out process the contractor shall submit and have the owner or designee acknowledge receipt of as-built drawings, maintenance, and operational guides and all activated product warranties and approve any submittals needed.</li> </ul>
7.1.29.	<p>The offeror must demonstrate they possess the ability, capacity, and staff to keep current with federal, state, and industry standards, and guidelines that are applicable within any of the 29 states.</p>
7.1.30.	<p>Quality Control Issues:</p> <ul style="list-style-type: none"> <li>During the contract, the owner or designee may request and/or secure samples, according to construction industry standards, guidelines, or ASBA standards, of materials being applied, used from containers at the job site, and submit them to an independent laboratory for comparison to specified material. The owner may acquire an independent industry qualified/certified consultant, to evaluate and issue a report on the quality of the materials being used, if the materials installed to meet or exceed the project's specifications. The cost of these tests and services will be paid by the owner.</li> <li>Should the test results prove that a material used and/or applied is not equal to or better than specified or the end-product does not meet minimum requirements. The offeror will reimburse the owner for the cost of the tests and/or services acquired. The offeror will also pay all costs incurred and associated to replace, remove, and dispose of non-compliant materials and bring the end product up to project specifications and requirements.</li> <li>Should the test results and services prove that materials tested were equal to specified material and the work performed meets the project's specifications and requirements, the offeror shall be notified of the results and the owner shall pay all associated costs.</li> </ul>

Item	Description
	<ul style="list-style-type: none"> <li>The offeror must be willing and able to provide, within five (5) business days of the request, the necessary proof, documentation, and evidence to demonstrate they, the respondent, have the experience in delivering and installing acceptable single and multi-court sport and recreational facilities utilized for basketball, volleyball, badminton, gymnastics, dance, etc. for all levels of competition and flooring systems found within performing arts centers, exercise, training, weight, and locker rooms, multi-purpose rooms, etc.</li> </ul>

## 8. Standard Specifications

Item	Description
8.1.1.	The Vendor Partner will have access to a full inventory of the awarded product line and/or agreed upon services.
8.1.2.	If the Vendor Partner cannot provide the requested construction service(s) within the period specified by the Owner, the Vendor Partner shall notify the Owner with enough lead time to allow for the services to be procured elsewhere.
8.1.3.	Vendor Partners must be a manufacturer's authorized sales and service dealer for all proposed materials/equipment. An authorized sales and service dealer is defined in this solicitation as one purchasing their products for reselling directly from the manufacturer(s) or the manufacturer's approved channels. Products that result from new authorized sales and service dealer arrangements between the Vendor Partner and the manufacturer during the term of this contract may be added and offered through the AEPA contract.
8.1.4.	All charges and components necessary for the performance of the contract shall be identified even if such are not specifically addressed in any paragraph or sub-paragraph or form that is a part of this request.
8.1.5.	If the Vendor Partner intends to utilize independent agents/distributors, subcontractors, and/or third-party agents to perform and/or provide any part of the products and services offered herein, the Vendor Partner must identify all providers and any associated costs with these providers.
8.1.6.	Optional products and services must be identified separately and must include clear descriptions of proposed services.
8.1.7.	All products sold by the Vendor Partner must be new. Only the newest versions of materials, software, and equipment will be bid. Older versions will only be sold if specifically requested. Vendor Partner may offer reconditioned products as a Voluntary Alternate; such items shall be marketed and labeled as being reconditioned.
8.1.8.	Vendor Partner has the option to offer private label products/materials. Vendor Partner shall maintain the same manufacturer specifications for private label products throughout the term of the contract. Any change of manufacturers for a private label shall result in offerings equal to or superior to the originally approved manufacturer at a price equal to or lower than the original offering.
8.1.9.	Pricing errors related to any contract between Vendor Partner and subsequent member/owner user shall be handled following agreed-upon terms and conditions.
8.1.10.	Vendor Partner shall provide a Safety Data Sheet (SDS) for all items sold if required. A separate sheet shall be provided for each item when a purchase is made.

## 9. Product/Category Specific Specifications

### General

Item	Description
9.1.1.	The offeror must be willing and able to demonstrate its' knowledge, understanding and experience with dealing and working with drawings, specifications and general provisions of the various types and levels of athletic, recreational, performing arts and multi-purpose educational facility's design, construction, functionality, and utilization necessary to assess and evaluate the existing conditions; consult with the owner; propose the most appropriate and cost-effective products available; to install the said product(s) and to provide ongoing maintenance and support services.
9.1.2.	The offeror must be willing, able, and have the ability and capacity to provide all labor, materials, equipment and, if required, design services, site inspection, preparation services, and product installation for those products being proposed in response to this solicitation. These services may be provided by the offeror's crews and staff or by subcontractors contracted and supervised by the offeror. It should be noted that the level of the offeror's involvement will depend on the individual project's scope and requirements.
9.1.3.	The offeror is responsible for ensuring that the proposed project's design and construction have been

Item	Description
	tested; meets and/or complies with all federal, state, local, and industry standards for such products. The installation method, procedures, and process utilized to install the product(s) are in accordance and comply with the manufacturer's institutions, specifications and comply with applicable ASBA, AAU, NCAA, NFHSA, and individual state requirements.
9.1.4.	If the offeror is only providing the hardwood or synthetic flooring system, the offeror must provide written documentation and communicate to the owner what the minimum sub-floor requirements, construction guidelines, and recommendations are and how the areas in which the flooring system is to be applied should be prepared to meet the flooring manufacturer's specifications. However, it should be noted that AEPA and its members are seeking and prefer providers who can provide a turn-key solution.
9.1.5.	If any part of the design or construction work is to be performed by the owner's crews or architect and/or a third party contractor not associated with the offeror, the offeror, before taking possession of the project site or proceeding with its work, must provide the owner with a signed affidavit stating that it has inspected and has accepted the current site conditions and work completed as meeting and/or exceeding its and the manufacturer, industry and governmental standards and requirements. If work is not acceptable, the offeror must notify the owner immediately in writing stating what is not acceptable and on what this determination was made.
9.1.6.	By accepting the owner's notice/order to proceed and executing the construction process, the offeror/contractor acknowledges that he has visited the site, has familiarized himself with the current conditions under which the work is to be performed, and understands the scope of work as defined in the contract documents and no pre-existing conditions will interfere with and/or keep the final solution from meeting and performing to manufacturer's specification and owner's expectations.
9.1.7.	Documentation signed by an authorized representative of the manufacturer will be provided to the owner stating that the installed solution has no measurable traces of heavy metals, leachable mercury or any other hazardous materials identified by the EPA. For comparison testing, before installation and randomly during installation, an 8" x 10" sample of the material must be furnished to the owner's independent laboratory upon request. This sample must be provided before installation.
9.1.8.	An additional 8" x 10" product sample, the same color, texture, thickness, etc. as the type of surfacing to be installed for this project shall be provided to the owner. This must be a representative sample of the product for comparison of color and texture during installation. This sample must be submitted and approved by the owner before installation.
9.1.9.	Upon completion of any striping or line markings, the contractor shall obtain written acceptance and approval of the markings by the owner's designated representative as being complete and meeting their requirements. This document shall state that the court(s), event markings and layout meets and complies with the governing bodies' (AAU/NCAA/NFHS/etc.) requirements for any athletic and activity event stated in the owner's scope of work for the individual project.

### Quality Assurance

Item	Description
9.3.1.	For each manufacturer and product line offered, the offeror must demonstrate through documentation that it has completed at least one project within fourteen (15) of the twenty-nine(29) AEPA states utilizing the various flooring solutions or similar solutions as those being proposed in response to this IFB and that the projects have been completed and accepted by the owner as meeting and complying with the governing bodies' (AAU/NCAA/NFHS/etc.) requirements and rules governing their level of athletic competition. The products offered shall meet or exceed the ASBA's guidelines, requirements, and performance specifications for the various types and levels of facilities applications in which they are being utilized.
9.3.2.	The offeror will only utilize qualified, trained, experienced, manufacturer-approved and, if applicable, licensed tradesman to perform all work done under this IFB.
9.3.3.	The offeror shall make its' site visit to fully acquaint themselves with the construction site, existing facilities, and utilities and shall fully understand the difficulties and restrictions attending the execution of the work under this IFB. All offerors shall advise the member in writing and receive its' acceptance of any restrictions, project alterations, and/or anticipated difficulties before accepting a contract to do the individual project.
9.3.4.	The offeror/AEPA prime contractors shall employ and maintain for the term of the AEPA contract a highly qualified, experienced, and trained flooring consultant on staff to ensure quality control in all

Item	Description
	aspects of any project conducted under this solicitation. Failure of the offeror/AEPA contractor to provide evidence that it meets this requirement will be deemed non-responsive and/or the AEPA contract will be terminated.
9.3.5.	Due to the individual AEPA member agency's requirements, any offeror responding to this solicitation, who fails to provide the information required in this solicitation, has failed to perform/complete past projects is in default of warranty work, or has been found guilty of violating state and/or local construction/labor codes, as judged by previous clients or AEPA, may be found non-responsive. AEPA reserves the right to consider or not consider the offeror's response as being responsive based on its investigation and findings.
9.3.6.	<p>All flooring system products and materials offered shall be warranted/guaranteed to the extent that it:</p> <ul style="list-style-type: none"> <li>• Has been manufactured, shipped, stored, and applied the following industry standards, manufacturer's specifications and instructions.</li> <li>• All flooring system parts must be supplied by one sub-contractor.</li> <li>• Will hold fast and/or adhere to the sub-flooring system as designed and intended.</li> <li>• Will perform as specified in these specifications, the specifications of the product manufacturer, and as identified and indicated in the current product information, literature, and specification sheets available to the end-user.</li> <li>• Will not de-laminate, bubble, warp, blister, fade, crack or wear excessively during the required guarantee period as indicted herein and under normal use and intended purpose as communicated by the owner during the development of the project's scope of work.</li> <li>• All machinery and materials used must be only those approved by the materials manufacturer.</li> <li>• The offeror and its surface manufacture must meet the following criteria: <ul style="list-style-type: none"> <li>• The flooring system manufacture shall inspect and certify to the facility owner that the solution installed meet and/or exceed the manufacturer's specifications and installation requirements.</li> <li>• The flooring system manufacture shall inspect and certify to the facility owner that the solution installed meet and/or exceed the manufacturer's specifications and installation requirements.</li> <li>• The offeror and the flooring solution manufacturer guarantees the usability and playability of the flooring system/solution installed is appropriate for the site conditions that exist and for the intended uses as identified with the project's scope of work for a six (6) year period commencing with the date of substantial completion and acceptance by the owner. The warranty coverage shall not be limited to the amount of usage.</li> <li>• Any/all warranty terms, conditions, stipulations, and/or requirements must be provided, discussed, and accepted in writing by the owner before issuing the owner's purchase order.</li> </ul> </li> </ul>

AEPA has divided this flooring system being requested into three (3) areas: Wood Flooring Systems, Synthetic/Rubber Flooring Systems, and Floor Products and Services relating to the refinishing, maintaining, and repairing of existing flooring systems. The offeror may respond to any one of the individual lots or all of the lots.

### Wood Flooring Systems

Item	Description
9.4.1.	The offeror will manufacture, obtain, deliver and install hardwood floor systems comprised of concrete and/or plywood sub-floors and Northern Hard Maple flooring or other synthetic wood-like flooring products following all applicable federal and state codes and industry standards. Obtain and provide the necessary labor, equipment, materials, supplies, and accessories to refinish, renovate, and repair existing hardwood flooring systems to a structural and functional condition following industry standards. The following specifications and related information are intended to provide the offeror with a general overview of what AEPA members are seeking in this solicitation.
9.4.2.	<p>The work may include but is not limited to:</p> <ul style="list-style-type: none"> <li>• Assessing and determining existing site conditions and owners' expectations for the flooring system to be provided.</li> </ul>

Item	Description
	<ul style="list-style-type: none"> <li>Developing a proposed solution to conform to and meet the owner's expectations while considering and ensuring the following:             <ul style="list-style-type: none"> <li>Assessing and determining existing site conditions and owners' expectations for the flooring system to be provided.</li> </ul> </li> <li>Developing a proposed solution to conform to and meet the owner's expectations while considering and ensuring the following:             <ul style="list-style-type: none"> <li>The sub-flooring systems are level and adequate to support and facilitate the proposed hardwood flooring system. Ensure a level, steel troweled slab to a tolerance of +/- 1/8" in a 10'0" radius and subject to the approval of the wood floor manufacturer. Moisture barriers must be adequate for the proposed site condition and environment.</li> <li>The flooring system proposed is Northern Maple standard strip flooring. 25/32" thick and flooring shall be x 2 1/4" and the grade shall be second and better.</li> <li>The flooring mill has extensive background and experience in producing and preparing this type of product selected for the individual project.</li> <li>Providing only products that are factory certified by a nationally recognized manufacturer and installed by locally licensed (if required), factory trained and approved installers.</li> <li>The flooring solution proposed is adequate and functional within the existing site conditions and will comply with all codes.</li> <li>Providing consulting, refinishing, and maintenance services for the various existing wood flooring systems that may exist within the educational and public athletic, recreational, performing arts, and multi-purpose facilities and for those systems being proposed in response to this solicitation.</li> <li>Provide training and support services that include a complete and comprehensive "how-to" upkeep and maintain the solution installed throughout its stated life cycle. The offeror will ensure that all training and assistance provided in the operation of and/or application of maintenance and refinishing products and equipment are following OSHA, EPA, industry, and manufacturer's guidelines and standards.</li> <li>Providing after the sale of ongoing inspection and maintenance services to ensure proper floor maintenance and upkeep.</li> </ul> </li> </ul>
9.4.3.	<p>Quality Assurance for New, Replacement, Repair, and Renovation of Flooring Systems</p> <ul style="list-style-type: none"> <li>Inspect existing floor area including the concrete slab and sub-flooring to determine current conditions and to determine the scope of work for either:             <ul style="list-style-type: none"> <li>Installing a new or replacement flooring system.</li> <li>To repair or renovate a flooring system, bring up to industry standards and in compliance with all codes.</li> <li>Inspect for proper tolerance and dryness and report any discrepancies to the member.</li> <li>The inspection report shall include all unsatisfactory conditions, along with the industry and/or manufacturer's standards, which were utilized to establish the conditions.</li> </ul> </li> <li>Flooring shall be delivered to the premises and be allowed to acclimate to building conditions on the job-site in a dry, well-ventilated area, not in contact with masonry, and shall be installed at moisture content not to exceed 8%.</li> <li>All skids of flooring bundles should be opened and spread out to acclimate the flooring to environmental conditions in the building, when applicable.</li> <li>Installation and materials to comply with all local and state building codes.</li> <li>Manufacturers specializing in hardwood flooring must have a minimum of ten (10) years' experience in manufacturing hardwood athletic flooring.</li> <li>Installation shall be handled directly by a factory-certified installer with the appropriate contractor license if required.</li> <li>The installer must be approved by the AEPA Member Agency representative and have a minimum of four (4) years' experience in the installation of flooring systems offered under this solicitation.</li> <li>Product Liability: Certification of insurance coverage for the life of the product of not less than Two Million Dollars (\$2,000,000).</li> </ul>



Item	Description
	<ul style="list-style-type: none"> <li>Product Improvement: Materials provided shall incorporate the latest manufacturer's design improvements and materials current at the time of shipment, provided that such improvements and materials are consistent with the intent of these specifications.</li> </ul>
9.4.4.	<p>Project Submittals New, Replacement, Repair and Renovation of Flooring Systems</p> <ul style="list-style-type: none"> <li>Project Description: Provide a description of all site preparation, materials and supplies to be furnished even if provided by others.</li> <li>Samples of material and color charts for striping for the architect and member to develop the color scheme.</li> <li>Operation and Maintenance Instructions: Include relevant instructions for proper operation and maintenance; ongoing methods and procedures inspection and maintenance; and a preventative maintenance schedule upon completion.</li> <li>Warranty: Written warranty that identifies and states what is and is not covered; the methods, procedures, and criteria to be utilized when a warranty claim is filed; any terms, conditions, stipulation, and timelines that may apply.</li> <li>List of deviations from manufacturer's specifications, if any.</li> <li>Final Report: Upon completion of the project, provide the owner with a written record certifying that the proposed work has been completed and inspected to ensure that it is in accordance and compliance with all federal, state, manufacturer and industry standards.</li> <li>Detail break down of all costs associated with the design of, manufacturing of, delivery of, installation of, and warranty of the proposed flooring system.</li> </ul>
9.4.5.	<p>Design Criteria New, Replacement, Repair and Renovation of Flooring Systems</p> <ul style="list-style-type: none"> <li>Flooring system shall have been independently tested and meet or exceed all Athletic Performance requirements according to the International Standard DIN 18032, Part 2.</li> <li>Independent DIN testing laboratory shall have Scientific Body Membership in the International Association of Sports Surface Sciences (ISSS). The test equipment shall have been calibrated and certified through the ISSS.</li> <li>DIN testing engineer shall be an ISO 17025 System member rated for each test conducted.</li> </ul>
9.4.6.	<p>Materials</p> <ul style="list-style-type: none"> <li>The hardwood flooring systems shall be manufactured by a nationally recognized company that has manufactured and provided this type of flooring to educational institutions throughout the United States for a least ten (10) years and can demonstrate, upon request, a proven record of customer satisfaction.</li> <li>All components and materials shall meet or exceed local building codes, industry standards, MFMA, and CPSC standards.</li> <li>Flooring shall be Northern Hard Maple; 25/32" thick x 3-1/4", 2-1/2", 2-1/4" or 1-1/2" wide; Second and Better, grade marked and stamped as produced by the manufacturer.</li> <li>Concrete slab surface vapor retarder shall be a minimum of 6 mil. polyethylene.</li> <li>Wall base shall be 4" x 3" x 4' heavy-duty molded, vented, rubber, or vinyl cove base with pre-molded outside corners as supplied by the flooring manufacturer.</li> </ul>
9.4.7.	<p>Finish for New, Replacement, Repair, and Renovation of Flooring Systems</p> <ul style="list-style-type: none"> <li>All materials must be suitable for application to new maple flooring or to such in-service flooring, which has been suitably prepared.</li> <li>The material shall be reasonably free from toxicity and objectionable odors. Container labeling must be following federal regulations governing the handling of hazardous materials.</li> <li>Seal and finish products must be approved by the Maple Floor Manufacturers Association (MFMA) "Athletic Flooring Sealer And Finish Specifications And Conformance List #29 Effective 01-01-2011". Listed on the MFMA Floor Sealer and Finish List shall serve as evidence of approval.</li> <li>The floor finish shall be applied according to finish manufacturer's instructions.</li> </ul>
9.4.8.	<p>Resilient Pre-Engineered Fixed Panel Subfloor System</p> <ul style="list-style-type: none"> <li>The wooden subfloor shall be pre-engineered panels manufactured and supplied by flooring manufacturers.</li> <li>Cushioning pad(s) shall be supplied and installed per manufacturer's instructions.</li> <li>Flooring fasteners shall be 2" barbed cleats or 15-gauge coated staples unless otherwise specified by the flooring manufacturer.</li> <li>The subfloor anchoring system shall be per flooring manufacturer design.</li> </ul>

Item	Description
9.4.9.	<p>Subfloor anchoring system shall be per flooring manufacturer design.</p> <ul style="list-style-type: none"> <li>• Subfloor sleepers shall be factory-drilled engineered sleepers with resilient pads spaced per flooring manufacturers' design.</li> <li>• Subfloor sleeper anchoring system shall be per manufacturer design.</li> <li>• Subfloor panels shall be 15/32" x 4' x 8' APA (or flooring manufacturer-approved equivalent) Rated Sheathing, Exposure 1, minimum 4-ply, or per flooring manufacturer design.</li> <li>• Cushioning pad(s) shall be supplied and attached per flooring manufacturer's instructions.</li> <li>• Flooring fasteners shall be 2" barbed cleats or 15-gauge coated staples unless otherwise specified by the flooring manufacturer.</li> </ul>
9.4.10.	<p>Double Plywood Subfloor System</p> <ul style="list-style-type: none"> <li>• Subfloor shall be 15/32" x 4' x 8', minimum 4-ply, APA (or flooring manufacturers approved rated equivalent) Rated Sheathing, Exposure 1, or per flooring manufacturer design.</li> <li>• Cushioning pad(s) as supplied and attached by flooring manufacturer instructions.</li> <li>• Flooring fasteners shall be 2" barbed cleats or 15-gauge coated staples unless otherwise specified by the flooring manufacturer.</li> </ul>
9.4.11.	<p>Sleeper and Sleeper with Plywood Subfloor Systems</p> <ul style="list-style-type: none"> <li>• Cushioned Sleepers shall be 2" x 3" x 4' nominal KD Hemlock, Spruce, Pine, or Fir with pads as supplied by the flooring manufacturer.</li> <li>• Optional plywood subfloor shall be 15/32" x 4' x 8' APA (or flooring manufacturer-approved equivalent) Rated Sheathing, Exposure 1, minimum 4-ply or per flooring manufacturer design.</li> <li>• Flooring fasteners shall be 2" barbed cleats or 15-gauge coated staples unless otherwise specified by the flooring manufacturer.</li> </ul>
9.4.12.	<p>Basket Weave Subfloor Systems</p> <ul style="list-style-type: none"> <li>• Wooden subfloor shall be 1" x 6" nominal KD Gym Grade Hemlock, Spruce, Pine or Fir, S2S, or S4S as supplied by the flooring manufacturer.</li> <li>• Install 1" x 6" subfloor diagonally to the long dimension of the room at a 25-degree angle or 45-degree angle. The ends of the 1" x 6" shall be butted or spaced per the flooring system manufacturer's instructions and side spacing 2" or 6" between adjoining 1" x 6". Maintain a 2" expansion void at the walls and all vertical obstructions.</li> <li>• The top layer of 1" x 6" subfloor shall be laid in the opposite direction to the first layer, at a 25 degree or 45-degree angle to the long dimension of the room so that no end joints fall over any end joints of the first layer. The ends of the second layer of 1"x6" shall be butted or spaced per the flooring system manufacturer's instructions and side spacing 2" between adjoining 1" x 6". Secure the two layers at each intersection using nails or staples. Maintain a 2" expansion void at the walls and all vertical obstructions.</li> </ul>
9.4.13.	<p>Basket Weave with Pads Subfloor System</p> <ul style="list-style-type: none"> <li>• Basket Weave with Pads: Wooden subfloor shall be 1" x 6" nominal KD Gym Grade Hemlock, Spruce, Pine or Fir, S2S, or S4S as supplied by the flooring manufacturer.</li> <li>• Install 1" x 6" subfloor diagonally to the long dimension of the room at a 25-degree angle or 45-degree angle. The ends of the 1" x 6" shall be butted or spaced per the flooring system manufacturer's instructions and side spacing 2" or 6" between adjoining 1" x 6" with pads stapled and spaced per the flooring system manufacturer's instructions. Maintain a 2" expansion void at the walls and all vertical obstructions.</li> <li>• The top layer of 1" x 6" subfloor shall be laid in the opposite direction to the first layer, at a 25 degree or 45-degree angle to the long dimension of the room so that no end joints fall over any end joints of the first layer. The ends of the second layer of 1"x6" shall be butted or spaced per the flooring system manufacturer's instructions and side spacing 2" between adjoining 1" x 6". Secure the two layers at each intersection using nails or staples. Maintain a 2" expansion void at the walls and all vertical obstructions.</li> </ul>
9.4.14.	<p>Inspection</p> <ul style="list-style-type: none"> <li>• Inspect concrete slab for proper tolerance and dryness per manufactures installation instructions.</li> <li>• The concrete slab shall be cleaned of all debris.</li> </ul>
9.4.15.	<p>Installation of Subfloor</p> <ul style="list-style-type: none"> <li>• The wood flooring shall not be installed until all masonry, plastering, tile, marble, and terrazzo</li> </ul>

Item	Description
	<p>work is completed, and overhead mechanical trades and painters have finished in the wood floor area. The building must be reasonably dry; all openings must be closed in; permanent heating and air conditioning installed and working.</p> <ul style="list-style-type: none"> <li>The sub-floor shall be dry, free of foreign materials, and broom cleaned before the beginning of the installation of the flooring system. Moderate room temperature of 65 degrees or more shall be maintained a week preceding and throughout the work. Humidity conditions within the building shall approximate humidity conditions which will prevail when the building is occupied. Care should be taken to maintain humidity within the range of 35% to 50%.</li> <li>Cover entire concrete slab with a surface vapor retarder, lapping joints a minimum of 6" or as specified by the vapor retarder manufacturer.</li> </ul>
<b>Floor Types for New &amp; Replacement Application</b>	
9.4.16.	<p>Resilient Pre-Engineered Fixed Panel System</p> <ul style="list-style-type: none"> <li>Install pre-engineered subfloor panels per manufacturer's instructions, perpendicular or diagonal to the finished flooring in a brick pattern. Space subfloor panels according to flooring manufacturer's recommendation. If required by the flooring system manufacturer, install solid blocking under bleachers in the stacked position and where portable backstops or other areas are subjected to high loads as shown on architectural drawings. If required by the flooring system manufacturer, install recommended blocking below bleachers in the extended position.</li> <li>Install the subfloor system using concrete anchors per flooring manufacturer's instructions. Provide 2" expansion voids at the perimeter and all vertical obstructions.</li> <li>Install maple flooring parallel to main playing court by nailing or stapling per manufacturer's instructions.</li> <li>Space joints between flooring strips to allow for intermediate expansion following local humidity conditions.</li> <li>Provide 2" expansion voids at the perimeter and all vertical obstructions.</li> </ul>
9.4.17.	<p>Resilient Fixed Plywood Sleeper with Continuous Floor System</p> <ul style="list-style-type: none"> <li>Install subfloor sleepers perpendicular to the finished flooring staggering joints, spacing subfloor panels according to the manufacturer's recommendation. Sleepers shall be spaced per floor manufacturers' design.</li> <li>Install the subfloor system using concrete anchors per flooring manufacturer's instructions. If required by the flooring system manufacturer, install solid blocking under bleachers in the stacked position and where portable backstops or other areas subjected to high loads as shown on architectural drawings. If required by the flooring system manufacturer, install recommended blocking below bleachers in the extended position.</li> <li>Attach subfloor panels to the sleepers using 1-1/4" nails or staples 12" o.c., spacing plywood 1/4" on all sides and edges, end joints staggered 4' and breaking on the sleepers. Provide 2" expansion voids at the perimeter.</li> <li>Install maple flooring parallel to main playing court by nailing or stapling per manufacturer's instructions.</li> <li>Space joints between flooring strips to allow for intermediate expansion following local humidity conditions.</li> <li>Provide 2" expansion voids at the perimeter and all vertical obstructions.</li> </ul>
9.4.18.	<p>Double Plywood Floor System</p> <ul style="list-style-type: none"> <li>Install the first layer of subfloor plywood opposite the direction of the maple flooring, 1/4" spacing all edges and breaking joints 4' - Provide 2" expansion voids at the perimeter and all vertical obstructions. If required by the flooring system manufacturer, install solid blocking under bleachers in the stacked position and where portable backstops or other areas subjected to high loads as shown on architectural drawings. If required by the flooring system manufacturer, install recommended blocking below bleachers in the extended position. The underside of the first layer shall have 32 cushion pads per the sheet attached 12" o.c. and 6" from edges of subfloor material on all sides. Provide 2" expansion voids at the perimeter and all vertical obstructions.</li> <li>The second layer of subfloor material shall be laid diagonally (45 degrees) (option: Install both layers of plywood at 45-degree angles to finished flooring) over the first layer 1/4" spacing all edges and breaking joints 4'. Attach the second layer of subfloor material with nails</li> </ul>

Item	Description
	<p>or staples 12" o.c. Provide 2" expansion voids at the perimeter and all vertical obstructions.</p> <ul style="list-style-type: none"> <li>• Install maple flooring parallel with main playing court by nailing or stapling approximately 12" o.c. or as specified by the flooring manufacturer.</li> <li>• Space joints between flooring strips to allow for intermediate expansion following local humidity conditions.</li> <li>• Provide 2" expansion voids at the perimeter and all vertical obstructions.</li> </ul>
9.4.19.	<p>Sleeper and Sleeper with Plywood Floor System</p> <ul style="list-style-type: none"> <li>• Sleeper System. <ul style="list-style-type: none"> <li>• Install sleepers end-to-end at right angles to the direction of the finished flooring with end joints staggered a minimum of 24". The sleepers shall be spaced 9" o.c. If required by the flooring system manufacturer, install solid blocking under bleachers in the stacked position and where portable backstops or other areas subjected to high loads as shown on architectural drawings. If required by the flooring system manufacturer, install recommended blocking below bleachers in the extended position.</li> <li>• Maintain a 2" expansion void at the walls and all vertical obstructions.</li> </ul> </li> <li>• Sleeper with Plywood System <ul style="list-style-type: none"> <li>• Install sleepers end-to-end at right angles to the direction of the finished flooring with end joints staggered a minimum of 24". The sleepers shall be spaced 12" o.c. If required by the flooring system manufacturer, install solid blocking under bleachers in the stacked position and where portable backstops or other areas subjected to high loads as shown on architectural drawings. If required by the manufacturer, install recommended blocking below bleachers in the extended position. Maintain a 2" expansion void at the walls and all vertical obstructions.</li> <li>• Install plywood over sleepers at 90-degree angle to the direction of finished flooring, 1/4" spacing all edges and breaking joints 4'. Attach with nails or staples 12" o.c.</li> <li>• Install maple flooring parallel with the main playing court by nailing or stapling approximately 12" o.c. or as specified by the flooring manufacturer.</li> <li>• Space joints between flooring strips to allow for intermediate expansion, following local humidity conditions.</li> <li>• Provide 2" expansion voids at the perimeter and all vertical obstructions.</li> </ul> </li> </ul>
9.4.20.	<p>Basket Weave Systems</p> <ul style="list-style-type: none"> <li>• Flooring shall be MFMA-RL Northern Hard Maple or MFMA-FJ Northern Hard Maple; 25/32" thick x 3-1/4", 2-1/2", 2-1/4" or 1-1/2" wide; First, Second and Better, Third and Better, Third Grade or Utility Grade: T &amp; G and EM; grade marked and stamped as produced by an MFMA member manufacturer.</li> <li>• Flooring fasteners shall be 2" barbed cleats or 15 gauge coated staples unless otherwise specified by the flooring manufacturer.</li> <li>• Wall base shall be 3"x 4" x 4' heavy-duty molded, vented, rubber, or vinyl cove base with pre-molded outside corners as supplied by the flooring manufacturer.</li> <li>• Install maple flooring parallel with the main playing court by nailing or stapling approximately 12" o.c.</li> <li>• Space joints between flooring strips to allow for intermediate expansion, following local humidity conditions.</li> <li>• Provide 2" expansion voids at the perimeter and all vertical obstructions.</li> </ul>
9.4.21.	<p>Floor Sanding</p> <ul style="list-style-type: none"> <li>• The floor will be sanded a minimum of three (3) times to remove an existing finish, dents, gouges, and surface flaws. Sanding will be following MFMA and the product manufacturer's instructions.</li> <li>• Machine sand with coarse, medium, and fine paper to a smooth, even, and uniform surface.</li> <li>• The floor shall present a smooth surface without drum stop marks, gouges, streaks or shiners</li> <li>• Final sanding shall be with 100 or 120 grit sandpaper.</li> <li>• Screen with a 120-grit disc to eliminate chatter, stop marks, and sanding patterns.</li> <li>• Tack the floor following MFMA and product manufacturer's instructions. The floor shall be tacked until thoroughly clean and free of all dust and debris.</li> </ul>
9.4.22.	<p>Finishing</p> <ul style="list-style-type: none"> <li>• Inspect the entire area of floor to ensure that surface is acceptable for finishing, completely</li> </ul>

Item	Description
	<p>free from sanding dust.</p> <ul style="list-style-type: none"> <li>• Apply seal and finish per finish manufacturer's instructions.</li> <li>• Paint game lines as shown on drawings, between the seal and first coat of finish. Game line paint shall be compatible with finish.</li> </ul>
9.4.23.	<p>Base and Threshold Installation</p> <ul style="list-style-type: none"> <li>• Install vented cove base by anchoring to walls with base cement, screws, or anchors.</li> <li>• Miter inside corners, and use pre-molded outside corners.</li> <li>• The metal threshold at the doorway to comply with flooring manufacturer or industry standards.</li> </ul>
9.4.24.	<p>Maintenance</p> <ul style="list-style-type: none"> <li>• Upon completion of floor installation, the owners, attendants, or individuals in charge are responsible for the upkeep of the building and are to see that the care and maintenance instructions of the MFMA and the flooring manufacturer are followed.</li> <li>• Preparation: The Contractor shall be responsible for field-checking site conditions and dimensions.</li> <li>• Installation: Install products following the manufacturer's instructions and approved submittal drawings.</li> <li>• Adjustment and Cleaning: All equipment to be adjusted for smooth and proper operation. The clean work area and remove debris from the site.</li> </ul>
9.4.25.	<p>Flooring Renovation, Refinishing and Repair Projects</p> <ul style="list-style-type: none"> <li>• Repairs must match the wood and construction on the floor or stage.</li> <li>• Replacement flooring shall not be installed until all masonry removal of damaged flooring and the repair of any sub-floor conditions that exist is completed. The building must be reasonably dry; heating, air conditioning, and ventilation systems must be working and the area closed to the public.</li> <li>• Remove damaged or worn wood, as needed.</li> <li>• Repair or renovate the subfloor is required.</li> <li>• Dispose of old wood following local and state laws. (Do not dispose of wood until the member examines it.)</li> <li>• Examine the moisture barrier. If damaged or worn, replace it with a 6-mil polyethylene membrane.</li> <li>• The sub-floor shall be dry, free of foreign materials, and broom cleaned before the beginning of the installation of the new flooring sections. Moderate room temperature of 65 degrees or more shall be maintained a week preceding and throughout the work. Humidity conditions within the building shall approximate humidity conditions, which will prevail when the building is occupied. Care should be taken to maintain humidity within the range of 35% to 50%.</li> <li>• Before refinishing, the floor shall be scrubbed, stripped, or sanded, as requested or required by the Member.</li> <li>• The floor will be sanded a minimum of three (3) times to remove an existing finish, dents, gouges, and surface flaws. Sanding will be following MFMA and the product manufacturer's instructions.</li> <li>• Final sanding shall be with 100 or 120 grit sandpaper.</li> <li>• Screen with a 120-grit disc to eliminate chatter, stop marks, and sanding patterns.</li> <li>• Tack the floor following MFMA and product manufacturer's instructions. The floor shall be tacked until thoroughly clean and free of all dust and debris.</li> <li>• On scrubbed floors, apply patch coat of finish, if required in heavily worn areas. Allow patch coats to dry, abrade and tack, following product manufacturer's instructions.</li> </ul>
9.4.26.	<p>Finish</p> <ul style="list-style-type: none"> <li>• On scrubbed floors, apply a coat of finish to the floor following the product manufacturer's instructions. Apply an additional coat of finish, if requested by the Member.</li> <li>• On stripped or sanded floors, apply a coat penetrating sealer. Use penetrating stain, if required by the Member.</li> <li>• Allow sealer or stain to dry following product manufacturer's instructions.</li> <li>• Prepare floor for a second coat of penetrating sealer or stain, or a coat of finish, following product manufacturer's instructions.</li> </ul>



Item	Description
	<ul style="list-style-type: none"> <li>• Ensure there is no draft and that floor remains free of dust, dirt, and debris during product application and drying.</li> <li>• Ensure proper ventilation following product manufacturer's instructions. Provide respirators, if required by the manufacturer.</li> <li>• After finishing the floor, ensure that it is closed to traffic and activities following the product manufacturer's instructions.</li> <li>• Base molding shall be pre-molded vent cove without corners and attached to the wall with adhesive and/or screws.</li> <li>• All flooring will be manufactured and graded following the MFMA standards.</li> <li>• Floor Finishing – New Floors <ul style="list-style-type: none"> <li>• Seal and finish products must be approved by the Maple Floor Manufacturers Association (MFMA). Publication on the MFMA Floor Sealer and Finish List shall serve as evidence of approval.</li> <li>• The offeror will consult with the Member to determine if the floor is to be sealed and finished with solvent-based or water-based products.</li> <li>• The floor will be sanded a minimum of three (3) times to remove existing dents, gouges, and surface flaws. Sanding will be following MFMA and the product manufacturer's instructions.</li> <li>• Final sanding shall be with 100 or 120 grit sandpaper or following MFMA or the products manufacturer's instructions.</li> <li>• Screen with a 120-grit disc to eliminate chatter, stop marks, and sanding patterns.</li> <li>• Tack the floor following MFMA and product manufacturer's instructions. The floor shall be tacked until thoroughly clean and free of all dust and debris.</li> <li>• Apply seal coat following MFMA and product manufacturer's instructions. The manufacturer's minimum coverage instructions shall be followed.</li> <li>• Allow seal coat to dry following manufacturer's instructions.</li> <li>• Apply the second coat of seal as specified by the product manufacturer.</li> <li>• Abrade floor following MFMA and product manufacturer's instructions before applying a second seal coat. Tack floor following MFMA and product manufacturer's instructions.</li> <li>• When striping and/or game lines must be accurately applied after the first seal coat, after buffing and vacuuming. The layout will be the following drawings. Offerors must confirm and will be held responsible for ensuring that any/all game lines use current rules of associations having jurisdiction. Lines shall be straight with sharp edges using colors and patterns approved by the owner. Use proper floor lining paint that is compatible with the seal and finish coating products.</li> <li>• Allow seal coat and/or game lines to dry following manufacturer's instructions.</li> <li>• Abrade floor following MFMA and product manufacturer's instructions before applying the second seal coat. Tack floor following MFMA and product manufacturer's instructions.</li> <li>• Apply two or three coats of finish, allow proper drying time, and follow proper abrading procedures between coats following MFMA and product manufacturer's instructions.</li> <li>• Ensure there is no draft and that the floor remains free of dust, dirt, and debris during product application and drying.</li> <li>• Ensure proper ventilation following product manufacturer's instructions. Provide respirators, if required by the manufacturer.</li> <li>• After finishing the floor, ensure that it is closed to traffic and activities following the product manufacturer's instructions.</li> </ul> </li> </ul>
9.4.27.	Refinishing and Renovation Projects <ul style="list-style-type: none"> <li>• Seal and finish products must be approved by the Maple Floor Manufacturers Association (MFMA). Publication on the MFMA Floor Sealer and Finish List shall serve as evidence of approval.</li> <li>• The offeror will consult with the Member to determine if the floor is to be sealed and finished with solvent-based or water-based products.</li> <li>• Only compatible seal finish and paint products will be used.</li> <li>• The floor will be sanded a minimum of three (3) times to remove an existing finish, dents, gouges, and surface flaws. Sanding will be following MFMA and the product manufacturer's</li> </ul>

Item	Description
	<p>instructions.</p> <ul style="list-style-type: none"> <li>• Final sanding shall be with 100 or 120 grit sandpaper or following MFMA or the products manufacturer's instructions.</li> <li>• Screen with a 120-grit disc to eliminate chatter, stop marks, and sanding patterns.</li> <li>• Tack the floor following MFMA and product manufacturer's instructions. The floor shall be tacked until thoroughly clean and free of all dust and debris.</li> <li>• When striping and/or game lines must be accurately applied after the first seal coat, after buffing and vacuuming. The layout will be the following drawings. Offerors must confirm and will be held responsible for ensuring that any/all game lines use current rules of associations having jurisdiction. Lines shall be straight with sharp edges using colors and patterns approved by the owner. Use proper floor lining paint that is compatible with the seal and finish coating products.</li> <li>• Allow seal coat and/or game lines to dry following manufacturer's instructions.</li> </ul>
9.4.28.	<p>Periodic Scrubbing and Recoating</p> <ul style="list-style-type: none"> <li>• Only MFMA products that are compatible with the existing seal and finish will be used for periodic recoating.</li> <li>• Scrub floor following MFMA and product manufacturer's instructions. Remove all gum, tape, rubber marks, scuffs, and other debris. Thoroughly rinse the floor.</li> <li>• Allow the floor to dry and touch up game lines following MFMA and product manufacturer's instructions.</li> <li>• Abrade floor as required by the product manufacturer's instructions.</li> <li>• Tack floor following MFMA and product manufacturer's instructions. The floor shall be tacked until thoroughly clean and free of all dust and debris.</li> <li>• Apply patch coat of finish, if required in heavily worn areas such as keys. Allow patch coat to dry, abrade and tack the floor, all following MFMA and product manufacturer's instructions.</li> <li>• Apply a coat of finish to the floor following MFMA and product manufacturer's instructions. Apply an additional coat of finish, if requested by the Member.</li> <li>• Ensure there is no draft and that floor remains free of dust, dirt, and debris during product application and drying.</li> <li>• Ensure proper ventilation following product manufacturer's instructions. Provide respirators, if required by the manufacturer.</li> <li>• After finishing the floor, ensure that it is closed to traffic and activities following the product manufacturer's instructions.</li> <li>• The offeror must be willing and able to allow the AEPA Member to determine the level of responsibility for performing the labor involved with refinishing and repairing an existing flooring system with their staff. The offeror will provide as little as, as much as, or a combination of floor maintenance and refinishing goods and services as requested.</li> <li>• The offeror must be willing and able to provide consulting and/or training services for Member's staff on how to utilize various products, materials, and equipment to maintain and refinish various types of athletic and multi-purpose floors.</li> <li>• The offeror will ensure that all training and assistance provided to AEPA Member's personnel in the operation and/or application of maintenance and refinishing products and equipment are following OSHA, EPA, industry, and manufacturer's guidelines and standards.</li> </ul>
9.4.29.	<p>Clean Up</p> <ul style="list-style-type: none"> <li>• All unused materials and debris are to be removed from the premises.</li> </ul>
9.4.30.	<p>Warranty</p> <ul style="list-style-type: none"> <li>• The installer shall warrant the installations jointly with the flooring manufacturer for One (1) year from the date of substantial completion against defects arising due to faulty materials or workmanship.</li> <li>• This warranty does not cover damage caused by fire, winds, floods, chemicals, or owners' negligence of reasonable precaution to provide adequate ventilation during hot and humid weather. Furthermore, this warranty does not cover damage to floors caused by ordinary wear and tear, faulty construction of the building, failure of other contractors to adhere to specification, separation of concrete slab, settlement of walls, or use of water on the floor.</li> <li>• Inspection: Verify that areas to receive products are free of impediments interfering with the installation. Do not begin work until conditions are satisfactory.</li> </ul>

Item	Description
	<ul style="list-style-type: none"> <li>Preparation: The Contractor shall be responsible for field-checking site conditions and dimensions.</li> <li>Installation: Install products following the manufacturer's instructions and approved submittal drawings.</li> <li>Adjustment and Cleaning: All equipment to be adjusted for smooth and proper operation. The clean work area and remove debris from the site.</li> </ul>

### Multi-Purpose Synthetic/Rubber Flooring Systems

Item	Description
9.5.1.	The offeror will manufacture, obtain, deliver, and install synthetic/rubber floor systems over concrete and/or plywood sub-floors following all applicable federal and state codes and industry standards. To obtain and provide the necessary labor, equipment, materials, supplies, and accessories to refinish, renovate, and repair existing synthetic flooring systems to functional and operational conditions following the manufacturers and industry standards.
9.5.2.	<p>The work may include but is not limited to:</p> <ul style="list-style-type: none"> <li>Assessing and determining existing site conditions and member's expectations for the flooring system to be provided.</li> <li>Developing a proposed solution to conform to and meet the member's expectations while considering and ensuring the following: <ul style="list-style-type: none"> <li>Provide only products that are factory certified by a nationally recognized manufacturer and are installed by licensed, factory-certified installers.</li> <li>Provide consulting, refinishing, maintenance services for the various synthetic/rubber flooring systems that exist within educational and governmental institutions.</li> <li>Provide after-the-sale ongoing inspection and maintenance services to ensure proper operation, maintenance, and upkeep of synthetic flooring systems installed.</li> <li>Provide labor, materials, equipment, and supervision necessary to complete installation of, refinishing, renovation, and maintenance of synthetic flooring systems.</li> <li>Provide extensive experience in repairing, renovation, and refinishing of synthetic flooring systems.</li> <li>The flooring solution proposed is adequate and functional within the existing site conditions and will comply with all local, state, and federal codes.</li> </ul> </li> </ul>
9.5.3.	Manufacturer: Proposed solutions must be equal to or better than those available from Mondo USA, Connor Sport Court, Beyond Sport Surfaces, Tarkett Sports, or equal at the sole discretion of AEPA.
9.5.4.	Manufacturer Qualifications: Manufacturer must have Ten (10) years of experience in the manufacture of synthetic flooring systems.
9.5.5.	Product testing shall be relative for multi-purpose use with certificates from independent testing resources to be made available upon request. Test results shall be no more than 5 (five) years old and performed according to ASTM and/or EN standard testing procedures.
9.5.6.	<p>Supplier Qualifications</p> <ul style="list-style-type: none"> <li>Surfacing supplier shall be an established firm experienced in the field and appointed as a distributor by the manufacturer of the synthetic flooring systems.</li> <li>Surfacing suppliers is to submit certification attesting that they are an approved distributor for the manufacturer of synthetic flooring systems.</li> <li>All system parts must be supplied by a single source.</li> </ul>
9.5.7.	<p>Installer Qualifications</p> <ul style="list-style-type: none"> <li>The installer of synthetic flooring systems shall have a minimum of five (5) years' experience in the field installing synthetic flooring systems; factory trained and certified, and has worked on at least five (5) projects of similar size, type, and complexity.</li> <li>Installer to submit the synthetic flooring systems manufacturers or distributor's certification attesting that they are an approved installer of synthetic flooring systems.</li> <li>Installers must be licensed as required by each AEPA Member state and be certified and approved by the manufacturer of the materials being installed.</li> </ul>
9.5.8.	Product Liability: Certification of insurance coverage for the life of the product of not less than Two Million Dollars (\$2,000,000).
9.5.9.	<p>Project Submittals</p> <ul style="list-style-type: none"> <li>Project Description: Provide a description of all site preparation, materials and supplies to be</li> </ul>

Item	Description
	<p>furnished even if provided by others.</p> <ul style="list-style-type: none"> <li>• Samples: Provide samples of materials and color finishes available to the architect and/or member to determine the type of flooring texture and color schemes to be utilized.</li> <li>• Operating and Maintenance Instructions: Include relevant instructions for the proper operation, maintenance, and inspection procedures and a preventative maintenance schedule to Member upon completion.</li> <li>• Manufacturer's specifications and descriptive literature.</li> <li>• List of deviations from manufacturer's specifications, if any.</li> <li>• Final Report: Upon completion of the project, provide the owner with a written record certifying that the proposed work has been completed and inspected to ensure that it is in accordance and compliance with all federal, state, manufacturer and industry standards.</li> <li>• Warranty: Written warranty that identifies and states what is and is not covered; the methods, procedures, and criteria to be utilized when a warranty claim is filed; any terms, conditions, stipulation, and timelines that may apply.</li> <li>• Cost Proposal: Detail break downs of all costs associated with the design of, manufacturing of, delivery of, installation of, and warranty of the proposed flooring system.</li> </ul>
9.5.10.	<p>Warranty</p> <ul style="list-style-type: none"> <li>• The synthetic athletic surfacing shall be covered by the manufacturer against product defects for ten (10) years from the date of acceptance by the Member. The manufacturer must provide this warranty upon completion of the installation at acceptance by the Member.</li> <li>• The installation of the synthetic athletic surfacing shall be covered against poor workmanship and faulty installation by a two (2) year written, the limited warranty provided by the offeror to start at acceptance by the Member.</li> </ul>
<b>Synthetic Flooring Systems</b>	
9.5.11.	<p>System Design New Flooring System</p> <ul style="list-style-type: none"> <li>• The flooring systems proposed shall be specifically created for and possess the characteristics required of both competition and recreational floors found in gymnasiums, physical education, weight, training, locker, and other multipurpose facilities. Characteristics may include but are not limited to co-efficient of friction wet and/or dry, vertical and horizontal shock absorption, durability, scuff-resistant, and easy to maintain. The following products are provided as a guide to the type and level of products being requested.</li> <li>• The flooring systems proposed shall be able to be installed over concrete, asphalt, wood, or vinyl with no need to remove the existing flooring, if in acceptable condition.</li> </ul>
9.5.12.	<p>Cast-In-Place Floors</p> <ul style="list-style-type: none"> <li>• Full-depth polyurethane floors are composed of 100% polyurethane that is mixed and poured directly over the substrate in multiple layers until a specific thickness is achieved. The finished product may have a smooth finish or any variety of surface textures. All of the components of the floor are fluid applied in situ, resulting in a seamless surface. The final coat of the floor is a protective finish, also called a coating, varnish, topcoat, or other names. Game lines are painted on with a special game line coating. Full-depth polyurethane systems may be installed over new substrates, including asphalt, concrete or wood, or over old substrates, including VCT, acrylic coatings, and existing polyurethane floors. Where they are installed over existing flooring systems, special techniques or bonding agents may be required. Even when installed over new substrates, a primer may be necessary to act as a bonding agent to ensure proper adhesion.</li> <li>• Padded polyurethane floors, also known as "sandwich systems," utilize a prefabricated underlayment, also called base mat or rubber pad, which is fully adhered to, partially adhered or loose-laid over the substrate. The underlayment is then covered with polyurethane resin that is mixed and poured in one or more layers until a specified thickness is achieved and coated, like full-depth floors described above. Except for the underlayment, the components are fluid applied in situ, resulting in a seamless surface. The finished product may have a smooth finish or any variety of surface textures. Game lines are painted on with special game line coating. Padded polyurethane systems may be installed over new substrates, including asphalt, concrete, or wood, or over existing substrates, including VCT, acrylic coatings, and existing polyurethane floors. Where they are installed over existing flooring systems, special techniques or bonding agents may be required. Padded polyurethane systems generally are bonded to the substrate with special adhesives, but may also be partially adhered or loose-</li> </ul>

Item	Description
	laid.
9.5.13.	<p>Pre-Fabricated Floors</p> <ul style="list-style-type: none"> <li>• Rolled rubber floor systems are floors that are manufactured of a rubber compound (neoprene, EPDM, SBR, etc.) and either cast, extruded, cut or pressed into sheets of a single thickness, width, and length. The rubber components may be either virgin or recycled materials. Thickness, width, and length vary between types and applications. These sheets are bonded to the substrate with an adhesive. The body of the rubber sheet may be solid rubber, granulated rubber bound with a binder, or two or more sheets laminated together to make a single sheet. The finished surface may be smooth or textured.</li> <li>• Rubber tile systems are flooring systems that are manufactured from a rubber compound (neoprene, EPDM, SBR, etc.). The rubber component, which may be either virgin or recycled material, may be made into sheets and then cut into tiles, or cast into tile form. Tiles are generally any form that is 1m x 1m square, or less. These tiles are bonded to the substrate with an adhesive. The finished product may have a smooth or textured finish.</li> <li>• PVC sheet flooring systems are manufactured either totally or partially of polyvinyl chloride. They may be solid PVC or they may incorporate a resilient backing onto a thinner PVC top layer. The backing may be foam or other resilient material. These floors are usually bonded to the substrate, but they may be partially adhered to or loose-laid. The individual sheets of the flooring system are usually welded together with heat or with special chemicals to form a "seamless" surface. The resulting product may have a smooth or textured finish.</li> <li>• Suspended polypropylene tile systems are floors made of injection-molded polypropylene tiles that snap together with some sort of locking mechanism. They are loose-laid and may be installed over a resilient underlayment and may be open or solid surfaced.</li> </ul>
9.5.14.	<p>Finishes consist of coatings or treatments applied on-site or furnished from the factory. They are used to provide desired performance characteristics, appearance, and/or durability for the intended use.</p> <ul style="list-style-type: none"> <li>• Smooth finishes are typically used for basketball, volleyball, and similar sports.</li> <li>• Textured finishes are used for tracking, general exercise, and similar sports.</li> </ul>
9.5.15.	<p>Working Conditions</p> <ul style="list-style-type: none"> <li>• The substrate may be concrete, bituminous, or wood.</li> <li>• Remove from substrate any ridges and bumps. Fill low spots, cracks, joints, holes, and other defects with the patching compound.</li> <li>• Patching compound to be supplied or approved/recommended by a sports flooring manufacturer.</li> <li>• Clean substrate and apply and float filler to leave the smooth, flat, hard surface. Prohibit traffic until the filler is cured.</li> <li>• Ensure that substrates are dry and exhibit neutral alkalinity. Moisture (calcium chloride) tests are recommended in various areas of the substrate.</li> <li>• The sub-floor is to be prepared as per the manufacturer's recommendations.</li> </ul>
9.5.16.	<p>Site Conditions</p> <ul style="list-style-type: none"> <li>• Maintain a stable room and sub-floor temperature, minimum 65°F (18°C), for 48 hours before, during and 48 hours after installation of the flooring system.</li> <li>• Rubber sports flooring should not be installed before the concrete or asphalt sub-floor has cured for a minimum of 30 days if new facility.</li> <li>• Moisture vapor emissions content of the concrete slab must not exceed 3lbs./1000 sq. ft./24 hours when using the calcium chloride test as per ASTM F1869-98.</li> <li>• Installation in a new facility of the rubber sports flooring shall only commence once all work related to other craftsmen and trades have been completed.</li> </ul>
9.5.17.	<p>Installation</p> <ul style="list-style-type: none"> <li>• Install sports flooring following the manufacturer's printed instructions.</li> <li>• Deliver and store the material in the original packaging with the labels intact in a controlled environment of a minimum temperature of 55°F (13°C) and under 50% relative humidity.</li> <li>• Sports flooring to be unrolled and allowed to relax.</li> <li>• Cut and adjust sports flooring before adhesion.</li> <li>• Rubber sports flooring adhesive to be two-part polyurethane adhesive suitable for adherence of a sheet good to asphalt, concrete, or urethane substrate and to be supplied or approved by rubber sports flooring manufacturer.</li> </ul>



Item	Description
	<ul style="list-style-type: none"> <li>• Mix adhesive following the manufacturer's instructions.</li> <li>• Hold all seams in place with suitable weights for a minimum of 12 hours.</li> <li>• Lines to be painted as per manufacturer's recommendations.</li> <li>• Surface to be protected before, during, and after installation until the project's acceptance by the owner or owner's agent.</li> </ul>
9.5.18.	<p>Maintenance Materials</p> <ul style="list-style-type: none"> <li>• Provide the member with three (3) copies of the maintenance instructions.</li> <li>• Provide the member with additional amounts of flooring, representing 2% of the total surface of each type and colors ordered.</li> <li>• Maintenance materials must be from the same dye lot.</li> <li>• Must provide SDS sheets with all material provided as required by federal regulations.</li> </ul>
9.5.19.	<p>Renovation, Refinishing and Repair Existing Synthetic Flooring Systems</p> <ul style="list-style-type: none"> <li>• The offeror will provide AEPA members with high-quality products, materials, equipment, and labor for maintaining and repairing various types of athletic and/or multi-purpose flooring systems utilized within educational and governmental recreation or multi-use facilities.</li> <li>• The maintenance and repair products offered must be compatible with and approved by the existing floor system manufacturer.</li> <li>• The offeror must be willing and able to allow the AEPA member to determine the level of responsibility for performing the labor involved with refinishing and repairing an existing flooring system with their staff. The offeror will provide as little as, or as much as, or a combination of floor maintenance and refinishing goods and services as requested.</li> <li>• The offeror must be willing and able to provide consulting and/or training services for member's staff on how to utilize various products, materials, and equipment to maintain and refinish various types of athletic and multi-purpose floors.</li> <li>• The offeror will ensure that all training and assistance provided to AEPA member's personnel in the operation of and/or application of maintenance and refinishing products and equipment is following OSHA, EPA, industry, and manufacturer's guidelines and standards.</li> <li>• At the request of the AEPA member, the offeror will provide a total and complete solution to renovate and/or repair existing athletic or multi-purpose floors.</li> </ul>
9.5.20.	<p>Quality Assurance Maintenance, Renovation, and Repair</p> <ul style="list-style-type: none"> <li>• Inspect existing floor area including the substrate, determine current conditions, and determine the scope of work to bring the flooring system up to industry standards and in compliance with all codes. Inspect for unusual flooring conditions or defects and report them to the member.</li> <li>• The inspection report shall include any/all unsatisfactory conditions, along with the industry and/or manufacturer's standards, which were utilized to establish the conditions.</li> </ul>
9.5.21.	<p>Renovation, Maintenance &amp; Repair Work</p> <ul style="list-style-type: none"> <li>• All work must be following the manufacturer's specifications and must comply with governmental and industry standards.</li> <li>• Site and work conditions must meet or exceed the manufacturer's recommendations and industry standards.</li> </ul>
9.5.22.	<p>Delivery, Storage &amp; Handling</p> <ul style="list-style-type: none"> <li>• Deliver materials to site in manufacturer's original, unopened containers and packaging, with labels identifying product name and manufacturer.</li> <li>• Material shall not be delivered until all related work is in place and finished and/or proper storage facilities and conditions can be provided and guaranteed stable according to material manufacturer's specifications.</li> <li>• Store the material in a secure, clean, and dry location.</li> <li>• Store materials to be installed indoors at the ambient temperature of the installation location for a minimum of 48 hours before installation.</li> <li>• Protect materials during handling and installation to prevent damage.</li> <li>• Store and dispose of solvent-based materials, and materials used with solvent-based materials, following requirements of local authorities having jurisdiction.</li> </ul>
9.5.23.	<p>Project Submittals</p> <ul style="list-style-type: none"> <li>• Project Description: Provide a description of all products and/or services to be provided</li> </ul>

Item	Description
	<p>based on the project's requirements even if the labor is to be performed by the AEPA member's personnel.</p> <ul style="list-style-type: none"> <li>• Sample: Provide samples of materials and color finishes available to the member's designated representative to determine the appropriate products to be utilized.</li> <li>• Provide complete and detail Instructions: Instructions on how to perform the various tasks and apply the various products as required for each project.</li> <li>• Cost Proposal: Detail breakdown of all costs associated with the design of, obtaining of, delivery of, and performance of the proposed products and/or services required to complete the project's scope of work.</li> </ul>
9.5.24.	<p>Quality Assurance</p> <ul style="list-style-type: none"> <li>• Inspections: Inspect existing floor area including the concrete slab and/or sub-flooring to determine current conditions and to determine the scope of work to bring the flooring system up to industry standards and in compliance with all codes and note any discrepancies and/or deficiency to the member.</li> <li>• The inspection report shall include all unsatisfactory conditions, along with the industry and/or manufacturer's standards, which were utilized to establish the conditions or deficiencies.</li> <li>• All products offered to refinish, repair, and maintenance of existing flooring systems must meet and/or exceed the original manufacturer's standards and specifications.</li> <li>• Based on the type of flooring system being serviced the applicable standards and specifications enumerated within lot one and two shall apply.</li> </ul>
9.5.25.	<p>Taping and Painting Game Lines</p> <ul style="list-style-type: none"> <li>• Based on the level of athletic competition that the AEPA member participates in, will dictate the court and game lines diagrams to be utilized. The offeror must provide, to the facility owner, a line diagram, and receive the owner's written approval before painting or taping the floor.</li> <li>• All court and game lines must comply with the appropriate national or state sports association or organization in which governs the athletic competition of the sports held in the individual project facility. (NCAA, AAU, NFSHSA, etc.)</li> </ul>
9.5.26.	The clean work area and remove all unused materials and debris from premises.

### [Freight & Delivery]

Item	Description
9.6.1.	Freight for this bid will be FOB Destination, freight prepaid and added to the invoice. The Vendor Partner will maintain risk on all products until the goods are received and inspected by the Buyer. The Vendor Partner will pay shipping costs and add the cost to the Buyers invoice.
9.6.2.	All freight charges must be quoted to the Buyer before any purchase order being issued by the Buyer.
9.6.3.	A packing slip must be provided with all deliveries including the purchase order number. Orders not filled and partial shipments shall be indicated on the packing list. Buyers must be notified of an anticipated availability date within three (3) business days of receipt of order.
9.6.4.	All products, equipment, supplies, and related accessories must be delivered during normal hours of operation on weekdays, unless at the convenience of the Buyer and through mutual agreement with the Vendor Partner.
9.6.5.	<b>Stored Materials.</b> Upon prior written agreement between Vendor Partner and Buyer, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to the Buyer before payment. Such materials must be stored and protected in a secure location and be insured for their full value by Vendor Partner against loss and damage. Vendor Partner agrees to provide proof of coverage and/or addition of Buyer as an additional insured upon Buyer's request. Additionally, if stored offsite, the materials must also be identified as the property of the Buyer and be separated from other materials. The buyer must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary. Until final acceptance by Buyer, it shall be the Vendor Partner's responsibility to protect all materials and equipment. Vendor Partner warrants and guarantees that title for all work, materials, and equipment shall pass to Buyer upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

## 10. Pricing

The Bidder must provide their pricing as requested utilizing the various pricing methodologies specified in this section. The Vendor Partner agrees that the cost for any item bid or offered on this contract will be uniform for all states and that any differences in pricing are due to state-specific installation and labor costs, AEPA Member Agency's Administrative Fee, etc. The Bidder/Vendor Partner must agree that they will offer prices equal to or better than what they ordinarily offer to individual entities or cooperatives with equal or lesser volume.

**A. Line-Item Pricing:** Line-item pricing is utilized when products and/or services that are broken down in detail by element, component, product categories, product type, and each product and/or service is presented as an individual item which needs to be combined with other items to make up a final project or solution. The Bidder offers firm pricing for specific line items in response to this bid; a project's cost is derived by the Vendor Partner preparing and providing a quote based on the project's terms, conditions, and requirements based on the line item pricing provided in the bid. The information provided in this bid for each item includes Product Category, Product Description, Manufacturer, Manufacturer SKU, Vendor SKU, Unit of Measure, Item List Price, AEPA Bid Price.

- i. **Fixed prices:** Prices bid shall be firm until each anniversary date of the contract unless there is an occurrence of one or more economic price adjustment contingencies outlined in the bid. Fixed price offers shall include prices for any items.
- ii. **Routine Price Adjustments (Without Economic Price Adjustment):** Vendors may request adjustments to the prices twice a year at the time of renewal at the AEPA Spring and Winter meetings. Vendor Partner must submit a fully documented written request to the AEPA Category Committee Chairperson thirty (30) days before the AEPA meeting. The request must specifically detail and document the cause and/or reason for price changes and include any supporting documentation (manufacturer's letter, indexes, etc.). All price changes require approval by the AEPA Member Agencies.
- iii. **Unpredictable Economic Price Adjustment:** If economic price adjustment contingencies occur, Vendor Partner may submit a fully documented request (manufacturer's letter, indexes, etc.) for a price adjustment to AEPA Contract Oversight Committee for review and approval by the committee and the AEPA Member Agencies. The documentation must substantiate the cause and/or reason for the requested price increase and demonstrate that it was unpredictable at the time of bid submittal and/or contract renewal and out of the Vendor Partner's control. Pricing will take effect thirty (30) days after approval and acceptance.
- iv. **New Products/Services:** Vendor Partner may submit new products or technologies that are within the original scope of work for the bid, to be added to the contract pending review and approval of the AEPA Bid Oversight Committee and AEPA Membership. Requests should be submitted to the AEPA Contract Oversight Committee thirty (30) days before the AEPA Winter or Spring meeting.

**B. Automated System for Pricing (ASP):** The method consisting of an ASP and/or software application (RSMMeans, Gordian) that is self-contained and consists of a turn-key solution that includes a complete line-item listing of all of the products, supplies, materials, equipment, services, accessories and options with their description, specifications, terms, conditions and associated pricing for each item, sub-assemblies and/or assemblies. The Bidder provides a percent of discount or fixed multiplier/factor to be applied to total project cost to allow for individual state conditions and requirements and to arrive at the AEPA price.

**C. RSMMeans (Construction Related Bids only):** It is important for Vendor Partners to breakout all costs (quantity and price) of all items listed under RS Means or an Alternative Pricing method. This includes all quoted items, not on the approved AEPA bid submittal. The following are minimum requirements for using RSMMeans for quoting projects to AEPA Member Agencies:

- i. The Contractors must use the current year and standard cost data. Only the following cost data titles will be accepted:
  - a. Building Construction Cost Data Book
  - b. Facilities Construction Cost Data
  - c. Facilities Maintenance & Repair Cost Data
  - d. Site Work & Landscape Cost Data Book
- ii. All work proposed under RSMeans must use RSMeans format, even if subcontractors are used.
- iii. An RSMeans spreadsheet must be submitted to substantiate the quote given to the AEPA Member Agency. The spreadsheet columns must reveal the full RSMeans number and a sufficient amount of the description. This also applies to change orders.
- iv. Pricing must be done by Location codes. National Average will not be allowed. To choose the "closest" location code, the first three (3) numbers of the zip code will be used to determine the city location index in the AEPA Member Agency State.
- v. The AEPA contract holder factor, bonding cost, AEPA discount, and taxes if applicable must be shown as separate line items at the bottom of the RSMeans spreadsheet. This information can be shown on a separate summary sheet. The summary sheet must start with the RSMeans spreadsheet total and show the detail for each of the items stated above. This detail will be provided to that AEPA State Agency and the AEPA Buyer as required.
- vi. All change orders which list items covered by RSMeans must be supported by an RSMeans spreadsheet.

**D. Alternative Method of Costing:** This method covers any product and/or service not covered by catalog pricing, published price list, line-item price list, automated system for pricing, or is a product and/or service due to the projects or applications specifications, conditions and /or requirements that need to be custom-designed, developed, manufactured and/or produced to meet the requirements of an individual, project or sole source. The alternative pricing is calculated as follows:

- i. The Bidder must prepare, issue, and receive three written quotes from available suppliers and select the supplier that offers the products and services that meet the stipulated requirements and specifications and the most cost-effective solution. All quotes must be made available upon request.
- ii. The Bidder must indicate the percent of overhead and /or markup as part of their response to be added to these costs to obtain the normal and customary retail price.
- iii. The AEPA price is calculated by taking the product and services to cost to the Contractor plus the indicated percent of profit/overhead to equal the normal and customary retail price. The Contractor will then subtract the approved AEPA discount to obtain the AEPA price. Example: item cost \$1,000; percent of profit/overhead of 20% equals the retail price of \$1,200; less the AEPA discount of 10% or \$120 equals the AEPA price of \$1,080.

#### **E. Part F - Pricing Workbook**

Pricing shall be completed on the provided pricing sheets (Microsoft Excel Workbook) with the individual tabs to be completed as follows:

- i. F.1 Base Bid Pricing (Required)
- ii. F.2 State Multiplier & Labor Rates (Required)
- iii. F.3 Volume Discounts (Optional)

Bid pricing will be evaluated on a combination of items from both the Base Bid Pricing and State Multiplier pricing submittal. AEPA will also include as part of the evaluation process a hypothetical specified project on a site ready for installation at a specific location. Bidder must respond with pricing. This exercise will be used to compare costs between bid responses.

## **11. Progress Payments**

Progress payments are allowed on purchases for goods and services under the following conditions: The Buyer and the Vendor Partner agree to the terms of the progress payments before issuing a purchase

order; the purchase order describes the amounts to be paid and the date of payment; the Buyer has a satisfactory method of verifying progress described in writing in a letter or on the purchase order; that payments will only be made when actual goods and/or services are verified/received; and that any such payments be made in full compliance of Buyer's local board rules and any other applicable state rules and regulations.

## 12. Warranty

Vendor Partner warrants that all commodities, supplies, materials, equipment, software, and service delivered under this contract shall conform to the specifications of this contract. All items should carry a warranty equal to the intended life cycle or a minimum 12-month manufacturer's warranty that includes parts and labor unless otherwise specified and agreed to. The manufacturer has the primary responsibility to honor a manufacturer's warranty; a distributor or dealer agrees to assist the purchaser to solve a dispute with the manufacturer over a warranty's terms. Any extended manufacturer's warranty will be passed on to the Buyer. For example, if a voice board has a three-year warranty, but the board is in a turnkey system that has a one-year warranty, the voice board's three-year warranty must be honored by the manufacturer and the Vendor Partner. All extended warranties must be passed on, without exception. If upon discovery, the Vendor Partner charges a Buyer for a replacement part that the Vendor Partner received at no cost under a warranty, the Vendor Partner will rebate the amount billed and the Buyer reserves the right to cancel the contract.

## 13. Evaluation

The AEPA Committee for this category will evaluate bid responses based on the entire response, and according to the criteria detailed in Part A for AEPA's definition of Responsive and Responsible bids. A recommendation may be made to recommend a single response or to recommend multiple bidders based on differentiation of product or service between bidders. AEPA will vote as a whole to accept or not accept a committee's recommendation. Once accepted, each recommended bid response will go to the individual states for contract approval. Please note, pricing evaluation may include other considerations, including the total cost of the acquisition and whether the Proposer's offering represents the best value. The evaluation committee may consider such factors as life-cycle costs, the total cost of ownership, quality, and the suitability of an offering in meeting AEPA members' needs.

<b>Evaluation Criteria</b>
Cost Evaluation
Complete Response to Bid
Conformance to Bid Terms and Conditions
Pricing Equal to or Better Than That Offered to Individual Entities or Cooperatives With Equal or Lesser Volume
Quality and Suitability of products offered
Marketing plan
Financial Viability
Demonstrated Track Record of Performance in the public marketplace
Value Added attributes
Commitment to lead with the AEPA contract





# Invitation for Bid AEPA IFB #021-B Hardwood & Synthetic Flooring

## Part C – Member Agency (State) Terms and Conditions

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#### 1. Member Agency (State) Terms and Conditions

A single IFB is being published and distributed on behalf of the Member Agencies in many states. Differences in contract implementation and operation will exist between the Member Agencies. Each state may have special laws relating to this procurement that must be adhered to in addition to the previously stated constraints. *When Member Agency/State-Specific Terms and Conditions differ from the General Terms and Conditions, the Member Agency/State-Specific Terms and Conditions will prevail.*

#### 2. Common Terms and Conditions

**Active Promotion of Contract:** Agencies require that the Vendor Partner take ownership and actively promote the contract in cooperation with the AEPA Member Agency to all of the Agencies' qualified Participating Entities.

**Sales to Participating Entities:** AEPA Member Agencies require that all awarded Vendor Partners offer the Member Agency contract opportunity to all qualified Participating Entities of the cooperative.

**Legal Obligations:** All Vendor Partners shall comply with all applicable Federal, State, and Local Laws, Codes, and Regulations while fulfilling the contract. It is the Bidder's responsibility to be aware of and comply with all state and local laws governing this procurement. Applicable laws, codes, and regulations (etc.) must be followed even if not specifically identified herein.

**Administrative Fees:** AEPA Member Agencies charge Vendor Partners an administrative fee (a percentage of sales in their respective state or states that they extend the AEPA pricing to). Administrative Fees are generally paid to each Member Agency quarterly. Additional details of how these fees are charged may be found under each state's Terms and Conditions.

A summary of each State's Administrative Fee, any special terms and conditions, and special ordering process requirements are listed here for the convenience of the Bidders.

### 3. Member Agency General Overview Summary

AEPA Member Agency State	General			Ordering Process			Construction Products and Services									Potential Customers						
	Administrative Fee	Bid Security Required on bid due date	Special Reporting Requirements	Standard Ordering Process	Electronic Ordering	Special Ordering Process	Davis Bacon and State Wage Rates	Payment & Performance Bonds Required	Contractor's Licensing Required	Permits and/or Registration Required	Construction Project Cost Limitations	Participate in Construction Services	Participate in Construction Products Only	Products are taxable	Service is Taxable	K-12 Education	Higher Ed.	Private Schools	Non-Profits	Federal Agencies	State Agencies	Cities & Counties
CA	2%	N	N	Y	Y	N	-	-	-	-	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
CO	2%	N	N	Y	N	N	N	N	N	N	N	Y	Y	N	N	Y	Y	Y	Y	Y	N	Y
CT	2%	N	N	Y	Y	N	Y	N	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y
FL	2%	N	N	Y	Y	N	Y	N	Y	Y	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
GA	2%	N	N	Y	Y	N	Y	N	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	N	N	N
IA	2%	N	Y	Y	Y	N		**			Y	Lim	Lim	**		Y	Y	Y	N	Y	Y	Y
IL	2%	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	N	Y	Y
IN	Var	N	N	N	N	Y	-	-	-	-	-	-	-	-	-	Y	Y	Y	Y	Y	Y	Y
KS	2%	N	n	Y	Y	Y	Y	Y	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y
KY	2%	N	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
MA	2%	N	N	Y	Y	Y	N	N	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y
MI	2%	N	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	TBD	Y	Y
MN	2%	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y/N*	N	Y	Y	Y	Y	Y	Y	Y
MO	2%	N	Y	Y	Y	N	Y	N	N	Y	N	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y
MT	2%	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
NE	2%	N	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	N	Y	Y
NJ	2%	N	N	Y	Y	N	Y	Y	Y	Y	Y	N	Y	N	N	Y	Y	Y	Y	N	N	Y
NM	2%	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
ND	2%	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y/N*	N	Y	Y	Y	Y	Y	Y	Y
OH	2%	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
OR	2%	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
PA	2%	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y
SC	2%	N	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	Y	Y	Y	Y	N	Y	Y
TX	2%	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
VA	2%	N	N	Y	Y	Y	N	N	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
WA	2%	N	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	N	N	Y	Y
WV	2%	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
WI	2%	N	N	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
WY	2%	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y

#### **4. State Specific Terms and Conditions**

##### **1. California, Monterey County Office of Education dba CalSave**

###### **1) Governing Law and Venue**

The laws of the State of California govern the Contract and prevail in the interpretation and administration of the Contract. California-specific Terms and Conditions prevail over any General Terms and Conditions. Each provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.

The venue for any litigation arising out of or related to the Contract shall be with either the Superior Court in and for the County of Monterey, State of California or the Federal District Court for the Northern District of California, San Jose Division.

##### **2. Authority**

For California, this request for bids is issued under the authority of the elected Monterey County Superintendent of Schools, who administers the Monterey County Office of Education (MCOE), located at 901 Blanco Circle, Salinas California, 93912. In this document, MCOE may be referred to as Agency, being distinct from other parties who may use this contract who are hereinafter referred to as Local Education Agencies (LEAs), regardless of their hierarchy or their political and organizational status as schools or municipalities.

##### **3. CalSave and CalBuy, Administration, and Agent**

Contracts awarded and Awarded Contractors/Vendors will automatically be part of the CalSave and CalBuy programs, and by bidding a Vendor must agree to participate. CalSave is cooperative purchasing program founded by the Monterey County Office of Education and administered by the Epylon Corporation under a contract with MCOE. MCOE is the lead agency for all Contracts, and the Monterey County Superintendent of Schools is the authority for the solicitation, evaluation, and award of all contracts. Epylon serves as MCOE's agent, but only the Monterey County Superintendent of Schools has the authority to award contracts. CalSave may also do business as CalBuy in certain jurisdictions. Correspondence and communication related to the contract award or administration of the program should be directed to Epylon, 630 San Ramon Valley Blvd., Suite 210, Danville, CA 94526.

MCOE reserves the right to change agents or to change the contact name of existing Agent's personnel administering the contract. If Agent or Agent's personnel change, Awarded Contractors/Vendors will be notified with new instructions.

##### **4. Transaction Fees**

Transaction Fees are the funding source for the operation of the self-supporting CalSave cooperative purchasing program. Awarded Contractors/Vendors shall be required to pay a Transaction Fee for all purchases by LEAs and other eligible entities made through the awarded Contract. For the purpose of this bid through Monterey County Office of Education and all Contracts awarded using this document, the Transaction Fee shall be 2 percent of Net Sales, which means gross sales less returns and cancelled orders within 30 days, shipping and sales and other taxes (excluding taxes based on net income). Transaction Fees will not be charged to or paid by the buyers themselves. Neither Awarded Contractor/Vendor nor its designated authorized reseller(s) shall itemize any additional amount corresponding to the Transaction Fees in the awarded Contract prices. This Transaction Fee applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.

Epylon will collect the full Transaction Fee on behalf of the CalSave and CalBuy programs, unless otherwise advised by Epylon. The Contractor/Vendor will make all participation fee payments within two weeks after sending the quarterly report. Checks are to be made payable to the Epylon Corporation and sent to 630 San Ramon Valley Blvd., Suite 210, Danville, CA 94526.

##### **5. Non-Conforming Jurisdictions**

Notwithstanding Section 4 (immediately above) no Transaction Fee is authorized to be charged to Awarded Contractors/Vendors for sales within any jurisdiction where prohibited by law or local- government policy. Instead, the cost of products, services, licenses, and goods sold under this contract in such jurisdictions shall be the same as for all school districts in all other counties of California. However, any LEA using this contract where Section 4 fees are not permitted shall be required to

pay a 2 percent fee for use of the contract, imposed by MCOE on the authority of Public Contract Code Section 20118 and 20652, which allows MCOE to charge reasonable costs to the public corporation or agency for furnishing the services incidental to the purchase of items under contract.

## **6. CMAS Conversion**

If an Awarded Vendor uses an MCOE or another AEPA-affiliated contract for the purpose of obtaining a separate CMAS (California Multiple Awards Schedule) contract from the State of California, the Awarded Vendor is responsible for paying both the CMAS fee and MCOE's 2 percent transaction fee for all orders submitted under the authority of the CMAS program. In exchange for this fee, the Vendor is given a license to use and duplicate MCOE/AEPA terms and conditions for the purpose of applying for a CMAS contract. Also, CalSave or CalBuy will post pricing allowing prospective buyers to check for pricing that is compliant with the MCOE and CMAS contract. Vendor must comply with MCOE's quarterly reporting requirements. Public records of sales through CMAS will be used to verify quarterly reports and sales made through the CMAS program.

## **7. Reports**

The Contractor/Vendor will compile a quarterly report listing each purchase made by participating Agencies and persons under this contract, and send them by the 15th of April, July, October, and January to Racquel Landolf with the e-mail address of [rlandolf@epylon.com](mailto:rlandolf@epylon.com). These reports shall be in Microsoft Excel format and shall have file names that identify the contractor/Vendor and the month being reported. The file at a minimum shall include the fields listed below and shall allow for sorting on any of these fields:

- Date of Order
- Name of Participating Agency (LEA)
- Description of Item Purchased
- Manufacturer's SKU Number
- Quantity
- Contract Unit Price
- Extended Price
- List Price Before AEPA Discount

## **8. Length of Term**

The term of the agreement shall commence on the date of the award and continue as stipulated in General Terms and Conditions, unless terminated, canceled, or extended. Contract may be terminated by MCOE if LEAs have not used the contract in any 12-month period, or if orders from participating LEAs do not total \$10,000 in any 12-month period. California statutory term limits and extensions shall apply. In no case will the Contract be in force for more than three years at one time.

## **9. Marketing and Advertising under this Agreement**

Vendor will actively promote the use of this contract by LEAs in California. Vendor must comply with the marketing plan offered as part of its bid submission. Unless other arrangements are made with the CalSave administrator, Vendor is also required to perform the following:

- Vendor will include the approved CalSave logo, web address, and toll-free number in all print electronic mail and other advertising and promotion intended for release to California K-12 schools, excluding national marketing releases.
- The CalSave logo and associated CalSave information shall be of a clearly readable size and in appropriate proportion to other elements in the printed material.
- Vendor agrees to provide CalSave with a copy or proof sheet of the advertisement or promotion material. Vendor will provide CalSave with date of release and name of publication, journal, etc.
- Vendor shall place a supplied CalSave Vendor sign on booths, tables, etc. of any or all exhibits for which the Vendor displays/participates at California tradeshow, conventions, and the like. Vendor will supply in advance scheduled exhibit dates. Vendor agrees to make available at the exhibit CalSave supplied brochures or other promotion materials.
- Vendor agrees to insert the approved CalSave logo, web address, and toll-free number on the Vendor's web site promoting or a specific CalSave landing page and providing a link to the CalSave website.
- Vendor will supply product catalog information, product description, pricing, etc., in a spreadsheet format as specified by CalSave for inclusion on the CalSave website.

- Vendor agrees to cooperate in developing appropriate website content to promote its products, services, and their advantages to school districts.
- Requested materials will be submitted to CalSave within 30 days.

#### **10. Conformance to Public Contract Code 20111**

An award by the Monterey County Superintendent of Schools under this solicitation will be for the purchase of equipment, materials, supplies, services, or repairs to be furnished, sold, or leased in accordance with Public Contract Code 20111 and 20650. Awards shall include allowance for installation and assembly services incidental and necessary to the use of the equipment, materials, supplies, and repairs purchased or leased.

#### **11. Conformance to Public Contract Code 20118 and 20652**

All public agencies (LEAs) are authorized by law to purchase off a contract awarded by an agency that has itself gone to bid, including all K-12 schools districts, college districts, special community districts and JPAs serving education, pursuant to Public Contract Code Sections 20118 and 20652. Using these statutes, the Monterey County Office of Education hereby declares its intent and authorization to make all contracts awarded under this contract "piggybackable" by other agencies in the state. The Agency waives any right to receive payment from other California agencies making purchases off the awarded contracts and those agencies will make payment directly to the vendors. Any legislative changes to Public Contract Codes 20118 and 20652 during the term of the contract(s) with Award Vendor(s) shall apply to the contract(s) immediately when such changes become law.

#### **12. Additional Piggyback and Standard School Supply and Equipment Authority**

The Monterey County Office of Education declares that items, materials, personal property, equipment, and licenses under Contract as a result of this Invitation to Bid will qualify as items to be included within its Standard School Supply and Equipment List. Because many County Offices of Education have banded together to create both the EdBuy and the CalSave programs for the purpose of collectively creating both a standard School Supply & Equipment List and cooperative contracts, the items solicited and awarded through this bid may also constitute a portion of an official Standard School Supply and Equipment List for other participating County Offices of Education and County Superintendents of Schools. Purchases by other County Offices of Education and LEAs may be made, not only in accordance with Public Contract Code 20118 and 20652, but also in accordance with Education Code 38110 and 38112 dealing with cooperatives and Standard School Supplies & Equipment.

#### **13. Intended for Personal Property**

An award by the Monterey County Superintendent of Schools under this solicitation will be for the purchase of equipment, materials, supplies, services, or repairs to be furnished, sold, or leased in accordance with Public Contract Code 20111 and 20650. Awards shall include allowance for installation and assembly services incidental and necessary for use of the equipment, materials, supplies, and repairs purchased or leased. When any services or repairs fall into a category of Public Works as defined in Public Contract Code 22002, an LEA may use this California contract only up to \$14,999 for labor and services, but for an unlimited dollar amount for any supplies, materials, equipment or personal property to be staged and ready for use in a local Public Works project. Other rules may apply in the event an MCOE contract award is converted to a CMAS contract.

#### **14. Public Works Limitations**

When Public Works services cost \$15,000 or more, an LEA, under most situations, must bid itself independently for the services and labor related to the public work, but may use this contract for the contracted supplies, material or equipment related to the project. If circumstances allow, LEAs may also combine this competitively bid contract with other alternative authorities for Public Works projects as may be allowed by law, such as Public Contract Code 22030, Education Code 17406 or Government Code 1466. LEAs should consult with their own legal counsel to see if such statutes apply to their Public Works projects.

#### **15. Start Date**

Once the award is made to the Contractor/Vendor and signatures have been placed on the contract from both parties, the Awarded Contractor/Vendor is authorized to begin selling to eligible Agencies. MCOE will begin informing LEAs of the Contract once the Contract has been signed.

#### **16. Posted Prices and Requests for Quotes**

The Awarded Contractor/Vendor, in cooperation with MCOE's agent, must make provision for LEAs to quickly ascertain bid



prices by posting prices, posting a link or contact for prices, distributing catalogs and price lists, responding to requests for quotations, or participating in eCommerce.

The 2 percent Transaction Fee on all sales is a cost of doing business to the Vendor and the requirement for the fee is publicly disclosed in these bid documents for the edification of all buying agencies and LEAs. Transaction fees should not appear as a line item on a quotation or on listed bid pricing. The final price quoted or displayed must be inclusive of the participation fee on all pricing and quotations.

#### **17. Submission of Orders and Delivery**

After entering into an agreement with MCOE, an LEA electing to use this Contract will enter into a separate contract with the Vendor by way of a purchase order or separate contracting document ("Separate Contract"). Purchase orders will be issued by participating LEAs to contractor/Vendor.

LEAs will fax or mail purchase orders directly to the CalSave office fax at (866) 488-3729) unless other arrangements have been made and agreed to by the CalSave Administrator. LEAs may also use Epylon eCommerce software for transmission of purchase orders. Standard business practice is for all purchase orders received by 3:00 p.m. Pacific Time to be logged and forwarded to the appropriate Vendor on the same day received, unless unusual circumstances occur. It is the responsibility of the awarded/Vendor contractor to track any purchase order received directly from an LEA and to include that order on quarterly reports.

Awarded Contractor/Vendor will deliver goods, services, and corresponding invoices directly to the participating LEAs and receive payments directly from the participating LEAs as per bid specifications.

## **2. Colorado, Colorado BOCES Association (CBA)**

### **A. Additional Agency Terms and Conditions**

**Advertising:** CBA will require a marketing flier, in electronic format, and timely updates from each vendor promoting the contract and AEPA/CBA relationship. CBA will assist in the development of the marketing flier and other appropriate materials which will include logos representing the vendor/AEPA/CBA. This flier will be for distribution and dissemination to all qualified customers through the CBA website and other appropriate and available methods.

**Sales to Qualified Customers:** Boards of Cooperative Educational Services (BOCES) in Colorado are legislatively created cooperative organizations directed by Colorado state statute 22-105 to serve all qualified agencies in a cooperative manner. BOCES are governed by publicly elected officials and by state and federal laws. No agency is obligated to use these services and contracts, but they find the benefits of low price and the satisfied bidding process most advantageous. Qualified agencies in Colorado include all public or private educational institutions, K-12 and higher education, all non-profit organizations, and all county or local governmental agencies. CBA requires that all participating vendors offer the Agency contract opportunities to all qualified customers.

#### ***A. Procedure for Processing Orders:*** Once the award is made to the vendor.

- CBA will inform its members of the contract by:
  - i.* Including the contract in the agency database that is available on the CBA website
  - ii.* Announcing the award through normal communication channels, CBA member presentations as well as regular electronic and direct mail communications.
  - iii.* Offering the opportunity to the vendor to publish their marketing information on the CBA website link to cooperative purchasing opportunities.
- A listing of CBA members, institutional names, contact names, addresses and phone numbers is available to the vendors through the CBA website. At this point the vendor must contact the members and qualified customers; and the customers have the right to contact the vendors directly. Note: CBA requires the awarded vendors to take ownership and actively promote the contract in cooperation with CBA to all members and qualified customers.
- When the customer identifies a desired product or service as available through the AEPA/CBA contract and agrees on price as presented to the customer by the awarded AEPA/CBA vendor, the customer then issues to the vendor a purchase order for that item or service.
- The awarded price must include an additional two percent (2%) administrative fee in the total cost (not as a separate line item), based on the total cost of goods and services including installation. This fee is to be forwarded by the vendor to CBA after the sale and payment is made to the vendor. Payment shall be made to CBA on a quarterly basis along with the complete sale report as specified in the general terms and conditions.
- The sale and transaction may continue without delay or anticipation of the CBA denial of said transaction.
- The administrative fee percentage (2%) is based on the total sale of goods and services including installation and must be included in the original cost quoted to the customer. In the event of a lease, the total administrative fee for the value of goods and services shall be paid to CBA by the vendor at the front end of the lease.

Vendor makes all deliveries and installation of products and services. CBA does not warehouse items nor provide services.

### **3. Connecticut, Capitol Region Education Council (CREC)**

#### **A. ADDITIONAL MEMBER AGENCY GENERAL TERMS AND CONDITIONS**

**Affirmative Action** - The Contractor must have an employment policy that there shall be no discrimination against anyone on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, physical disability or sexual orientation in the hiring, upgrading, demotions, recruitment, termination and selections for training, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Contractor further agrees to be an "affirmative action-equal opportunity employer."

**Applicability of Contract Provisions to Connecticut Participants** - The Capitol Region Education Council (CREC) is the AEPA Member Agency. Any entity that uses the contract awarded by CREC under this document is referred to as a "Participant." The bidder that is awarded the contract by CREC is referred to as the "Contractor."

#### **Conflict of Interest**

The Contractor shall disclose any relationship with a CREC employee that would not be considered an "arms-length" or independent transaction, as described below. This disclosure must be made in writing to CREC for an evaluation. CREC will respond to this disclosure in writing.

A CREC employee (including independent contractors for purposes of this definition) placing an order or recommending a vendor must disclose any relationship with that vendor which would not be considered an "arms-length" or independent transaction. This disclosure must be made in writing to CREC for an evaluation. CREC will respond to this disclosure in writing.

For a transaction to be considered "arms-length" or "independent", a CREC employee should not be influenced, dependent upon, guided or controlled by a vendor into choosing that vendor, or item to purchase; nor should it appear to a third party that a CREC employee made a purchasing decision which appears to be based upon a personal relationship between the CREC employee and vendor.

The following are examples when a transaction is NOT considered arms-length or independent: (1) when there exists a personal relationship between a CREC employee and a vendor, (2) when there exists the potential for a personal benefit to a CREC employee, or (3) the parties to a business deal are dependent upon one another for "something" other than the purchase itself.

In addition, the Contractor shall, if given a copy of the potential Participant's conflict of interest policy, follow the process in that policy, or otherwise disclose to a potential Participant any relationship that would not be considered an "arms-length" or independent transaction with that Participant, as described above. This disclosure must be made in writing to the chief official (for example, the Superintendent at a board of education) at the potential Participant.

Determination of the existence of a conflict of interest does not prohibit CREC and/or a Participant from entering into the contract and purchase order, respectively.

**Financing Arrangements** - *Any financing arrangements (including lease purchasing arrangements) will be made directly between the Contractor and a Participant. Financing arrangements may be subject to additional laws, rules and regulations, terms and conditions not described in this document and are subject to separate negotiation with each Participant that is interested in such an arrangement. Each Participant should seek its own legal advice prior to entering into a financing arrangement. CREC must receive a report annually summarizing the executed lease purchases along with the summary of the customer purchases. CREC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Contractor and the Participant only.*

**Freedom of Information Act** - The Contractor acknowledges that CREC and some Participants are subject to the Freedom of Information Act, Connecticut General Statutes Sections 1-200 et seq., and submitted to CREC and/or such Participants may be made available to the public under the provisions of the Freedom of Information Act.

**Incorporation of Bid Documents** - The bid documents, including all appendices executed by Contractor that have been accepted by CREC (the "Bid") are specifically incorporated into this Contract.

**Independent Contractor** - The Contractor shall not be held or deemed in any way to be the agent or employee of CREC and/or a Participant. It is the intention of the parties that the Contractor shall be and is to be considered an independent contractor.

**Marketing and Advertising** - Contractor agrees to provide CREC with a copy or proof sheet of all advertisements, customer communications or promotional material for prior approval.

**Modification to Bid Language in the AEPA Invitation for Bid** - The Bidder by submitting its bid hereby declares that this Bid is  
AEPA IFB #018 Part C Member Agency  
Terms & Conditions

made without any connection with any other person or persons making any proposal for the same items, that it is in all respects fair and without collusion or fraud and that no person acting for or employed by CREC or a Participant is directly or indirectly interested in the proposal or in the goods or services to which it relates, or in any portion of the profits therefrom.

**A. ADDITIONAL MEMBER AGENCY TERMS AND CONDITIONS FOR NON-CONSTRUCTION PRODUCTS AND SERVICES**

None

**B. ADDITIONAL MEMBER AGENCY TERMS AND CONDITIONS FOR CONSTRUCTION PRODUCTS AND SERVICES**

**CT Commission on Human Rights and Opportunities**

Municipal Public Works contracts funded in whole or in part by the State of Connecticut are subject to contract compliance requirements and set-aside goals as follows:

The contractor who is selected to perform this State project must comply with CONN. GEN. STAT. §§ 4a-60, 4a-60a, 4a-60g, and 46a-68b through 46a-68f, inclusive, as amended by June 2015 Special Session Public Act 15-5.

State law requires a minimum of twenty-five (25%) percent of the state-funded portion of the contract for award to subcontractors holding current certification from the Connecticut Department of Administrative Services ("DAS") under the provisions of CONN. GEN. STAT. § 4a-60g. (25% of the work with DAS certified Small and Minority owned businesses and 25% of that work with DAS certified Minority, Women and/or Disabled owned businesses.) The contractor must demonstrate good faith effort to meet the 25% set-aside goals.

For municipal public works contracts and quasi-public agency projects, the contractor must file a written or electronic non-discrimination certification with the Commission on Human Rights and Opportunities. Forms can be found at:

[http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav\\_GID=1806](http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav_GID=1806)

**C. PROCEDURES FOR PROCESSING ORDERS**

- A. Purchase orders will not be accepted or processed by CREC. All business will be contracted directly with the Participant, which will issue a purchase order and provide payment for the applicable good or service directly to the Contractor.
- B. To the extent not otherwise described in this document, once a purchase order is issued by a Participant to a Contractor, all of the provisions of the contract shall benefit and be enforceable by such Participant, unless specifically identified as applying to CREC only.

**D. AGENCIES ALLOWED TO PURCHASE UNDER THE MEMBER AGENCY**

*There are 169 school districts in Connecticut and all are eligible for membership. No district is obligated to use these services. Additional members may include other public educational institutions, public colleges or universities, community colleges, vocational or technical schools, municipal governments, and other governmental, quasi-governmental, or non-profit organizations.*

**Work in Other States**

CREC is making the CT AEPA contract available for vendors to use in all New England states – CT, ME, NH, RI, VT – and New York, and any other state without AEPA member representation. Our contract is also available in MA for vendors who TEC has been unable to sign with.

Sales made in any of these states using the AEPA contract are to be reported to CREC, with the 2.0% administrative fee made payable to CREC. The Contractor must advise CREC its intent to use the contract in any of these states.

All Terms and Conditions for Connecticut apply to work in these states. It is the Contractor's obligation to ensure that the purchaser fully understands the AEPA contract, including whether it is allowable under applicable state regulations.

#### **4. Florida, Panhandle Area Education Consortium/Florida Buy Purchasing Program**

##### **A. Additional Agency Terms and Conditions**

Vendor Contact: Vendor will designate to the Panhandle Area Educational Consortium Florida Buy, one individual who will represent them during the agreement period. This contact person will correspond with each ordering member for technical assistance, problems, or questions that may arise, including instructions if different contacts for different geographical areas are needed. This information will be distributed to all school districts upon award of this bid. Vendors may use this contract to sell products or services in addition to school districts to any government agency, non-profit organizations or institutions.

Vendor agrees to abide by all federal, state and local laws and regulations. It is the responsibility of the Vendor to determine applicability and requirements of any such laws and to abide by them.

All terms and conditions may be modified and revised by PAEC Florida Buy with the written consent of both PAEC Florida Buy and the Awardee.

PAEC Florida Buy, at its discretion, may offer the use of the awarded agreement to governmental entities such as state agency purchasing programs, to extend the use of the contract to eligible users. This option will be referred to as an Interlocal Agreement. Under such conditions, the participating agency may, with written consent from the Awardee, modify and revise the terms and conditions of the master agreement.

Other state and public agency purchasing program agreements may require additional administrative fees, associated with sales, to be paid by the Awardee for the management of the contract. The Awardee will be notified in writing and will have the option of accepting or rejecting the Interlocal Agreement program fees.

No right or interest in the Contract shall be assigned or transferred by the Contractor without the prior written consent of the PAEC Florida Buy program. No delegation of any duty of the Contractor shall be assigned without prior written permission of PAEC Florida Buy. If the original Vendor/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. PAEC Florida Buy reserves the right to reject the acquiring person or entity as a Vendor/Contractor. A change of name agreement will not change the contractual obligations of the Vendor/Contractor.

The Awardee, may, upon entering into negotiations with qualified buyers, amend their prices to offer volume discounts below the lowest unit rates established in the pricing portion of this agreement.

##### **B. Procedures For Processing Orders**

Once the award is made to the Vendor, PAEC Florida Buy will inform all school districts of the contract by:

1. Including the award information on the PAEC Web site at [www.floridabuy.org](http://www.floridabuy.org)
2. Announcing the award in its PAEC Florida Buy website
3. Announcing the award via electronic mail to all members

Any members, contact names, addresses and phone numbers will be available at the PAEC Web site [www.floridabuy.org](http://www.floridabuy.org). At this point, the Vendor may contact the members and the members may contact the Vendor. The member will identify a desired product or service available through the AEPA contract and agrees on the price and conditions as presented to the member by the awarded AEPA Vendor. The member then issues to the Vendor a purchase order for that item or service. The purchase order must include an additional (2%) administrative fee built into the total invoiced cost, based on the total costs of good, services and installation. A final copy of the customer purchase order or sales summary must be sent to PAEC Florida Buy by the Vendor after completion of the service or installation. The Vendor has (30) thirty days to forward this purchase order. This will insure compliance of the contract.

Vendor makes all deliveries and installations of products and services. PAEC Florida Buy does not warehouse items. All participating Vendors agree to and are subject to audit proceedings of the AEPA sales to members.

The Vendors price will include a (2%) administrative fee that the Vendor shall collect from the member and remit to PAEC Florida Buy on a quarterly basis. The Vendor will produce and provide to PAEC Florida Buy quarterly reports ending March 31, June 30, September 30 and December 31 throughout the contract period. The reports shall identify the Vendor and the quarter being reported, shall include a minimum of the fields listed below:

1. Date of Order
2. School district
3. List or academic price sales totals
4. PAEC Florida Buy price sales totals



5. Member savings total

Quarterly reports and administrative fee payments to PAEC Florida Buy are due the 15<sup>th</sup> of the succeeding month, and all checks are to be made payable to the Panhandle Area Educational Consortium and sent to: PAEC, 753 West Blvd, Chipley, Florida 32428 and Attention: Florida Buy. PAEC may designate another agent for collecting and administrative fee that will be negotiated with Vendor for e-commerce transactions.

**C. Agency Members Purchasing Under The Member Agency**

The Panhandle Area Educational Consortium is a fourteen-member consortium that includes a voluntary purchasing program developed for schools in Florida. All other school districts in Florida are participating members in the programs of the Panhandle Area Educational Consortium (PAEC), including participation in the statewide cooperative purchasing program. Agencies that use this contract will be in compliance with FS1001.42. PAEC was established to provide easily accessible information for our member and participating public school districts and the communities we serve. Since the creation of PAEC in 1967, our school districts have benefitted from shared services made available through leading edge technology. While school districts access our teaching and learning, training and technology, and business operations services in varying degrees of need, all come for the mutually beneficial purpose of reaching their goals together.

## 5. Georgia, Cooperative Purchasing Agency (CPA)

### 1. General Overview

- a. Cooperative Purchasing Agency is now the AEPA representative for the state of Georgia. In Georgia we advertise our bids on the state procurement registry website:

<http://doas.ga.gov/state-purchasing/georgia-procurement-registry-for-local-governments>

- b. In 1971 several small school systems in North Georgia decided to work together & form **Cooperative Purchasing Agency (CPA)**, a non-profit organization built by & for the school systems to combine their purchasing power. As a division of North Georgia, Northeast Georgia, & Pioneer RESA; Pioneer RESA serves as our fiscal agent and as such we currently show up on the Georgia Procurement Registry as Pioneer RESA. CPA serves as a purchasing agent for classroom & office supplies for its 35-member school systems plus neighboring ones who choose to take advantage of cooperative buying. CPA also serves as a recipient agency for USDA commodities that member systems receive through the USDA school lunch program. In addition to items included in our catalog & website, CPA has access to brands, custom items, & entire product categories that meet systems' office & classroom needs – including furniture options (indoor & outdoor), playground equipment, shelving installations, print supplies, & more.

### 2. Additional Participating Agency Terms and Conditions for Construction Related Products and Services

- a. Georgia requires all local school boards to post any bids requiring capital improvements / public works construction over \$100,000.00 to be posted on the Georgia procurement website, regardless of who they are purchasing through.

### 3. Local Government Provisions - Provisions Applicable to Counties, Municipal Corporations, And Other Governmental Entities

§ 36-91-20. Written contract required; advertising; competitive sealed bidding; timing of addendums; prequalification

- a. All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.
- b. Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or an Internet website identified by the governmental entity which may include the Georgia Procurement Registry as provided by Code Section 50-5-69.
  - i. Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.
  - ii. Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.
  - iii. Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:
    1. A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and
    2. A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.
  - iv. Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.
  - v. The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.
  - vi. All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides notice of a mandatory prebid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.
- c. Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:
  - i. Place the bidder or offeror at risk for construction; and

- ii. Require labor or building materials in the execution of the contract shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.
- d. No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.
- e. Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.
- f. Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:
  - i. Criteria for prequalification must be reasonably related to the project or the quality of work;
  - ii. Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;
  - iii. Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and
  - iv. Any prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror can not be later disqualified without cause. History Code 1981, § 36-91-20, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2007, p. 640, §

## 6. Illinois

The following State Specific Terms and Conditions shall apply to all contracts involving public schools and/or other educational entities operating in Illinois, (hereinafter "Illinois Customers") and shall prevail over any General Terms and Conditions if/when they differ.

### Illinois Law to Govern.

The Agreement, as modified by these Illinois Terms & Conditions, is (and shall be) governed by, construed under, subject to compliance with, and interpreted in accordance with, the laws and regulations of the State of Illinois, expressly including, (but not limited to): the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; its procurement and bidding standards and prerequisites delineated at 105 ILCS 5/10-20.21; the Illinois Public Officer Prohibited Activities Act, 50 ILCS 105/0.01 *et seq.*; the Illinois Criminal Code, 720 ILCS 5/1-1 *et seq.*; its prohibitions against interference with public contracting delineated at 720 ILCS 5/33E-1, *et seq.*; the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/1 *et seq.*; the Illinois Public Officer Prohibited Activities Act, 50 ILCS 105/1 *et seq.*; the Illinois Drug-Free Workplace Act, 30 ILCS 580/1 *et seq.*; the Illinois Business Enterprises for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/0.01 *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/2-105 *et seq.*; and policies of the Illinois Customer relating to the subject matter of the Agreement with Contractor.

When Contractor and/or its agents will be on an Illinois Customer's premises (whether for delivery, installation, the provision of contractual services, or otherwise), Contractor shall also comply in all respects with: all background check requirements set forth at 105 ILCS 5/10-21.9; the Illinois Smoke Free Illinois Act, 410 ILCS 82/1 *et seq.*, and the Illinois Firearm Concealed Carry Act, 430 ILCS 66/1 *et seq.*

Any contractual payment requested of an Illinois Customer shall be invoiced, processed, and remitted to a Contractor in accordance with the requirements and provisions of the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*

This Agreement shall be construed and incorporated in accordance with the laws of the State of Illinois, regardless of any choice of law provision that might otherwise authorize construction of its terms in accordance with the law(s) of another state, states, or federal law.

By entering into this Agreement with an Illinois Customer, the Contractor's signature on the executed contract shall serve as Contractor's certification of Contractor's compliance with the foregoing laws and all requirements thereunder.

### Entire Agreement and Construction

The Agreement, as modified by these Illinois Terms & Conditions, represents the entire agreement between Contractor and the Illinois Customer, and supersedes all prior negotiations or agreements, written or oral, which are not included herein. This Agreement may only be amended by written instrument executed by the Illinois Customer and Contractor. In the event of a conflict between the Agreement, as modified by these Illinois Terms & Conditions, and a proposal from Contractor, the terms of this modified Agreement will take precedence.

Each party has reviewed and approved the Agreement, and no rule of construction that resolves ambiguities against the drafting party will be employed in the interpretation of this Agreement.

### Dispute Resolution.

Any dispute arising in any manner hereunder shall be subject to resolution by litigation, unless all involved parties consent to an alternative means of dispute resolution. Venue for any legal action brought hereunder shall be the Illinois state circuit court of the county in which the Illinois Customer's administrative office is located or (if different and only if the Illinois Customer so elects) the Illinois state circuit court of the county where the Project is performed. Any provision of the General Terms purporting to change, limit, restrict, or shorten any Illinois period of repose and/or the duration of any applicable Illinois statute of limitation shall be of no force or effect against an Illinois Customer, it being understood by the parties that the Illinois periods of repose and statutes of limitation applicable to the subject matter hereof shall govern actions relating to this Agreement. No provision from the General Conditions shall limit, restrict, or shorten the duration of any period of repose or statute of limitation applicable under Illinois law.

### Termination of the Agreement.

The Illinois Customer may terminate this Agreement at any time, in whole or in part, with or without cause, upon providing written notice to Contractor. If this Agreement is terminated by the Illinois Contractor for cause, the Contractor shall be liable to the Owner for any increase in cost incurred by the Owner in replacing the goods under contract and/or completing the contractual work, and for any additional or other damages the Illinois Customer suffers. In the event this Agreement is terminated by the Illinois Customer solely for the Illinois Customer's convenience, Contractor shall be compensated for items properly provided and/or work properly rendered through the date of termination, as can be documented to the reasonable satisfaction of the Illinois Customer. The Illinois Customer shall have no liability to Contractor beyond the date of termination. In no event shall Contractor be compensated for anticipated profit or lost opportunity.

#### Insurance and Indemnification Provisions.

Contractor hereby agrees to indemnify and hold the Illinois Customer, its board members, officers, agents, employees, administrators, attorneys, and any other parties designated by the Illinois Customer (hereinafter collectively called the AIndemnitees@) harmless from all losses, claims, liabilities, injuries, damages and expenses, including (but not limited to) all attorneys= fees and defense and court costs and expenses, that the Indemnitees may incur arising out of, or occurring in connection with, the performance, acts, omissions, negligence, willful and/or wanton behavior, and/or breaches by Contractor of its duties and obligations under or pursuant to this Agreement. This indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers= or workmen= compensation acts, disability benefit acts or other employee benefit acts.

Contractor shall procure, at no expense to the Illinois Customer, the insurance coverages set forth in the General Conditions. In each such instance, Contractor shall, by endorsement, name the Illinois Customer as an additional insured and shall provide copies of said policies and endorsements to the Illinois Customer prior to commencement under this Agreement.

#### Funding Contingencies for Multi-Year Projects.

All contracts with Illinois Customers that call for performance, or otherwise extend, beyond the Illinois Customers' current fiscal year, are, and shall be, expressly contingent upon annual appropriations. In the event an Illinois Customer's entry into an Agreement with Contractor constitutes a lease purchase (whether for financing purposes or otherwise), that Agreement shall be subject to the provisions of 105 ILCS 5/10-22.25a in addition to all other terms set forth in this Agreement.

#### Warranties and Claims.

No provision(s) set forth in the General Conditions shall serve to limit the Contractor's liability with respect to damages of any sort (whether actual, incidental, consequential, or otherwise) suffered by an Illinois Customer, nor will any disclaimer of warranties be effective against an Illinois Customer.

#### Attorney Fee Provisions.

No provision providing for the payment of prevailing party costs and expenses (including legal fees) resulting from litigation or other method of dispute resolution shall be applicable to Illinois Customers.

#### Automatic Renewals.

No provision calling for automatic renewals or "evergreen" renewals, (wherein the term of the agreement automatically renews for a period beyond the initial term unless a party provides affirmative advance notice of termination to the other party) shall be effective in an Agreement with an Illinois Customer, it being the parties' understanding, instead, that the contractual arrangements with Illinois Customers will terminate upon completion of the initial term or satisfaction of the original scope, unless the parties subsequently and affirmatively agree to supplemental renewal provisions.

#### Successors and Assigns: No Subcontracting.

Contractor shall not assign any rights under, or interest in, this Agreement, nor may Contractor subcontract any duties arising hereunder, without the prior written consent of the Illinois Customer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## **7. Indiana, Wilson Education Service Center (WESC)**

### **A. Additional Agency Terms and Conditions**

Participating entities and approved vendors must be in full compliance with statutory requirements of all applicable federal, state, and local laws, rules, regulations, and ordinances including applicable public works and prevailing wage projects. All provisions required thereby to be included herein and are hereby incorporated for reference. This contract shall be construed in accordance with and governed by the laws of the State of Indiana. Awarded pricing must be made available to all participating entities regardless of size.

### **B. Procedure for Processing Orders**

Wilson Education Service Center will inform all public school corporations, private/parochial schools, charter schools, nonprofit entities, municipalities, other governmental entities and higher education entities of contract awards via web sites and various marketing strategies. Vendors will have the primary responsibility to market contracts to eligible buyers within Indiana. After contracts are awarded and product information is available on our e-procurement sites vendors are free to contact eligible buyers and vice versa. The Wilson Education Service Center utilizes an e-procurement facilitation system as the primary mechanism for ordering and the primary method of marketing. Vendors are required to use the IAESC Procurement System and GovPro systems upon award. A 2.25% administrative fee will be assessed on gross monthly sales for IAESC Procurement (used by schools) and a 3.25% administrative fee will be assessed on gross monthly sales on GovPro (all other entities) after a 1% price increase. Vendors shall not include shipping and handling charges, federal excise tax, or state sales tax on invoices. Taxes do not apply to purchases by the participating entities. All participating entities have a "Not for Profit Tax Exemption Certificate" which will be furnished by the buyer upon request by the vendor. Quantities shipped in excess of quantities designated in the Purchase Order, or unapproved product substitutions will be returned at the vendor's expense.

### **C. Members Purchasing Under the Agency**

All public school corporations, private/parochial schools, charter schools, nonprofit entities, municipalities, other governmental entities and higher education entities are eligible buyers. The Wilson Education Center as established by Indiana Code 20-1-11.3-1 with Inter-local Agreement Powers as established by Indiana Code 36-1-7-2 represents all eligible buyers in this program within Indiana.



## **8. Iowa, AEA Purchasing**

### **A. Additional Member Agency General Terms and Conditions that apply for all categories**

#### **Right to Assign**

AEA Purchasing specifically reserves the right, in its sole discretion, to assign and transfer its interest in the Contract with the Vendor Partner, consistent with the terms and conditions of said Contract, to any organization, along with all corresponding duties, responsibilities, and obligations of both parties, and under the terms provided herein.

### **B. Additional Member Agency Terms and Conditions for Non-Construction Products and Services None.**

### **C. Additional Member Agency Terms and Conditions for Construction Products and Services**

AEA Purchasing may participate in Construction Products and Services bids through AEPA on a limited basis due to the restrictions mandated in the Iowa Code, Chapter 26 and 573.

### **D. Procedure for Processing Orders**

AEA Purchasing's eligible clients follow a standard or electronic ordering process. The awarded Contractor will invoice and deliver products and services directly to AEA Purchasing's eligible clients. All invoices for payment shall be sent directly to the AEA Purchasing eligible client ordering under the terms and conditions of this agreement. The AEA Purchasing eligible client will make payment directly to the awarded Contractor(s). AEA Purchasing does not process any orders.

### **E. Agencies Allowed to Purchase under the Member Agency**

- K-12 Public & Private Schools
- Area Education Agencies
- Colleges & Universities
- Public Libraries
- City, County & State Government
- Non-Profit Education Organizations

## 9. Kansas, Greenbush-Southeast Kansas Education Service Center (SEKESC)

### A. Additional Member Agency General Terms and Conditions that apply for all categories

#### **Kansas Mandatory Contract Provisions**

**Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

**Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

**Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

**Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

**Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

**Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

**Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

**Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

**Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

**Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A.

75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

**Information: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

**The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

**Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

**Assignment - SEKESC Right to Assign**

In the event of a cancellation, the SEKESC specifically reserves the right, in its sole discretion, to assign and transfer its interest in any contract, consistent with the terms and conditions of any contract, to any organization, along with all corresponding duties, responsibilities for both parties and provisions contained herein.

**Purchase Orders**

Any purchase order issued by SEKESC, or one of its eligible entities, is cancelable under provisions of K.S.A. 10-1113. All purchase orders shall be issued by the SEKESC or its participating eligible entities desiring to acquire the products or services under the contract. Said purchase order shall include adequate reference to identify the bid to which it relates.

#### **Marketing**

- Awarded Vendor will proactively market the awarded contract to all eligible entities. The SEKESC will enhance the Awarded Vendor's marketing efforts through communication and meetings with eligible entities, participation in marketing events and tradeshow, through its website and social media resources and through day-to-day customer support activities.
- Awarded Vendor will train its professional staff and sales force in the provisions and benefits of the awarded contract. The SEKESC will enhance such effort by providing joint trainings and participating in joint sales calls as needed.
- The SEKESC and Awarded Vendor will jointly design presentations, documents, and other promotional material to assist in the promotion of the awarded contract.
- Awarded Vendor will include the SEKESC (Greenbush) logo on all sales materials targeted to eligible entities for the awarded contract. The SEKESC hereby grants to Awarded Vendor a non-exclusive, revocable, non-transferable, permission to use the SEKESC (Greenbush) name and logo during the term of this Agreement. Likewise, during the term of this agreement, the Awarded Vendor grants the SEKESC (Greenbush) permission to reproduce their name and logo in connection with marketing and promotion of the awarded contract.

#### **B. Additional Member Agency Terms and Conditions for Non-Construction Products and Services**

SEKESC has no additional terms and conditions for non-construction products and services.

#### **C. Additional Member Agency Terms and Conditions for Construction Products and Services**

**K.S.A. 60-1111. Public works bond.** (a) Bond by contractor. Except as provided in this section, whenever any public official, under the laws of the state, enters into contract in any sum exceeding \$100,000 with any person or persons for the purpose of making any public improvements, or constructing any public building or making repairs on the same, such officer shall take, from the party contracted with, a bond to the state of Kansas with good and sufficient sureties in a sum not less than the sum total in the contract, conditioned that such contractor or the subcontractor of such contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with or in or about the construction of such public building or in making such public improvements.

A contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer. A public official entering into a contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer.

(b) Filing and limitations. The bond required under subsection (a) shall be filed with the clerk of the district court of the county in which such public improvement is to be made. When such bond is filed, no lien shall attach under this article. Any liens which have been filed prior to the filing of such bond shall be discharged. Any person to whom there is due any sum for labor or material furnished, as stated in subsection (a), or such person's assigns, may bring an action on such bond for the

recovery of such indebtedness but no action shall be brought on such bond after six months from the completion of such public improvements or public buildings.

(c) In any case of a contract for construction, repairs or improvements for the state or a state agency under K.S.A. 75-3739 or 75-3741, and amendments thereto, a certificate of deposit payable to the state may be accepted in accordance with and subject to K.S.A. 60-1112, and amendments thereto. When such certificate of deposit is so accepted, no lien shall attach under this article. Any liens which have been filed prior to the acceptance of such certificate of deposit shall be discharged. Any person to whom there is due any sum for labor furnished, materials, equipment or supplies used or consumed in connection with or for such contract for construction, repairs or improvements shall make a claim therefor with the director of purchases under K.S.A. 60-1112, and amendments thereto.

#### **D. Procedure for Processing Orders**

The SEKESC utilizes the following ordering/delivery procedures:

- Purchase orders will be issued by the individual eligible entity.
- Vendors must issue invoices directly to the ordering eligible entity as specified on each purchase order.
- Delivery of all items included in this solicitation will be made to the locations within each eligible entity as will be specified on the purchase order.
- Each order shall contain a packing slip of its contents to assist in prompt processing of payments to Vendor.
- The SEKESC reserves the right to implement a Vendor Quotation Number process for contract awards related to, but not limited, to project-based and construction related proposal activities.

Additionally

- Awarded Vendor agrees to demonstrate the benefit of the pricing agreement with the SEKESC over alternative options, including competitive solicitation pricing.
- Awarded Vendor agrees to proactively offer terms and pricing under this agreement to eligible entities and a more effective alternative to the cost and time associated with alternate bids and solicitation.
- When responding to third party procurement solicitations, Awarded Vendor may:
  - Choose not to respond and make this agreement available as an alternative and comparison to the agency's solicitation responses.
  - Respond with pricing, terms, and conditions of this agreement. If awarded the contract, sales will be reported as defined in the solicitation.
  - Provide lower prices when the competitive process requires without being required to extend the lower pricing to all eligible entities. In such case, if Awarded Vendor is awarded the contract, the sales will be reported as defined in the solicitation.
  - Respond to the solicitation with higher pricing than is available through this agreement and if an alternative response is permitted, may offer the pricing under this agreement as an alternative for consideration. If Awarded Vendor is awarded the contract with alternative SEKESC pricing, the resulting sales will be reported as defined in the solicitation.
- Provide notification to the SEKESC of the response to a solicitation, including but not limited to the name of the soliciting agency, general description of scope, timeline, and resulting award or non-award. Such notification shall be submitted to Tina Smith at [tina.smith@greenbush.org](mailto:tina.smith@greenbush.org) within 5 business days of the proposal submission and resulting award information within 5 business days of agency's notification to Awarded Vendor.

#### **E. Agencies Allowed to Purchase under the Member Agency**

Eligible Entities: Entities eligible to purchase from Southeast Kansas Education Service Center (Greenbush) cooperative purchasing contracts include but may not be limited to:

- K-12 Public Schools
- K-12 Private Schools
- Colleges & Universities
- City, County, and State Governments
- Public Libraries

Non-profit organizations holding form #501C3

## 10. Kentucky, Green River Regional Educational Cooperative (GRREC)

Additional Member Agency General Terms and Conditions that apply for all categories The Green River Regional Educational Cooperative, Inc. (GRREC) is one of eight educational cooperatives in Kentucky, all of which are participants in the AEPA bids. GRREC serves as contact agency for all AEPA correspondence for all eight educational cooperatives. For the Kentucky Educational Cooperatives, the collective bidding process is conducted consistent with KRS Chapter 45A, the Kentucky Model Procurement Code. Contracts with GRREC shall include the provision granting GRREC employees the right to access to the Contractor's records.

Vendor Contact: Vendor will designate to GRREC one individual who will represent them to Kentucky Bidding Cooperative members during the agreement period. This contact person will correspond with each ordering member for technical assistance, problems, or questions that may arise. Include instructions if different contacts for different geographical areas are needed; this information will be distributed to Kentucky Bidding Cooperative members upon award of this bid. The following Federal Clauses are required as a part of KY bid documents: 1. CLEANAIR/CLEANWATER A. Vendor Partner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq). Vendor Partner agrees to report each violation to the USDA and the appropriate EPA Regional Office.

B. Vendor Partner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Vendor Partner agrees to report each violation to the USDA and the appropriate EPA Regional Office. 2. SUSPENSIONANDDEBARMENT Vendor Partner understands that a contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by GRREC. If it is later determined that Vendor Partner knowingly rendered an erroneous certification, in addition to remedies available to GRREC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Vendor Partner agrees to comply with the requirements of 2 CFR 180.220 while the above referenced contract is valid. Vendor Partner further agrees to include a provision requiring such compliance in its lower tier covered transactions. 3. LOBBYING Vendor Partner will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and the New Restrictions on Lobbying and has signed and attached to this Addendum the Certificate Regarding Lobbying and, if applicable, the Disclosure of Lobbying Activities (Forms SF-LLL) and annually will sign and submit a certificate, if applicable, Form SF-LLL to GRREC. 4. PROCUREMENTOFRECOVERED MATERIALSPURSUANTTO2 C.F.R. § 200.322 Vendor Partner agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. 5. BUYAMERICAN "Domestic Commodity or Product" are defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards School Food Authorities ("SFAs") must comply with when purchasing commercial food products served in the school meals programs. Buy American: AEPA Member Agencies or Participating Entities participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (atleast51percent) using agricultural commodities that are produced in the US. Federal regulations require that all foods purchased for Child Nutrition Program be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when: the product is not produced or Manufactured in the US in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product. ALL products that are normally purchased by Vendor Partner as non-domestic and proposed as part of this contract must be identified with the country of origin. Vendor Partner shall outline their procedures to notify GRREC when products are purchased as non-domestic. Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by GRREC, prior to the delivery of the product to the AEPA Member Agency or Participating Entities. Any non-domestic product delivered to the AEPA Member Agencies or Participating Entities, without the prior, written approval of GRREC will be rejected. Vendor Partner must affirm its willingness to assert its best and reasonable efforts to ensure compliance with this federal rule.

6. COST REIMBURSEMENTCONTRACTS Solicitation Requirements for cost reimbursable contracts:

A. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

B. Contractor will separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or (B) Contractor will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost

determination and verification;

C. Contractor's determination of its allowable costs will be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

D. Contractor will identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit;

E. Contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and F. Contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

B. Additional Member Agency Terms and Conditions for Construction Products and Services

The Contractor and subcontractors shall pay all laborers, workmen and mechanics performing work under this contract not less than the rate of wages set forth in the prevailing wage schedule incorporated in the contract conditions as determined by the Kentucky Department of Labor in accordance with the provisions of KRS 337.505 through KRS 337.550. Bidders are informed that construction contracts of the Commonwealth of Kentucky and political subdivisions are not exempt from the provisions of the Kentucky Sales and/or Use Tax. Current sales and/or Use Tax shall be provided for and included in the bid amount as no adjustments will be permitted nor made after receipt of bids.

1. It should be noted that where performance bonds are required, it should include both performance and payment bonds.

2. State Prevailing Wages shall apply for projects of \$250,000.00 or more, or Davis Bacon wages (when federal funds are utilized) if higher than State Prevailing Wages.

3. All work shall be in accordance with necessary approvals from the Kentucky Department of Housing, Buildings and Construction and the Kentucky Building Code.

4. All processes of the project comply with 702 KAR 4:160, the Capital Construction Process, including necessary approvals from the Kentucky Department of Education.

5. Performance and payment bond on AIA document 312 must be provided for all projects that exceed \$25,000. (Also provide that the Surety shall comply with state requirements.)

6. In accordance with 702 KAR 4:160, AIA and KDE documents be utilized on all projects including but limited to: AEPA IFB #021 Part C Member Agency Terms & Conditions Page 20

a. A 101 Standard form of Agreement between Owner and Contractor (including KDE amendments)

b. A201 General Conditions of the Standard Form of Agreement between Owner and Contractor (including KDE amendments)

c. AIA A701 Instructions to bidders, with KDE amendment and KDE Form of proposal (may require editing AEPA instructions to bidders to eliminate conflicts).

d. KDE purchase Order (for direct purchase of materials with tax number, to exempt materials from state sales tax)

e. If applicable, where architectural services are provided by the Owner, Form B141, Standard Form of Agreement between Owner and Architect

7. Architectural services shall be provided in accordance with KRS 322.360 and other relevant Kentucky Revised Statutes by the vendor or the Owner at the Owner's preference.

C. Procedure for Processing Orders Once the award is made to the Contractor/vendor, GRREC and Kentucky's other cooperatives will inform their members (school districts and other entities) of the contract by: 1) including the contract in the Current Bids section on their websites and 2) publishing the contract information in catalogs disseminated to all members. A list of members, contact names, addresses and phone numbers is made available to the Contractor. At this point the Contractor/vendor contacts the members and members may contact the Contractor/vendor. When the member identifies a product or service, it will issue a purchase order for that item to the vendor. The vendor's price will include a two percent (2%) administrative fee that the vendor will collect from the member and remit to GRREC on a quarterly basis. Municipal and county governments, and other governmental, quasigovernmental, or nonprofit organization price will reflect a two percent (2%) administrative fee. On the occasion that an AEPA contract awarded by Kentucky is utilized by public school and public non-school entities in other states, purchases in these instances will also reflect a two percent (2%) administrative fee. The vendor will also compile and provide to GRREC a quarterly report showing all purchases made by Kentucky members (with specific detail as to what purchases were made by which members) under this contract. Further, if no purchases are made in any given quarter, the Vendor shall remit a "No Activities" statement to GRREC for that quarter. The vendor will also produce and provide to GRREC an annual summary report for all purchases made under this contract for a period of beginning with the award of the contract through December 31st and all consecutive annual periods if contract is extended. The vendor will make all administrative fee payments to the GRREC by the 15th of the month following the end of the quarter (i. e. April 15th, July 15th, October 15th and January 15th). All checks are to be made payable to GRREC and sent to GRREC, 230 Technology Way, Bowling Green, KY 42101 and Attention: Bids Coordinator. GRREC may designate another agent for collecting an administrative fee that will be negotiated with vendor for e-commerce transaction. GRREC will share information from the quarterly and annual reports and distribute the administrative fee among the other KY Educational Cooperatives according to membership.

D. Members Purchasing under the Agency: Currently there are 8 Bidding Cooperatives in Kentucky and all are participating in this invitation through GRREC's solicitation. There are 170+ independent and county school districts and all are eligible for



membership in a Bidding Cooperative and approximately 98% of the districts are members of one of the cooperatives. No district is obligated to use these services. Additional members may include other public educational institutions in the state, public colleges or universities, community colleges, vocational or technical schools, municipal and county governments, and other governmental, quasi- g o v e r n m e n t a l or non- profit organizations. Kentucky currently shares its AEPA contracts with the following states: AL, LA, MS, NC, SC, and TN. Only those districts or institutions listed on an approved Bidding Cooperative membership list are eligible to purchase under these contracts. This list may change during the contract period

## 11. Massachusetts, The Education Cooperative

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. ***Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.*** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular

business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

**12. Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

**13. Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

**14. Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

**15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

Prior to award, the Contractor must **certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by**

their authorized signatory.

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***INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS***

A. "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: ***Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108*** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once

## 12. Michigan, Oakland Schools, (OS)

### A. Additional Member Agency General Terms and Conditions that apply for all categories:

#### 1. Conflict of Interest

Contractor shall disclose in writing to Buyer any conflicts of interest with Board members, administrators, and or employees of any Participating Entity (as defined below). A conflict of interest may include, but is not limited to, a financial ownership interest in, or employment with Contractor or Subcontractor by a Participating Entity' Board member, administrator, or employee or their family member. A "family member" means a person's spouse or spouse's sibling or child; a person's sibling or sibling's spouse or child; a person's child or child's spouse; or a person's parent or parent's spouse, and includes these relationships as created by adoption or marriage. Determination of the existence of a conflict of interest does not prohibit the Participating Entity from entering into a contract with the Contractor (MCL 380.634; MCL 15.322 et seq).

#### 2. Iran Economic Sanctions Act

Public Act 517 of 2012, commonly known as the "Iran Economic Sanctions Act" (the "Act"). The Act provides that beginning April 1, 2013, an "Iran Linked Business" is not eligible to submit a bid on a request for proposal with a "public entity" (OS). The Act also requires that a person that submits a proposal in response to an OS request for proposal must certify to the public entity that it is not an Iran Linked Business. This requirement applies to all requests for proposals issued by OS, and not just to construction projects.

The Act defines an Iran Linked Business as:

- a. A person engaging in investment activities in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran;
- b. A financial institution that extends credit to another person, if that person will use the credit to engage in investment activities in the energy sector of Iran.

If the OS determines, using credible information available to the public, that a person or entity has submitted a false certification, OS must provide written notice to the person or entity of its determination and of its intent not to enter into or renew the contract. The notice must include information on how to contest the determination. The notice must also specify that the individual or entity may become eligible for future contracts with the public entity if the activities that caused it to be an Iran Linked Business are ceased.

#### 3. Hazardous Materials

If any hazardous chemicals are supplied under a contract/purchase order arising out of this solicitation, a Material Safety Data Sheet (MSDS) shall accompany the delivery of any hazardous chemicals supplied by the Contractor. All MSDS sheets shall be sent to the attention of the Participating Entity. Ref: State of Michigan Act 154, Section 14, P.A. 1974 as amended. Copies of MSDS for all purchased hazardous materials must be provided prior to delivery of any items by the Contractor. Additionally, the MSDS needs to be attached to the invoice and all products delivered must be labeled according to Section 14 of Act 154, of the public Acts of 1974, as amended. Any appropriate products not labeled will be refused and the Contractor will be responsible for additional freight charges. Payment may be withheld until the Participating Entity receives the MSDS.

#### 4. Modifications to Contracts

No modifications to a contract/purchase order with a Participating Entity shall be binding upon such Participating Entity unless agreed to in writing signed by an authorized representative of the Participating Entity.

#### 5. Governing Law

Any contract arising out of this solicitation shall be governed by and construed under the laws of the State of Michigan. In the event of any legal action to enforce or interpret any contract arising out of this solicitation, the sole and exclusive venue shall be the state or federal court of the local jurisdiction where the Participating Entities located.

### B. Additional Member Agency Terms and Conditions for:

#### 1. Non-Construction Products and Services:

All supplies, materials, and equipment sold or leased to Michigan intermediate school districts or K-12 public school districts must be in accordance with MCL 380.623a and 380.1274, respectively. The procurement of supplies, materials and/or equipment in a single transaction costing more than the State of Michigan Competitive Bidding threshold set forth in MCL 380.623a and 380.1274 by an intermediate school districts or K-12 public school districts requires the district to obtain competitive bids and the purchase must be approved by the district's Board of Education.

#### 2. Construction Products and Services:

All Contractors understand and agree that the use of AEPA contracts is not intended for use by Michigan intermediate school  
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districts or public K-12 school districts for construction, renovation or remodeling projects under MCL 380.1267 and agree to comply with all applicable standards and statutes for said construction projects.

**C. Procedure for Processing Orders:**

Once the award is made to a Contractor, OS will inform the Participating Entities and Other Agencies of the award by announcing the award through its general and usual methods of disseminating information.

1. OS follows the AEPA Standard Ordering Process (see Part A, General Terms and Conditions for All Agencies, "Ordering Procedures").

2. Contractors shall be required to pay a two percent (2%) administrative fee (the "Fee") based on the total cost of goods or services purchased, including installation and freight, if applicable. In the event of a lease arrangement, the total Fee for the value of goods leased shall be paid to OS by the Contractor at the front end of the lease. Contractor or its designated authorized reseller(s) shall not include any additional amount corresponding to the Fee in the bid responses or awarded prices.

**D. Agencies Allowed to Purchase under the Member Agency:**

OS serves all local school districts located in Oakland County, Michigan. In addition to, and in accordance with the terms and conditions set forth in this solicitation, all **public school districts, private schools, public school academies, intermediate school districts colleges, universities, counties, cities, townships, villages, and non-profit organization** in the State of Michigan shall be permitted to use AEPA solicitations approved by OS.

It should be clearly understood that OS is assisting these Participating Entities as a service to procure selected supplies, materials and equipment and services desired by the Participating Entity. Both the Contractor and any Participating Entity using this solicitation agree that the OS makes no representation that use of this solicitation by any Participating Entity is, in fact, in compliance with rules, regulations, policy or procedures of the Participating Entity. In this regard, the OS strongly suggests that, at a minimum, the Contractor and any Participating Entity considering such use consult with their own legal counsels before doing so. All Participating Entities using AEPA solicitations shall be responsible for adhering to their own applicable rules, regulations, policies, procedures and state statutes, etc., which may govern the use of cooperative purchasing contracts within their respective jurisdictions.



### 13. Minnesota, Cooperative Purchasing Connection (CPC)

#### 1. General Terms and Conditions that apply for all categories

- a. **Governing Law:** The laws of the State of Minnesota govern all contracts resulting from this IFB. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
- b. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Otter Tail County, Minnesota. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Otter Tail County, Minnesota.
- c. **Hazardous Substances:** All hazardous products purchased by members shall include a Safety Data Sheet (SDS) with the delivery.
- d. **Lease and Rental Agreements:** The Vendor may allow participating agencies to enter into a rental, lease, or lease-purchase agreements, providing such agreements comply with Minnesota Statutes and guidelines. CPC must receive a report annually, summarizing the executed lease purchases along with a summary of the participating agencies' purchases. CPC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Vendor and the participating agency. The Vendor agrees that leases will comply with the Uniform Commercial Code. The applicable administrative fee must be included in the lease cost based on the total value of the goods and applicable services purchased. This fee is referred to under the Technical Specifications. The Vendor should attempt to work with CPC's current leasing vendor. Note, the current leasing vendor may require a minimum purchase amount to begin the leasing process. Should the Vendor be required to utilize their own financial leasing company, this should be noted/requested as an exception. In the event of a lease, the total administrative fee for the value of goods shall be paid to CPC by the vendor at the front end of the lease. CPC reserves the right to review all purchase orders, lease documents and invoices to ensure contract compliance.
- e. **Marketing and Promotion:** Upon award and completion of the vendor orientation, CPC will promote the contract opportunity via its websites. CPC will also announce the new partnership in its newsletters and will publish the contract and marketing information through hard copy marketing items (i.e. flyers, postcard) and electronic email. Contracts will also be promoted at applicable trade shows, conferences, and meetings regularly. CPC may assist in the development of these materials if requested by the Vendor, but in all cases shall have the authority to review and approve any marketing materials. If a website is used, the link will be made available from the CPC website. Any web page or link, or other marketing tools shall be dedicated to CPC information only.
- f. **Non-Discrimination:** Any resulting contract for on or behalf of participating agencies, said Vendor agrees to:
  - i. That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, because of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
  - ii. That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
  - iii. That a violation of this section is a misdemeanor; and
  - iv. That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, shall be forfeited for a second or any subsequent violation of the terms or conditions of this contract.
- g. **Participating Agency:** A participating agency shall be defined under Minnesota Statutes M.S. §471.59, and M.S. §123A.21, Sub. 11 and South Dakota Statutes §5-18A-37. An eligible agency includes any school, higher education, city, county, other governmental agency, nonprofit organization, or other entity contracted to conduct business on behalf of a participating agency provided that they are required to follow state and local procurement regulations.
- h. **Prompt Payment:** Participating Agencies will follow M.S. §471.425 regarding prompt payment of local government bills.
- i. **Substance Use and Conduct:** All Vendor partners and subcontractors must adhere to local substance (alcohol, drug, smoking, etc.) and conduct (dress code, language, parking, etc.) policies while on a participating agencies' premises.
- j. **Vendor Orientation (CPC 101):** The Vendor and their participating resellers/sub-contractors will be required to participate in an online training session that is designed to educate the Vendor and resellers/sub-contractors on the purpose and nature of CPC. The Vendor will not be marketed to participating agencies until they have completed the vendor orientation session.

#### 2. Additional Participating Agency Terms and Conditions for Non-Construction Products and Services

If requested by CPC, the contracted vendor will work with CPC to develop an order form, or order forms, containing the most

commonly purchased items, that CPC can utilize to market the contracted vendor to its participating agencies.

### 3. Additional Participating Agency Terms and Conditions for Construction Related Products and Services

Upon acceptance and approval of the Vendor's offer by AEPA, CPC will independently consider the offer and conduct a conference call with the Vendor to determine if the Vendor can meet the requirements for construction-related products and services and to enter and execute a contract in the state of Minnesota. The contracted vendor will be required to work with CPC's participating agencies and require that an architect's signature or certification is noted on the specifications as required by **Minnesota Statute §326.12 subd. 3**. With certain exceptions, **Minnesota Rules part 1800.5200, subpart 1**, requires a licensed architect or engineer to prepare and certify specifications for building alterations or renovations. Once CPC and the Vendor can confirm that business can be conducted in Minnesota, CPC will make a final decision to complete the contract execution process.

For all quotes provided to participating agencies, for construction-related projects, products, and services, the contracted vendor must also send a duplicate quote to CPC. The quote provided to CPC must include the contact information of the participating agency.

**Performance Bond (for construction and/or installation related projects):** Performance bonds will be required on all projects valued at fifty-thousand dollars (\$50,000) or more in Minnesota and North Dakota and, twenty-five thousand dollars (\$25,000) or more in South Dakota. All performance bonds will be issued by a corporate surety authorized to do business in the state in which the work will be conducted and by a surety listed in the US Treasury Circular 570. Performance bonds will be posted by the Vendor and submitted to the specific participating agency for the assigned project. Should the contract be the result of a piggyback agreement, performance bonds will reflect each state's bonding requirements.

The Vendor will execute a performance bond in an amount equal to one hundred percent (100%) of the value specified in the contract between the participating agency and the Vendor unless the participating agency requires less to be posted. This bond will protect all persons supplying labor and material to the Vendor for the performance of the work provided in the contract. Subcontractors who may work on the contract may have to provide the Vendor with a performance bond. If the contract price increases after the bond is provided, the participating agency may consider obtaining additional bonds from the Vendor.

The Vendor will deliver the performance bond to the eligible participating agency at the time the contract is executed between the agency and the Vendor. Work will not commence between the Vendor and the eligible participating agency until the performance bond is received by the participating agency and a copy has been sent to CPC via email (info@purchasingconnection.org). The Vendor will be responsible for providing CPC with a copy of all contracts and bonds following CPC purchasing procedures. Should the Vendor fail to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to pay the dollar amount of the bond to the participating agency.

It is the Vendor's responsibility to ensure that they can obtain the required bonding for all construction products based on an awarded contract arising from this solicitation. Payment will not be issued for any project for which the required bonds have not been received.

With said construction based project, the participating agency may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this solicitation and resulting Master Contract Agreement (i.e. project timeline, completion dates, progress payments, delivery requirements, invoice requirements, etc.). Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Vendor and the participating agency. CPC, its agents, members, and employees shall not be a party to any claim for breach of such agreement.

**4. Insurance:** The Vendor shall purchase, maintain and provide certification from the insurer for minimal coverage during the life of an awarded contract, to include, but not limited to, comprehensive public and/or commercial liability, errors and omissions, workman's compensation, unemployment, and other insurance coverage required by and applicable to each of CPC's individual state's statutes and federal laws which proposed products and services will be offered and provided. The Vendor shall provide a Certificate of Insurance (COI) from the issuing company or their authorized agent, identifying the coverage required below and identifying CPC as a "Certificate Holder". Any required insurance that is canceled before the expiration date of the contract agreement, the issuing company will send immediate notice to CPC. Respondents shall provide a statement of insurance from the issuing company or their authorized agent with their proposal. The Vendor shall meet the following requirements:

1. Commercial General Liability: \$1,000,000 each occurrence, \$500,000 annual aggregate
2. Automobile Liability: \$1,000,000 each occurrence
3. Workers Compensation: \$100,000

CPC reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. The Vendor shall provide the COI with their submission.

### 5. Procedure for Contract Award, Notification and Processing Orders

Once the award is recommended by the AEPA Review Committee, CPC considers the recommendation based on the value of the potential contract for its participating agencies. Participating agency is defined as any city, county, public or private educational agency, nonprofit or governmental agency that is a participant of CPC. In the event of an award by the Board of Directors, CPC will inform its members of the award and contract by the following methods along with contract instructions and ordering process.

- a. The contract is listed and promoted on the CPC website ([www.purchasingconnection.org](http://www.purchasingconnection.org)).
- b. Announcing the award in CPC newsletters.
- c. CPC will publish the contract and marketing information through a hard copy marketing flier and electronic email. Contracts are promoted through PDF and a hard copy product catalog distributed at statewide trade shows and agency meetings regularly. CPC will require a marketing flyer, brochure, or other similar marketing pieces, in an editable, electronic format, from each vendor promoting the available contract with the vendor, and/or a web page or link. CPC may assist in the development of the marketing flier and material (if requested by the vendor), but in all cases shall have the authority to review and approve any marketing materials. If a web site is used, the link will be made available from the CPC web page. Any web page or link, or other marketing tools shall be dedicated to AEPA information only.
- d. When the member identifies a desired product or service, the member and the vendor may negotiate with each other to establish a description of items and/or services. The vendor shall quote a price to the member, in writing, using AEPA established discounts and including the two percent (2%) administrative fee in the quoted price. The administrative fee shall be based upon the total cost of goods and/or services including installation costs. The administrative fee shall not be listed as a separate line item on the quote. When a member decides to purchase through the CPC-AEPA contract, the member issues the purchase order directly to the vendor. The purchase order must include the total invoiced cost, based on
  - i. The total cost of goods, service, and installation, including the 2% administrative fee.
  - ii. Notification will be made to the vendor in the event the purchase order is not in compliance with the contract and adjustments will be made at that time. CPC and the Vendor will mutually resolve any issues concerning past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by CPC otherwise. All sales and transactions may continue without delay or in anticipation of the CPC purchase order verification.
  - iii. Once all the items and services on the purchase order have been delivered to the member completely and satisfactorily, the Vendor then files a copy of the final invoice, which is available to CPC by request in support of the quarterly sales summary. The invoice is to be marked "Copy".
  - iv. The Vendor makes all deliveries and installations of products and services. CPC does not warehouse items or provide installation services.
  - v. This administrative fee is to be paid by the vendor to CPC, quarterly, within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to CPC a sales report, in Excel format, listing the following information:
    1. Name of purchasing agency
    2. Address of purchasing agency (city, state, zip code)
    3. Date of purchase
    4. Invoice number
    5. Amount of purchase
    6. Administrative fee generated by sale
    7. Savings generated by saleThis report shall include all sales made and payments received by the vendor in said quarter. The sales report shall be emailed to Melissa Mattson at [mmattson@lcsc.org](mailto:mmattson@lcsc.org) and copied to Lori Mittelstadt at [lmittelstadt@lcsc.org](mailto:lmittelstadt@lcsc.org). Payments must be received either via check or authorized ACH. An ACH enrollment/authorization form must be provided to CPC for completion. ACH remittance notification must be sent to the individual indicated on the ACH enrollment/authorization form prior to ACH payment. If mailing a check, the payment shall be delivered to Melissa Mattson, CPC, 1001 East Mt. Faith, Fergus Falls, MN 56537. The check shall be made out to Lakes Country Service Cooperative.
- vi. CPC requires that all participating vendors offer the contract opportunity to all CPC participating agencies.

6. **Express Online Marketplace:** CPC provides participating agencies with an online purchasing platform called Express. Through Express, agencies can search for and purchase items. Essentially, Express is a one-stop-shop for many of CPC's commodity-based contracts. The Vendor does not have to have an e-commerce site to be included in Express. Express offers integration into two (2) of the main K-12 school financial systems in Minnesota. CPC expects growth in the number of agencies utilizing the marketplace and the volume of sales to grow significantly. CPC will work with the Vendor to determine if the contract agreement is suitable for the online platform. If deemed suitable, CPC will require integration into Express promptly as outlined in the solicitation.

#### 14. **Missouri, EducationPlus (EDPLUS) [Formerly Cooperating School Districts of the Greater St. Louis Area (CSD)]**

##### A. Additional Agency Terms and Conditions

Lease and Rentals: Vendor may allow EDPLUS members to enter into rental, lease, or lease purchase agreements, providing such agreements are in compliance with Missouri statutes and State Department of Education policies, rules and regulations. EDPLUS must receive a copy of the executed leasing documents prior to processing a purchase order. EDPLUS will not collect lease payments. Bidder 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. Bidder 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 EDPLUS member, and what that cost will be. No sale of a contract to a third party will be made without first informing EDPLUS and the EDPLUS member of the sale. If Bidder sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original vendor. A 2% administrative fee must be included in the lease cost based on the total value of the goods purchased. This fee is referred to under ordering process.

##### B. Procedure for Processing Orders

(1.) Once the award is made to the vendor, EDPLUS will inform its members (and non-members eligible to purchase from EDPLUS) of the contract by announcing the award in its periodic newsletter and other EDPLUS presentations as well as regular electronic communications.

(2.) EDPLUS may require a marketing flier from each vendor promoting the contract and AEPA relationship. EDPLUS will assist in the development of the marketing flier and material. This flier will be for distribution as well as posting on the EDPLUS website and disseminated to potential customers. Note: EDPLUS requires the awarded vendor to take ownership and actively promote the contract in cooperation with EDPLUS to all qualified customers.

(3.) When the member identifies a desired product or service as available through the AEPA contract and makes a purchase on the EDPLUS online Marketplace or agrees on price as presented to the member by the awarded AEPA vendor, the member then issues to the vendor a purchase order for that item or service.

(4.) The purchase order must include an additional two percent (2%) administrative fee in the total cost, based on the total cost of goods and service including installation and freight if applicable. This fee is to be forwarded by the vendor to EDPLUS after the sale and payment is made to vendor. Payment shall be made to EDPLUS on a quarterly basis along with complete sales history during that period.

(5.) Vendor makes all deliveries and installations of products and services. EDPLUS does not warehouse items nor provide services.

(6.) All participating vendors agree to and are subject to audit proceedings of AEPA member sales.

##### C. Members Purchasing Under the Agency

We take great pride in the fact that EducationPlus is providing a complete line of purchasing services to our 50+ member school districts and hundreds of additional school districts, educational institutions, and nonprofit organizations throughout Missouri and Illinois. EducationPlus was created in 1928 with its primary focus aimed at improving educational opportunities for all students. Our goal is to promote efficient use of educational dollars, and simultaneously provide an ongoing market for those vendors doing business with EducationPlus. EducationPlus serves schools and political subdivisions in Missouri and Illinois.

##### D. Governing Law

**MO. REV. STAT. §70.220. 1.** Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision.

## 15. Montana, Montana Cooperative Services (MCS)

1. General Standards: Purchases by public entities in excess of \$80,000 are subject to public bid; purchases under this amount are subject to requirements of public contracts. See Sections 7-5-230 I and 7- 5-2304, Montana Code Annotated (Counties); Sections 7-5-4302 and 7-5-4303, Montana Code Annotated (Municipalities).

Note: purchases of less than \$80,000 are not subject to public bid requirements, which provides local government entities with considerable flexibility to make purchases. Public bidding requirements do not appear to prohibit local government entities who are members of AEPA or MCS from soliciting bids from approved vendors for purchases in excess of \$80,000.

2. Local Government Cooperative Purchasing Authority: Local governments may also elect to purchase cooperatively through the Montana Department of Administration in lieu of soliciting their own bids. 51 A.G. Op. 15 (2006). Procurement by government entities generally falls within the Montana Procurement Act, Section 18-4-101, MCA, et seq.

a. Local Governments are authorized to adopt and implement the rules and standards of the Act:

18-4-124. Local government adoption of procurement provisions -- alternative project delivery contracts. (1) A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

b. Local governmental entities and school districts are specifically authorized to purchase cooperatively in the public interest:

18-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any non profit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States, or a tribal procurement unit.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

(5) "Tribal procurement unit" means a tribal government, tribal entity, or official of a tribal government located in Montana that expends tribal funds or funds administered by a tribe for the procurement of supplies and services to the extent provided by tribal or federal law.

18-4-402. Cooperative purchasing authorized . The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units, open-ended state public procurement unit contracts that are made available to local public procurement units, and competitive contracts established by for-profit, not-for-profit, or nonprofit cooperative entities. (emphasis added).

Note: Cooperative purchasing by local governmental entities may require entering into an agreement with the Montana Department of Administration. This requirement does not appear to preclude local entities from participating as members of purchasing groups.

c. Local governmental entities are authorized to enter agreements with each other in order to purchase cooperatively.

7-11-104. Authorization to create interlocal agreements -- issuance of bonds for joint construction -- hiring of teacher, specialist, or superintendent. One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-401, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties. (emphasis added).

3. School and school district cooperative purchasing authority: Schools and school districts are specifically authorized to purchase cooperatively utilizing qualifying purchasing entities:

"A [school] district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of [soliciting public bids and awarding a contract] if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list." Section 20-9-204(4), Montana Code Annotated (emphasis added).

Note: Montana's AEPA member, Montana Cooperative Services, meets all of the statutory requirements of Section 20-9-204(4), MCA, with respect to cooperative purchasing groups.

Cooperative purchasing is another tool in the bag for local governmental entities, including school districts, to acquire services and supplies at better prices than may otherwise be available. Membership in MCS provides access to AEPA-approved vendors as well as in-state suppliers who have been carefully vetted for reliability and quality.

Disclaimer: The above discussion is for informational purposes only and does not constitute legal advice.



## 16. North Dakota, North Dakota Educators Service Cooperative (NDESC)

### 1. General Terms and Conditions that apply for all categories

- a. **Governing Law:** The laws of the State of North Dakota govern all contracts resulting from this IFB. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
- b. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Cass County, North Dakota. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Cass County, North Dakota.
- c. **Hazardous Substances:** All hazardous products purchased by members shall include a Safety Data Sheet (SDS) with the delivery.
- d. **Lease and Rental Agreements:** The Vendor may allow participating agencies to enter into a rental, lease, or lease-purchase agreements, providing such agreements comply with North Dakota Statutes and guidelines. NDESC must receive a report annually, summarizing the executed lease purchases along with a summary of the participating agencies' purchases. NDESC will not collect lease payments or be involved in the terms and conditions of the lease. All lease arrangements are between the Vendor and the participating agency. The Vendor agrees that leases will comply with the Uniform Commercial Code. The applicable administrative fee must be included in the lease cost based on the total value of the goods and applicable services purchased. This fee is referred to under the Technical Specifications. The Vendor should attempt to work with NDESC's current leasing vendor. Note, the current leasing vendor may require a minimum purchase amount to begin the leasing process. Should the Vendor be required to utilize their own financial leasing company, this should be noted/requested as an exception. In the event of a lease, the total administrative fee for the value of goods shall be paid to NDESC by the vendor at the front end of the lease. NDESC reserves the right to review all purchase orders, lease documents and invoices to ensure contract compliance.
- e. **Marketing and Promotion:** Upon award and completion of the vendor orientation, NDESC will promote the contract opportunity via its websites. NDESC will also announce the new partnership in its newsletters and will publish the contract and marketing information through hard copy marketing items (i.e. flyers, postcard) and electronic email. Contracts will also be promoted at applicable trade shows, conferences, and meetings regularly. NDESC may assist in the development of these materials if requested by the Vendor, but in all cases shall have the authority to review and approve any marketing materials. If a website is used, the link will be made available from the NDESC website. Any web page or link, or other marketing tools shall be dedicated to NDESC information only.
- f. **Non-Discrimination:** Any resulting contract for on or behalf of participating agencies, said Vendor agrees to:
  - i. That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, because of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
  - ii. That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
  - iii. That a violation of this section is a misdemeanor; and
  - iv. That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, shall be forfeited for a second or any subsequent violation of the terms or conditions of this contract.
- g. **Participating Agency:** A participating agency shall be defined under Chapter 54-40.3 of the North Dakota Century Code, as amended. An eligible agency includes any school, higher education, city, county, other governmental agency, nonprofit organization, or other entity contracted to conduct business on behalf of a participating agency provided that they are required to follow state and local procurement regulations.
- h. **Substance Use and Conduct:** All Vendor partners and subcontractors must adhere to local substance (alcohol, drug, smoking, etc.) and conduct (dress code, language, parking, etc.) policies while on a participating agencies' premises.
- i. **Vendor Orientation:** The Vendor and their participating resellers/sub-contractors will be required to participate in an online training session that is designed to educate the Vendor and resellers/sub-contractors on the purpose and nature of NDESC. The Vendor will not be marketed to participating agencies until they have completed the vendor orientation session.

### 2. **Additional Participating Agency Terms and Conditions for Non-Construction Products and Services**

If requested by NDESC, the contracted vendor will work with NDESC to develop an order form, or order forms, containing the most commonly purchased items, that NDESC can utilize to market the contracted vendor to its participating agencies.

### 3. **Additional Participating Agency Terms and Conditions for Construction Related Products and Services**

Upon acceptance and approval of the Vendor's offer by AEPA, NDESC will independently consider the offer and conduct a conference call with the Vendor to determine if the Vendor can meet the requirements for construction-related products and services, according to [Chapter 48-01.2 of the North Dakota Century Code](#), and to enter and execute a contract in the state of North Dakota. Once NDESC and the Vendor can confirm that business can be conducted in North Dakota, NDESC will make a final decision to complete the contract execution process.

For all quotes provided to participating agencies, for construction-related projects, products and services, the contracted vendor must also send a duplicate quote to NDESC. The quote provided to NDESC must include the contact information of the participating agency.

**Performance Bond (for construction and/or installation related projects):** Performance bonds will be required on all projects valued at fifty-thousand dollars (\$50,000) or more in North Dakota. All performance bonds will be issued by a corporate surety authorized to do business in the state in which the work will be conducted and by a surety listed in the US Treasury Circular 570. Performance bonds will be posted by the Vendor and submitted to the specific participating agency for the assigned project. Should the contract be the result of a piggyback agreement, performance bonds will reflect each state's bonding requirements.

The Vendor will execute a performance bond in an amount equal to one hundred percent (100%) of the value specified in the contract between the participating agency and the Vendor unless the participating agency requires less to be posted. This bond will protect all persons supplying labor and material to the Vendor for the performance of the work provided in the contract. Subcontractors who may work on the contract may have to provide the Vendor with a performance bond. If the contract price increases after the bond is provided, the participating agency may consider obtaining additional bonds from the Vendor.

The Vendor will deliver the performance bond to the eligible participating agency at the time the contract is executed between the agency and the Vendor. Work will not commence between the Vendor and the eligible participating agency until the performance bond is received by the participating agency and a copy has been sent to NDESC via email ([info@purchasingconnection.org](mailto:info@purchasingconnection.org)). The Vendor will be responsible for providing NDESC with a copy of all contracts and bonds following NDESC purchasing procedures. Should the Vendor fail to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to pay the dollar amount of the bond to the participating agency.

It is the Vendor's responsibility to ensure that they can obtain the required bonding for all construction products based on an awarded contract arising from this solicitation. Payment will not be issued for any project for which the required bonds have not been received.

With said construction based project, the participating agency may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this solicitation and resulting Master Contract Agreement (i.e. project timeline, completion dates, progress payments, delivery requirements, invoice requirements, etc.). Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Vendor and the participating agency. NDESC, its agents, members, and employees shall not be a party to any claim for breach of such agreement.

4. **Insurance:** The Vendor shall purchase, maintain and provide certification from the insurer for minimal coverage during the life of an awarded contract, to include, but not limited to, comprehensive public and/or commercial liability, errors and omissions, workman's compensation, unemployment, and other insurance coverage required by and applicable to each of NDESCs individual state's statutes and federal laws which proposed products and services will be offered and provided. The Vendor shall provide a Certificate of Insurance (COI) from the issuing company or their authorized agent, identifying the coverage required below and identifying NDESC as a "Certificate Holder". Any required insurance that is canceled before the expiration date of the contract agreement, the issuing company will send immediate notice to NDESC. COIs must be updated and sent to NDESC upon insurance coverage renewal. Respondents shall provide a statement of insurance from the issuing company or their authorized agent with their proposal. The Vendor shall meet the following requirements:
1. Commercial General Liability: \$1,000,000 each occurrence, \$500,000 annual aggregate
  2. Automobile Liability: \$1,000,000 each occurrence
  3. Workers Compensation: \$100,000

CPC reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. The Vendor shall provide the COI with their submission.

### 5. **Procedure for Contract Award, Notification and Processing Orders**

Once the award is recommended by the AEPA Review Committee, NDESC considers the recommendation based on the value of the potential contract for its participating agencies. Participating agency is defined as any city, county, public or private

educational agency, nonprofit or governmental agency that is a participant of NDESC. In the event of an award by the Board of Directors, NDESC will inform its members of the award and contract by the following methods along with contract instructions and ordering process.

- a. The contract is listed and promoted on the NDESC website ([www.ndesc.org](http://www.ndesc.org)).
- b. Announcing the award in NDESC newsletters.
- c. NDESC will publish the contract and marketing information through a hard copy marketing flier and electronic email. Contracts are promoted through PDF and a hard copy product catalog distributed at statewide trade shows and agency meetings regularly. NDESC will require a marketing flyer, brochure, or other similar marketing pieces, in an editable, electronic format, from each vendor promoting the available contract with the vendor, and/or a web page or link. NDESC may assist in the development of the marketing flier and material (if requested by the vendor), but in all cases shall have the authority to review and approve any marketing materials. If a web site is used, the link will be made available from the NDESC web page. Any web page or link, or other marketing tools shall be dedicated to AEPA information only.
- d. When the member identifies a desired product or service, the member and the vendor may negotiate with each other to establish a description of items and/or services. The vendor shall quote a price to the member, in writing, using AEPA established discounts and including the two percent (2%) administrative fee in the quoted price. The administrative fee shall be based upon the total cost of goods and/or services including installation costs. The administrative fee shall not be listed as a separate line item on the quote. When a member decides to purchase through the NDESC-AEPA contract, the member issues the purchase order directly to the vendor. The purchase order must include the total invoiced cost, based on
  - i. The total cost of goods, service, and installation, including the 2% administrative fee.
  - ii. Notification will be made to the vendor in the event the purchase order is not in compliance with the contract and adjustments will be made at that time. NDESC and the vendor will mutually resolve any issues concerning past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by NDESC otherwise. All sales and transactions may continue without delay or in anticipation of the NDESC purchase order verification.
  - iii. Once all the items and services on the purchase order have been delivered to the member completely and satisfactorily, the Vendor then files a copy of the final invoice, which is available to NDESC by request in support of the quarterly sales summary. The invoice is to be marked "Copy".
  - iv. The Vendor makes all deliveries and installations of products and services. NDESC does not warehouse items or provide installation services.
  - v. This administrative fee is to be paid by the vendor to NDESC, quarterly, within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to NDESC a sales report, in Excel format, listing the following information:
    1. Name of purchasing agency
    2. Address of purchasing agency (city, state, zip code)
    3. Date of purchase
    4. Invoice number
    5. Amount of purchase
    6. Administrative fee generated by sale
    7. Savings generated by saleThis report shall include all sales made and payments received by the vendor in said quarter. The sales report shall be emailed to Jane Eastes at [jeastes@lcsc.org](mailto:jeastes@lcsc.org) and copied to Lori Mittelstadt at [lmittelstadt@lcsc.org](mailto:lmittelstadt@lcsc.org). Payments must be received either via check or authorized ACH. An ACH enrollment/authorization form must be provided to CPC for completion. ACH remittance notification must be sent to the individual indicated on the ACH enrollment/authorization form prior to ACH payment. If mailing a check, the payment shall be delivered to Jane Eastes, NDESC, 1001 East Mt. Faith, Fergus Falls, MN 56537. The check shall be made out to Lakes Country Service Cooperative.
- vi. NDESC requires that all participating vendors offer the contract opportunity to all NDESC participating agencies.

- 6. Express Online Marketplace:** NDESC provides participating agencies with an online purchasing platform called Express, powered by EqualLevel. Through Express, agencies can search for and purchase items. Essentially, Express is a one-stop-shop for many of NDESC's commodity-based contracts. A Vendor does not have to have an e-commerce site to be included in Express. NDESC expects growth in the number of agencies utilizing the marketplace and the volume of sales to grow significantly. NDESC will work with the Vendor to determine if the contract agreement is suitable for the online platform. If deemed suitable, NDESC will require integration into Express promptly.

## 17. Nebraska, Educational Service Unit Coordinating Council (ESUCC)

### A. Additional Agency Terms and Conditions

**1) Bid Award Determination:** The bidder hereby agrees to these bidding conditions by virtue of submitting this signed document on or before the Bid Opening date as specified below.

**2) Natural Gas Contractors:** Any bids relating to natural gas shall be based upon an awareness of NEB. REV. STAT. § 75-501, adopted in conformity with Rules, Regulations, and Interpretations of Federal Agencies with authority to regulate pipeline common carriers and interstate commerce.

**3) Performance and Payment Bonds:** Upon execution of a contract between an ESUCC member and the prime contractor for construction or public improvement, performance and payment bonds described above in the AEPA General Terms and Condition shall be provided to the member. Performance and payment bonds between the member and the prime contractor shall be on standard forms. The prime contractor shall deliver copies of both the performance and payment bonds to ESUCC at the time the contract between the member and the prime contractor is executed. All suits for nonpayment or nonperformance shall be filed as allowed under Nebraska law.

**4) Insurance:** Contractors shall secure and keep in force during the term of any awarded agreement the following insurance coverages from insurance companies authorized to do business in Nebraska:

- Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person for any number of claims arising out of a single occurrence and \$5,000,000 for all claims arising out of a single occurrence.
- Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$1,000,000 per person for any number of claims arising out of a single occurrence and \$5,000,000 for all claims arising out of a single occurrence.
- Workers compensation coverage meeting all statutory requirements.

**5) Debarment and Suspension:** Contractors shall comply with Executive Orders 12549 and 12689 as applicable. Contractors may be debarred for a period of two (2) years, unless earlier modified by the Special Awards Committee of ESUCC for any of the following conduct: (a.) Repeatedly not following the bid process. (b.) Repeatedly submitting non-responsive bids. (c.) Any behavior, which has as its effect injuring the integrity of the bid process. (d.) Failure to deliver goods pursuant to a successful bid. (e.) Repeated lack of acceptable handling and delivery of goods pursuant to a successful bid. (f.) Repeatedly not meeting delivery deadlines. (g.) Repeated failure to timely rectify damages of goods, or shortages of goods when it is the responsibility of the contractor to take such action. (h.) Conviction of a crime of dishonesty. (i.) Debarment or suspension by any agency or Federal Agency by the contractor or any of its key employees. (j.) Other conducts which materially and adversely affects the services of ESUCC Cooperative Purchasing program.

**6) Statement Filed:** A bidder who is awarded a contract for any goods or services pursuant to this IFB shall file with ESUCC a statement as required by NEB. REV. STAT. § 73-102.

**7) Nondiscrimination:** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of any awarded bid or agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

**8) Employment Eligibility Verification:** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with any awarded bid or agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

**9) Federal Funding.** It is understood that purchases may be funded in whole or in part with funds allocated by the Federal government, including the U.S. Department of Education and is therefore subject to those regulations, restrictions, and conditions normally associated with federally funded programs and any other requirements that the state or federal government may prescribe including, but not necessarily limited to, the "Federal Requirements" listed above in the AEPA Terms and Conditions and the following:

- **Lobbying:** The Bidder agrees and understands that under the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) that Bidders that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
- **Patent Rights:** The USDOE's and any other federal agency's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Agreement include, but are not necessarily limited to, 34 CFR Part 80.
- **Copyrights and Right in Data:** The USDOE's and any other federal agency's requirements and regulations pertaining to copyrights and rights in data include, but are not necessarily limited to, 34 CFR Part 80.
- **Access to Documents:** The Parties and their grantees, the USDOE and/or other federal grantor agency, the

Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Bidder which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

- **Energy Policy and Conservation Act:** The parties shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- **Buy American:** To the maximum extent practicable, the Bidder will purchase domestic commodities or products produced in the United States or processed substantially using commodities produced in the United States
- **Minority Business Owners:** The ESUCC will contract with minority-owned businesses, women's business enterprises, and labor surplus firms when possible. Steps to ensure compliance with this provision will include:
  - .1 Qualified small, minority, and women's businesses on solicitation lists so that when such businesses are potential vendors, they are included in ESUCC solicitations.
  - .2 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation for such businesses.
  - .3 Establishing delivery schedules, where requirement permits, which encourage such enterprises
  - .4 Use services of Small Business Administration, Minority Development Agency, or similar state agency to maximize participation.
  - .5 Require prime Bidder, if subcontracts are to be let, to follow the above steps
- **Reporting Notice:** The USDOE's and any other federal agency's requirements and regulations pertaining to reporting include, but are not necessarily limited to, 34 CFR Part 80.
- **Work Hours:** The parties agree to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) which requires each contractor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- **Debarment and Suspension:** The parties agree and understand that under Executive Orders 12549 and 12689 that a contract award (see 2 CFR 180.220) must not be made to any party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM).
- **Solid Waste Disposal Act:** The parties agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- **Remedies:** Contracts for more than the simplified acquisition threshold (currently set at \$150,000, but is subject to inflation adjustment) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**11) Governing Law and Venue:** All bids and contracts shall be governed by and construed in accordance with the laws of the State of Nebraska. The venue for any litigation arising out of or related to a bid or contract will be in any eligible state or federal court of Nebraska.

**12) Public Records:** The Contractor acknowledges that the ESUCC and its affiliated schools and members must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include any bid documents or contracts and all records created and maintained in relation to them.

**13) Conflict of Interest:** By submitting a proposal, Contractor certifies that there does not now exist any relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal. The Bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest. The Bidder certifies that it will not employ any individual known by Bidder to have a conflict of interest.

The Contractor shall not, at any time, recruit or employ any employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

The submission of the offer did not involve collusion or other anti-competitive practices. Neither signatory nor any person on his behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the matter of the bidding or award of a contract under this solicitation.

The Contractor, by submitting a bid, certifies that it has not had a contract with education organizations in State of Nebraska

terminated early. If Contractor has had a contract terminated early within the State of Nebraska, Contractor must provide the contract number, along with an explanation of why the contract was terminated early.

Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

Contractor certifies that Contractor and Contractor's employees, officers, and associates directly involved in obtaining contracts with the State of Nebraska, ESUCC, or any subdivision of the state have not been convicted of false pretenses, attempted false pretenses, or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985

ESUCC may cancel any contract if it is found that gratuities in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any employee of ESUCC with a view toward securing a contract or with respect to the performance of this 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 ESUCC for demonstration or evaluation are not considered gratuities.

#### **B. Procedure for Processing Orders**

ESUCC affiliated schools or members send their purchase orders both directly and electronically to the vendor, the vendor ships directly to the school/member, and direct bills the schools/members the cost of merchandise plus the ESUCC 2% administrative fee. Vendors must provide a quarterly report to ESUCC Cooperative Purchasing. The report will include: Date of sales, school name, ESU affiliation, selling price, list price and savings. The ESUCC Cooperative Purchasing administrative Fee of 2% will accompany each quarterly report.

#### **C. Members Purchasing Under the Agency**

ESUCC represents 17 Educational Service Units statewide who in turn service Nebraska school districts with over 300,000 students. ESUCC is authorized to coordinate purchases for public school districts, nonpublic school systems, other ESUs, and other public agencies, including any county, city, village, school district, or agency of the state government, any drainage district, sanitary and improvement district, or other Municipal Corporation or political subdivision of the State of Nebraska.

#### **D. Procedure for Processing Orders**

All purchase orders will be submitted directly from the purchasing entity to the vendor. ESUCC will not facilitate the processing of purchase orders unless the offering is service related. If it is a service related purchase then the purchase order shall be submitted by ESUCC.

#### **E. Agencies Allowed to Purchase under the Member Agency**

Purchases through ESUCC contracts are to be primarily for K-12. However other state entities may use the ESUCC contracts. All inquiries to purchase on the behalf of a non-profit group not in state statute or receiving state funding must be approved by ESUCC.

## **18. New Jersey, Educational Services Commission of New Jersey (ESCNJ)**

### **Applicability of Contract Provisions to New Jersey Participants**

ESCNJ is the AEPA Member Agency. Any entity that uses the contract awarded by ESCNJ under this document is referred to as a "New Jersey Participant." To be a New Jersey Participant the entity must be a member of the ESCNJ Cooperative Pricing System. The bidder that is awarded the contract by ESCNJ is referred to as the "Contractor."

Once a contract is awarded by ESCNJ, a New Jersey Participant may enter into a purchase order agreement directly with the Contractor. To the extent not otherwise described below or in this document, once a purchase order is issued by a New Jersey Participant to a Contractor, all of the provisions of the contract shall benefit and be enforceable by such New Jersey Participant, unless specifically identified as applying to ESCNJ only.

1. The Bidder by submitting its bid hereby declares that this Bid is made without any connection with any other person or person making any proposal for the same items, that it is in all respects fair and without collusion or fraud and that no person acting for or employed by ESCNJ or a New Jersey Participant is directly or indirectly interested in the proposal or in the goods or services to which it relates, or in any portion of the profits there from.

2. **Event of default and termination of Contract:**

ESCNJ shall have the right to cancel the contract based upon a default by Contractor. A New Jersey Participant shall have the right to cancel its purchase arrangement based on a default by the Contractor with regard to such purchase arrangement. In addition, ESCNJ and each New Jersey Participant reserves the right to withhold payments for goods and services that are not in compliance with the terms of the contract or if the Contractor is in default. Any of the following shall be a default under the contract: 1) The Contractor fails to adequately perform the services set forth in the contract; 2) Contractor fails to deliver all or any part of the goods, or delivers defective goods; 3) The Contractor fails to make progress in the performance of the contract and/or does not deliver within the agreed-upon schedules; 4) The Contractor fails to observe any of the terms and conditions of the contract, including, without limitation, assigning the contract and/or failing to deliver required insurance or performance bonds; 5) The Contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the New Jersey Participant; or 6) the Contractor has become insolvent, makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy or is subject to an involuntary petition in bankruptcy not discharged within thirty (30) days. ESCNJ and each New Jersey Participant shall follow the following procedure if the contract or purchase order is to be terminated:

Step 1 - Issue a warning letter of concern outlining the violations and length of time to correct the problem(s). The length of time to correct the problem shall be determined by ESCNJ or the New Jersey Participant, as applicable, in its sole discretion, based on the problem.

Step 2 - Issue a letter of intent to cancel the contract or purchase order, if the problem(s) is not resolved by the given date.

Step 3 - Issue the letter to cancel contract or purchase order.

Upon receipt of the written notice of concern, the Contractor shall have ten (10) business days to provide a satisfactory response to ESCNJ and the New Jersey Participant that provided the notices. Failure on the part of the Contractor to address adequately all issues or concerns may result in contract cancellation.

The remedy to terminate and withhold payments is in addition to any other remedies ESCNJ and the New Jersey Participants may have. In the event of Contract termination by a New Jersey Participant, such New Jersey Participant's payment obligation shall cease as of the final date on which services in accordance with this Contract are last performed by the Contractor. Upon termination of this Contract under this section, the Contractor (and its surety) will be responsible for all of such New Jersey Participant's expenses, losses and damages incurred in replacing Contractor for the remainder of the term of the Contract.

3. **Assignment:**

Contractor shall not subcontract, assign, transfer, convey, sublet or otherwise dispose of its/his/her contractual duties to any other person, firm, or corporation, without the previous written consent of ESCNJ and any New Jersey Participant that has an outstanding open purchase order or financing arrangement. If the Contractor wants to assign its/his/her right to payment of the Contract, Contractor shall notify ESCNJ and any New Jersey Participant that has an outstanding open purchase order or financing arrangement immediately, in writing, of such assignment of right to payment. In no case shall such assignment of Contract relieve the Contractor from its/his/her obligations or change the terms of the Contract.



**4. Indemnification:**

Contractor shall indemnify, defend, keep and save harmless ESCNJ, each New Jersey Participant and its respective agents, officials, employees and volunteers (each an "Indemnified Party") against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses (including attorneys' fees) which result from, arise out of, or in connection with the performance, or breach of performance, under the Contract of Contractor and any of its/his/her employees, agents or personnel. The Contractor shall, at its/his/her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the Indemnified Party in any such action, the Contractor shall, at its/his/her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Party as herein provided.

**5. New Jersey Participant Policies:**

The Contractor must be familiar with a New Jersey Participant's policies or regulations which affect the services provided under this Contract and that have been or will be distributed during the term of this Contract. Policies and regulations include, but are not limited to, New Jersey Public Contracts Law, school district policies, municipality policies, charters school policies, and county ordinances.

As each board of education, municipality governmental agency, educational institution in the State of New Jersey may have or may be required to have individual policies and procedures for the procurement of goods and services; and as one of the aforementioned institutions/agencies may be dependent upon the policies/procedures of another institution or agency, it is required for the Contractor to be familiar with the policies of the New Jersey Participant that impact the purchase. In limited situations, there may be State statutes which govern the allow ability of purchases to be reimbursed by State funding. The New Jersey Participant should obtain its own legal advice on these statutes prior to purchasing under a contract.

The following documentation will be required prior to the award of any contract for New Jersey Participants:

1. New Jersey Business Registration Certificate - Before award in NJ, not at time of bid
2. New Jersey Contractors Registration Certificate (All time and material bids.) Before award in NJ not at time of bid
3. New Jersey Pay-to-Play Documentation (Political Contribution Disclosure)
4. Statement of Ownership (Ownership Declaration Certification)
5. New Jersey Affirmative Language (Exhibit A) and (Exhibit B) for construction repair and maintenance contracts
6. Acknowledgement of the Contractor's/Vendor's responsibility to pay prevailing wage.  
[http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing\\_wage\\_determinations.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html)  
(Time and material bids.)
7. New Jersey Affirmative Action Questionnaire/Documentation
8. Disclosure of Investment Activities in Iran
9. Years of experience is not a criterion for the evaluation of bids to be awarded for the State of New Jersey. For additional information visit [www.nj.gov/dca/divisions/dlgs](http://www.nj.gov/dca/divisions/dlgs)
10. W9
11. Certificate of Insurance with the ESCNJ named as insured and the bid title/# listed - Before award in NJ, not at time of bid
12. DPMC - (All time and material bids.) Before award in NJ, not at time of bid
13. Total Amount of Uncompleted Contracts (All time and material bids.) Before award in NJ, not at time of bid
14. Americans with Disabilities ACT of 1990
15. Statement of Suspension or Debarment Form
16. Sworn Contractor Certification; Qualifications Credentials (All time and material bids.)
17. Subcontractor Disclosure Statement (All time and material bids.)
18. Prevailing Wages Certification—Submission with Bid (All time and material bids.)
19. Pre-Qualification Affidavit/No Material Adverse Change (All time and material bids.)
20. Total Amount of Uncompleted contracts (All time and material bids.)
21. Certificate of Authority (All time and material bids.)
22. Assurance of Compliance
23. Contractors licenses (All time and material bids.)
24. New Jersey School Development Authority (All time and material bids.)

**6. Performance Bonds:**

Each New Jersey Participant may require a performance bond in the case of services to be performed under the Contract if

required. The Contractor shall furnish to the New Jersey Participant a Surety Performance Bond ("Performance Bond") with an option to renew each succeeding year of the Contract in a form satisfactory to the New Jersey Participant assuring the faithful performance of the Contract. The Bond shall be equal to one hundred percent (100%) of each year's estimated Contract price as reviewed and agreed upon by the New Jersey Participant, and shall be continued for the life of the Contract in amounts equal to one hundred percent (100%) of each year's estimated Contract price as reviewed and agreed upon by the New Jersey Participant. The Contractor must send such Performance Bond to the New Jersey Participant prior to the commencement of any services under the Contract. Each such Performance Bond shall be furnished by a surety company acceptable to the New Jersey Participant and licensed or authorized to do business in New Jersey. Failure to deliver the bond shall be considered a default under the Contract, at the discretion of and upon notice by the New Jersey Participant.

**7. Governing Law:**

This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey without regard to its conflicts of laws principles.

**8. Financing Arrangements:**

Any financing arrangements (including lease purchasing arrangements) may be made directly between the Contractor and a New Jersey Participant or with the free ESCNJ Leasing Program. Financing arrangements may be subject to additional laws, rules and regulations, terms and conditions not described in this document and are subject to separate negotiation with each New Jersey Participant that is interested in such an arrangement. Each New Jersey Participant should seek its own legal advice prior to entering into a financing arrangement. ESCNJ must receive a report annually summarizing the executed lease purchases along with the summary of the customer purchases. ESCNJ will not collect lease payments or be involved in the terms and conditions of the Contractor lease. All lease arrangements are between the Contractor and the New Jersey Participant only.

**9. Affirmative Action:**

The Contractor/Vendor must have an employment policy that there shall be no discrimination against anyone on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, physical disability or sexual orientation in the hiring, upgrading, demotions, recruitment, termination and selections for training, in any manner prohibited by the laws of the United States or of the State of New Jersey. The Contractor/Vendor further agrees to be an "affirmative action-equal opportunity employer." The Contractor/Vendor must provide one of the following: "Letter of Federal Affirmative Action Plan Approval", "Certificate of Employee Information Report" or a completed "Employee Information Report Form AA302" prior to award bid.

**10. Independent Contractor:**

The Contractor shall not be held or deemed in any way to be the agent or employee of ESCNJ and/or a New Jersey Participant. It is the intention of the parties that the Contractor shall be and is to be considered an independent contractor.

**11. Incorporation of Bid Documents:**

The bid documents, including all appendices executed by Contractor that have been accepted by ESCNJ (the "Bid") are specifically incorporated into this Contract.

**12. New Jersey Public Records Act:**

The Contractor acknowledges that ESCNJ and New Jersey Participants are subject to the New Jersey Public Records Act, New Jersey Public Contracts Law and information submitted to ESCNJ and/or such New Jersey Participants may be made available to the public under the provisions of this Act.

Marketing and Advertising under this Contract - applicable to Member Agency (ESCNJ) contract only:

1. Contractor agrees to provide ESCNJ with a copy or proof sheet of all advertisements, customer communications or promotional material for approval. Contractor will provide ESCNJ with date of release and name of publication, journal, etc. if applicable.
2. Contractor will include the approved ESCNJ logo, web address, bid #, bid title, bid term, NJ State Approved Co-op #65MCESCCPS and contact information in all print, electronic mail and other advertising and promotion intended for release in New Jersey.
3. The ESCNJ logo and information shall be of a clearly readable size and in appropriate proportion to other elements in the print material.
4. Contractor agrees to make available ESCNJ supplied brochures or other promotional materials on booths, tables, etc. of any or all exhibits for which the Contractor displays/participates at tradeshow, conventions and the like. Contractor will supply scheduled exhibit dates in advance.
5. Contractor agrees to insert the approved ESCNJ logo, web address, NJ State Approved Co-op #65MCESCCPS bid #, bid

term and contact information on the Contractor's website promoting and providing a link to the ESCNJ website. Contractor will also provide ESCNJ with text, links and logos to be posted on the ESCNJ website.

#### **B. Procedures for Processing Orders**

1. Once the award is made to the Contractor, ESCNJ will inform the potential New Jersey Participants of the Contract, including a webpage dedicated to the contract on the ESCNJ website. At this point, the Contractor may directly contact any potential New Jersey Participant and any potential New Jersey Participant may directly contact the Contractor.
2. Purchase orders will not be accepted or processed by ESCNJ. All business will be contracted directly with the New Jersey Participant, which will issue a purchase order and provide payment for the applicable good or service directly to the Contractor.
3. The total cost of ESCNJ's program is funded through a 2.2% participation fee paid to ESCNJ quarterly by the participating Contractors. The administrative fee percentage is based upon the total sale or lease of goods and services, including installation, if included. This fee shall be included in all price quotations to New Jersey Participants and shall not be printed as a line item on the quotation.
4. Along with the participation fee, the Contractor will produce and provide to ESCNJ quarterly reports ending March 31, June 30, September 30 and December 31 throughout the contract period. The reports shall be in Microsoft Excel and be available in electronic form, shall identify the Contractor and the quarter being reported, shall be delivered to ESCNJ on the 15<sup>th</sup> of the month, shall include a minimum of the fields listed below and shall allow for sorting on any of these fields:
  1. Date of order.
  2. The name of the New Jersey Participant.
  3. ESCNJ Bid Number
  4. ESCNJ Co-op Number (New Jersey State Approved Cooperative Pricing System #65MCESCCPS)
  5. List (or academic) price sales totals.
  6. New Jersey Participant price sales totals.
  7. New Jersey Participant savings totals to be sent to the ESCNJ in summary and to each individual New Jersey Participant.
5. Quarterly reports and administrative fee payments are to be made payable to ESCNJ and sent to ESCNJ, 1660 Stelton Road, Piscataway, NJ 08854, Attn: Patrick M. Moran, or such other address that ESCNJ will provide from time to time.
6. If no purchases are made in any given quarter, the Contractor shall remit a "No Activities" statement to ESCNJ for that quarter. The Contractor will also produce and provide to ESCNJ an annual summary report for all purchases made under each contract awarded by ESCNJ pursuant to this document for a period beginning with the award of the contract and ending December 31 and all consecutive annual periods, if the contract is extended.
7. New Jersey School Districts and other eligible New Jersey Participants are normally exempt from sales tax. The Contractor/Vendor should confirm this exemption and collect a tax-exempt letter from each New Jersey Participant.

#### **C. Members Purchasing Under the Agency**

There are 584 operating school districts in New Jersey and all are eligible for membership. No district is obligated to use these services. Additional New Jersey Participants may include other public educational institutions, public colleges or universities, community colleges, vocational or technical schools, municipal governments, and other governmental, quasi-governmental, or non-profit organizations. The ESCNJ Cooperative Pricing System currently has 1,300+ New Jersey Participants located in all 21 Counties of the State of New Jersey.

#### **CONFLICT OF INTEREST**

An ESCNJ employee (including independent contractors for purposes of this definition) placing an order or recommending a vendor must disclose any relationship with that vendor which would not be considered an "arms-length" or independent transaction. This disclosure must be made in writing to the Business Administrator and/or Chief Financial Officer for an evaluation. The Business Administrator and/or the Chief Financial Officer will respond to this disclosure in writing.

For a transaction to be considered "arms-length" or "independent", an ESCNJ employee should not be influenced, dependent upon, guided or controlled by a vendor into choosing that vendor, or item to purchase; nor should it appear to a third party that an ESCNJ employee made a purchasing decision which appears to be based upon a personal relationship between the ESCNJ employee and vendor.

The following are examples when a transaction is NOT considered arms-length or independent: (1) when there exists a personal relationship between an ESCNJ employee and a vendor, (2) when there exists the potential for a personal benefit to an ESCNJ employee, or (3) the parties to a business deal are dependent upon one another for "something" other than the purchase itself.

The Contractor shall disclose any relationship with an ESCNJ employee that would not be considered an "arms-length" or independent transaction, as described above. This disclosure must be made in writing to the Business Administrator and/or the Chief Financial Officer for an evaluation. The Business Administrator and/or the Chief Financial Officer will respond to this disclosure in writing.

In addition, the Contractor shall, if given a copy of the potential New Jersey Participant's conflict of interest policy, follow the process in that policy, or otherwise disclose to a potential New Jersey Participant any relationship that would not be considered an "arms-length" or independent transaction with that New Jersey Participant, as described above. This disclosure must be made in writing to the chief official (for example, the Superintendent at a board of education) at the potential New Jersey Participant.

Determination of the existence of a conflict of interest does not prohibit ESCNJ and/or a New Jersey Participant from entering into the contract and purchase order, respectively.

**American Goods - American Goods Clause—N.J.S.A. 18A:18A-20 - American goods and products to be used where possible**

All contracts for work for which it will pay any part of the cost or work which by contract it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available, to be used in such work.

**Anti-discrimination** - All parties to any contract with the ESCNJ agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

**Debarment/Suspension - N.J.A.C. 17:19-1.1 et seq.** The ESCNJ will not enter into a contract for work with any person, company or firm that is on the State Department of Labor and Workforce Development; Prevailing Wage Debarment List, or the State of New Jersey Consolidated Debarment Report ([www.state.nj.us/treasury/debarred](http://www.state.nj.us/treasury/debarred)) or the Federal System for Award—SA ([www.state.nj.us/treasury/debarred](http://www.state.nj.us/treasury/debarred)) or the Federal System for Award—SA

**For Time and Material bids - DPMC** - There is a non-refundable fee of \$100.00 which must be submitted to the State with your application. All payments must be made on company checks (no-cash) made payable to "Treasurer, State of New Jersey". No application will be processed without the fee. If you have any questions, please contact the Contractor Classification unit by accessing the DPMC web site at [www.state.nj.us/treasury/dpmc/](http://www.state.nj.us/treasury/dpmc/). NOTE: It is suggested that a photocopy of this completed form be retained for your records. Please submit the completed application and all required documentation to the Treasurer, State of New Jersey. Upon review and approval of this application, your firm will be notified by mail of the effective and expiration dates, type of work, and rating assigned to your firm. Please submit your certificate with your bid package.

Any contractor who submits a bid for a public works contract the amount which exceeds **\$20,000**, pursuant to N.J.S.A. 18A:18A-26, 27 et seq., shall be classified by the Department of Treasury, Division of Property Management (DPMC) as to the type of work and trades (character) and the aggregate rating (amount) of public work they are qualified to submit bids.

The ESCNJ may only accept bids from contractors that are qualified.

**Notice of Classification—DPMC-27**

The Notice of Classification is a document issued by the DPMC that provides the following information about the qualified contractor:

- Trade(s) classification held by the contractor

The contractor is classified by the trade and trade number as found in Form DPMC-27. For example

Trade Number	Trade
C030	Plumbing
C032	HVACR

The contractor is therefore qualified to submit bids (exceeding \$20,000) to the board of education that pertain to plumbing and heating, ventilation, air conditioning and refrigeration.

**For Time and Material Bids Equipment Certification 18A:18A-23.** A certificate showing that the bidder owns, leases, or controls all the necessary equipment required by the plans, specifications and advertisements under which bids are asked for and if the bidder is not the actual owner or lessee of any such equipment, his certificate shall state the source from which the equipment will be obtained, and shall be accompanied by a certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.

**For Time and Material bids - Total Amount of Uncompleted Contracts - DPMC 701**

This document is completed by the contractor submitting a bid, on the form provided by the DPMC. The document lists the

amount of uncompleted contracts held by the contractor and a certification that the amount of uncompleted contracts, added to the bid amount for the ESCNJ Participant project, does not exceed the Aggregate Amount rating as assigned by the DPMC.

**For Time and Material bids - Pre-Qualification Affidavit/No Material Adverse Change**

Pursuant to N.J.S.A. 18A:18A-32, no bidder is qualified to bid on any public work contract unless they provide an affidavit that there has been no material adverse change in his qualification information pursuant to N.J.S.A. 18A:18A-28.

**For Time and Material bids - Prevailing wages; Alterations and repairs** - The State of New Jersey Prevailing Wage Act, Chapter 150 Laws of 1963 with applicable statewide wage rates and for the wage rates for the county of the location of the New Jersey Participant, as published by the Department of Labor and Workforce Development in conformance with N.J.S.A. 34:11-56-25 et seq. Copies of these wage rates may be obtained from the State Department of Labor and Workforce Development, and/or viewed at <http://lwd.dol.state.nj.us/> the Prevailing Wages Determination Section.

**For Time and Material bids - Compliance with New Jersey Prevailing Wage Act**

Every contractor and subcontractor performing services in connection with this project, shall pay all workers a wage rate not less than the published prevailing wage rates, for the locality the work is being performed, as designated by the New Jersey Department of Labor and Workforce Development.

**For Time and Material bids - Certified Payrolls**

Every contractor agrees to submit to the New Jersey Participant a certified payroll for each payroll period within ten (10) days of the payment of wages. The contractor further agrees that no payments will be made to the Contractor by the New Jersey Participant, if certified payrolls are not received by the New Jersey Participant. It is the Contractor's responsibility to insure timely receipt by the district of certified payrolls.

**For Time and Material bids - Submission of Affidavit**

Before final payment, the contractor shall furnish the New Jersey Participant with an affidavit stating that all workers have been paid the prevailing rate of wages in accordance with State of New Jersey requirements. The contractor shall keep an accurate record showing the name, craft, or trade and actual hourly rate of wages paid to each workman employed by him in connection with this work. Upon request, the Contractor(s) and each Subcontractor shall file written statements certifying to the amounts then due and owing to any and all workmen for wages due on account of the work. The statements shall be verified by the oaths of the Contractor or Subcontractor, as the case may be.

## 19. New Mexico, Cooperative Educational Services (CES) Terms and Conditions

**Cooperative Educational Services (CES)** is the administering agency of a Joint Powers Agreement as authorized by Section 11-1-1, et. seq. NMSA 1978, which is based in Albuquerque, New Mexico, and is composed of 180 New Mexico public educational institutions (Members) such as K-12 public school districts; charter schools; colleges and universities and their branch campuses; community colleges and vocational schools; Bureau of Indian Education (BIE) schools; that are parties to the Revised and Amended Joint Powers Agreement (JPA) to establish an educational cooperative. CES was organized in 1979 as a direct response to the needs of small and rural Local Education Agencies (LEA's). CES offers numerous programs and services in the following areas: administrative support, special education services, and cooperative purchasing.

### A. CES General Terms and Conditions

**Arbitration:** This contract is subject to arbitration to the extent required by the New Mexico Procurement Code, 13-1-21 to 13-1-199. NMSA 1978.

**Assignment of CES Payments:** If the Contractor requests that its payment from CES/CES Members be issued to a third party or that a joint check be issued to the Contractor and a third party, this request must be submitted and approved by the agency prior to the Contractor accepting a purchase order. The agency reserves the right to assess a special handling charge of thirty-five dollars (\$35) per check. The special handling charge will be deducted from the amount of the invoice being paid. If the Contractor wishes to have all payments under this contract made to a third party, Contractor must state this in his response.

**Background Checks** - Per 22-10A-5 NMSA 1978, the New Mexico Public Education Department (NMPED) mandates security and background checks for individuals working and/or providing services within public school grounds and buildings. Specifically, part C of the sections states, "Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a Contractor or a Contractor's employee with unsupervised access to students at a public school." Describe how your company will comply with the CES Member's or Participating Entity's policies and procedures in regard to background checks.

**CES Members:** Are the parties to the CES Joint Powers Agreement (JPA) and consist of public educational institutions within the State of New Mexico and include public school districts as defined in NMSA 1978 § 22-1-2, State Institutions as defined in NMSA 1978 § 22-1-2, State Educational Institutions defined under Article XII, Section 11 of the New Mexico Constitution, most of the community colleges defined by the "Community College Act" as defined in NMSA 1978 § 21-13-1 et seq., their branch community colleges as defined in NMSA 1978 § 21-14-1 et seq., technical and vocational institutes defined in NMSA 1978 § 21-16-1, area vocational schools defined in NMSA 1978 § 21-17-4, off campus community colleges or instructional facilities as defined in NMSA 1978 § 21-14A-1, charter schools as defined in NMSA 1978 § 22-8A-1, Regional Center Cooperatives as set forth in Section 22-2B-1 et seq., and 638 schools and grant schools. Each public educational institution is authorized by its governing body and the Procurement Code 13-1-135 NMSA 1978 to enter into cooperative purchasing agreements, pursuant to Sec. 11-1-1 et seq. 1978 Comp. and Sec. 108 of Ch. 65 of the Laws of 1984 (The Procurement Code).

**CES Participating Entities:** Is defined as non-public educational agencies and/or organizations classified as follows, that may participate in and purchase tangible personal property, professional, non-professional and construction services through their cooperative purchasing agreement with CES.

1. Federal Agency [25 USC 3001 (4)] is defined as any department, agency, or instrument of the United States, any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of government, including the Executive Office of the President or any independent regulatory agency established through legislative and/or administrative action.
2. State Agency [13-1-90 NMSA 1978] is defined as any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or office of the executive, legislative or judicial branch of the government of this State. "State agency" includes the purchasing division of the General Services Department (GSD) and the state purchasing agent but does not include local public bodies.
3. Local Public Body [13-1-67 NMSA 1978] is defined as a political subdivision of the State and the agencies, instruments and institutions thereof, including: two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code [13-1-28 NMSA 1978].
4. Non-Profit, Non-Public Educational Institutions and other Non-Profit Organizations (Section 501(c)(3) of the Internal Revenue Code, Federal Tax Code) is defined as charitable, religious, educational, public service, support and scientific organizations, entities, corporations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of the Federal Tax Code.

**CES Supplemental Packet:** Upon acceptance and approval of the Contractor's offer by AEPA, CES will independently consider the offer and issue a Contractor's supplemental packet requesting specific information necessary to enter and execute a contract in the state of New Mexico including information relating to: the Contractor's qualifications; ability to conduct business in the state of New Mexico; and who will be coordinating, promoting, receiving, and processing orders; and providing the prime Contractor's goods and services in New Mexico. Once the prime Contractor provides this information, CES will review, seek clarification (if needed), and conduct a Contractor conference to complete the contract execution process.

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

**Civil and Criminal Penalties:** The New Mexico Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**Commencement Date/Substantial Completion Date:** CES's purchase order establishes the Notice to Proceed. The Substantial Completion Date refers to a stage of a construction or building project or a designated portion of the project that is sufficiently complete, in accordance with the construction contract documents, so that the owner may use or occupy the building project or designated portion thereof for the intended purpose. The allowed duration for each project will be determined by the Contract Documents between the CES Agency and the Contractor.

**Confidential Information and Disclosure of Proposal Contents:** For the purposes of this procurement, the provisions of the "New Mexico Inspection of Public Records Act" (NMSA 1978, Chapter 14, Article 2) will be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection. Proposers are reminded, that while trade secrets and other proprietary information they submit in conjunction with this procurement may not be subject to public disclosure, protections must be claimed by the proposer at the time of submission of its Technical Proposal. Proposers should refer to the New Mexico Inspection of Public Records Act for further clarification.

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of your proposal. Your cost proposal will not be considered confidential under any circumstance. Any proposal copyrighted or marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

The Proposer must clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as "confidential" in order to claim protection, if any, from disclosure. The proposer shall provide a sheet with the following legend, specifying the specific section(s) of his proposal sought to be restricted in accordance with the conditions of the legend:

*"The data contained in pages \_\_\_\_ of the proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Proposer as a result of or in connection with the submission of this proposal, CES and its Members and Participating Entities shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit CES and its Members and Participating Entities the right to use or disclose data obtained from any source, including the proposer, without restrictions."*

Further, to protect such data, each page containing such data shall be specifically identified and marked "CONFIDENTIAL". Within the required electronic submission, any item marked as confidential will need to be submitted in a separate folder marked "Confidential information".

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 Contractor will be informed in writing of such determination. Contractor may object in writing within five (5) days after notification of determination, no disclosure will be made and the bid response may be rejected.

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

**Contractor:** As defined in Construction Industries Licensing Act, 60-13-1 NMSA 1978: "contractor" means any person who undertakes, offers to undertake by bid or other means, or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes constructing, altering, repairing, installing or demolishing any: road, highway, bridge, parking area or related project; building, stadium or other structure; airport, subway or similar facility; park, trail, bridle path, athletic field, golf course or similar facility; dam, reservoir, canal, ditch or similar facility; sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; sewerage, water, gas or other pipeline; transmission line; radio, television or other tower; water, oil or other storage tank; shaft, tunnel or mining appurtenance; leveling or clearing land; excavating earth; air conditioning, conduit, heating or other similar mechanical works; electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act.

The Act includes subcontractor and specialty contractor; and includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer and other consultants required for the building project; and who utilizes their skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction.



**Contractor Invoice:** The Contractor will send an invoice to CES or a CES Member after the delivery of goods and/or services. Goods and services will be invoiced at current contract pricing approved by AEPA including the 2% administrative fee and if applicable, the local New Mexico Gross Receipts Tax.

**Contractor's Quote to CES Member or Participating Entity:** When preparing a proposal under a CES awarded contract, the Contractor must clearly identify and break out supplies, materials, equipment, services, labor, and local New Mexico Gross Receipt Tax into individual line items as they appear on the Contractor's awarded price schedule or pricing methodology. Stated prices must include the CES two percent (2%) administrative fee. All costs associated with preparing cost proposals and job orders shall be the responsibility of the Contractor and must be based on a detailed scope of work and in compliance with an approved pricing methodology.

**Credit Hold:** The Contractor must agree not to place CES, its Member or Participating Entity on "credit hold" without ten (10) days advanced notice in writing to all parties, by letter or e-mail. Before CES can pay a Contractor's invoice, it must collect payment from the CES Member or Participating Entity 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.

**Disclosure of Confidential Information:** Any confidential information provided to the Contractor by CES, its Members or Participating Entities or developed by the Contractor based on information provided by CES, its Members or Participating Entities in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of CES, its Members or Participating Entities. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to CES, its Members or Participating Entities within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to CES, its Members or Participating Entities will result in direct, special and incidental damages.

**Indemnification:** To the fullest extent permitted by law, Contractor must, defend, indemnify and hold harmless CES, its Members, its Participating Entities, its officers and employees, against any and all liability, claims, demands, actions, damages, losses, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, government action and all expenses, including attorneys' fees and litigation expenses, demands or expenses asserted by a third-party, caused by, or resulting from, Contractor's and/or its employees, act(s) or omissions(s) while Contractor, and/or its employees, perform(s) or fails to perform its obligations and duties under this agreement or acts or omissions occurring outside of this agreement. Any equipment or facilities damaged by Contractor's operation shall be repaired and/or restored to their original condition at Contractor's expense. Contractor shall at all times keep in force liability insurance limits as outlined in this solicitation. Failure to maintain current coverage in the amounts stated may result in termination of this agreement. CES shall be named as a co-insured on the insurance policy and the policy shall provide that the policy cannot be modified or cancelled without the approval of CES.

"This provision shall survive any termination of this Agreement. Contractor will promptly advise CES in writing of any action, administrative or legal proceedings or investigation as to which defense and indemnification shall apply."

**Indemnification Intellectual Property:** The Contractor shall defend, at its own expense, CES, its Members and Participating Entities against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against CES, its Members and Participating Entities based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse CES, its Members and Participating Entities for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, CES, its Members and Participating Entities shall:

1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
2. Allow the Contractor to manage the defense and settlement of the claim as permitted by law; and
3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

**CES, its Members and Participating Entities Rights:** If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

1. Provide CES, its Members and Participating Entities the right to continue using the product or service and fully indemnify CES, its Members and Participating Entities against all claims that may arise out of CES, its Members and Participating Entities use of the product or service;
2. Replace or modify the product or service so that it becomes non-infringing; or
3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by CES, its Members and Participating Entities to the extent such modification is the cause of the claim

**Insurance:** On contract award, the Contractor will, at its own expense, purchase and maintain insurance that will protect it from claims that may arise out of or as a result from its activities under this contract, where those activities are performed

by it, by any Subcontractor, by anyone directly or indirectly employed by any of the Contractors or by anyone for whose acts the Contractor may be liable during the entire performance period of this contract. The Contractor must furnish a Certificate of Insurance to the CES procurement officer prior to official award. If policy changes occur during the life of the contract, it is the Contractor's responsibility to provide updated proof of coverage to the CES procurement officer.

1. Will provide to CES proof of coverage under the Workman's Compensation Insurance, as required by the Labor Laws and New Mexico Statutes.
2. Bidders will submit a certificate of general liability insurance for personal injury, occupational disease, sickness or death, and property damage. Insurance will include "occurrence" claim provisions. Minimum acceptable coverage is one million dollars (\$1,000,000) combined single limit for bodily injury and property damage, or seven hundred fifty thousand dollars (\$750,000) bodily injury and two hundred fifty thousand dollars (\$250,000) property damage (each occurrence). **The Contractor will name CES and the CES Member as co-insured up to the limits of the Tort Claims Act.**
3. Will provide to CES a certificate of comprehensive vehicle liability insurance, for both owned and non-owned vehicles, shall be one million dollars (\$1,000,000) per occurrence combined single limit for both personal injury and property damage.
4. If required for professional services, will provide a certificate of errors and omissions insurance for damages caused by an error, omission, or any negligent acts caused by the Contractor and its Subcontractors in the performance under this agreement. Combined single limit per occurrence is one million dollars (\$1,000,000) and the annual aggregate limit of not less than two million dollars (\$2,000,000). The bidder will provide "tail" coverage at the completion of any contract entered into by CES or its Members for a minimum of 12 months, or the maximum time period reasonably available in the marketplace. The Contractor shall furnish certification of "tail" coverage as described following contract completion. This will be a condition of the final acceptance of work or services.
5. In addition, Contractor must provide, upon request, identical certification of insurance to any CES Member or Participating Entity using this contract. Prior to commencing any work, all Subcontractors must procure and maintain at its own expense until final acceptance of the work, written insurance coverage, and insurer's acceptance to the prime Contractor. All Subcontractors will provide workers' compensation insurance, which waives all subrogation rights against the prime Contractor and CES/CES Member/Participating Entities.

**Lease and Rentals:** Contractor can allow CES Members to enter into rent, lease or lease/purchase agreements, providing such agreements are in compliance with 6-6-12 NMSA 1978 Exemption from Bateman Act, 13-1-67 NMSA 1978 Definition; local public body, and Public Education Department policies, rules and regulations. CES will not collect lease payments. Contractor 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. Contractor 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 Contractor sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original Contractor.

As required by New Mexico law, the lease agreement with the CES Member or Participating Entity will need to contain a termination provision for Non-Appropriation of Funds. In the event no funds or insufficient funds are appropriated and budgeted by CES, its Members or Participating Entities (Lessee) governing body or are otherwise unavailable in any fiscal year for the payment of lease and other amounts due under any lease, the lease shall terminate on the last day of the fiscal period for which appropriations were received or other amounts are available to pay amounts due under the lease without penalty or expense to the Lessee. It is the decision of CES, its Members, or Participating Entities to determine the sufficiency of funds, which determination shall be accepted by the Lesser and is final. The Lessee shall give the Lesser or its Assignee written notice at least thirty (30) days in advance of such occurrence.

**Legal Remedies:** All claims and controversies are subject to the New Mexico Procurement Code, NMSA 1978, and Sections 13-1-21 through 13-1-199.

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

**Local Representation:** Depending on the type and level of products and services offered, the Contractor must demonstrate their sales, support, and service staff are physically located where they can respond to and deliver services in a timely and cost-effective manner.

**Manufacturer Endorsement:** The Contractor must demonstrate it is an authorized distributor of the products and services offered, has access to manufacturer's technical support and warranty services, and possesses the certifications required to install, configure, and maintain the products offered within the state of New Mexico.

**New Mexico Procurement Code:** Sections 13-1-21 through 13-1-199 NMSA 1978 may be cited as the "Procurement Code".

**Offer Acceptance Period to Execute a Contract with CES:** In order to allow CES the opportunity to evaluate the bids approved by AEPA, CES requires that the AEPA approved Contractor submit to CES a complete electronic copy of its response to AEPA's solicitation with original signatures within fifteen (15) days of CES's request. CES will issue its supplemental packet within thirty (30) days after receipt and review of the approved Contractor response. The approved Contractor will have fifteen (15) days to return the CES supplemental packet. After CES receives the request information in

the supplemental packet, CES issue a contract for the products and services as approved by AEPA.

**Ordering Process:** Contractor agrees to adhere to CES' ordering process(es).

**Ownership of Materials and Documents:** CES, its Members or Participating Entities shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tools (hereafter "**materials**") which are originated or created through Contractor's work pursuant to this Contract. Contractor, for valuable consideration herein provided, shall execute all **documents** necessary to assign and transfer to, and vest in CES, its Members or Participating Entities all Contractor's rights, title and interest in and to such original **materials**, including any copyright, patent and trade secret rights which arise pursuant to Contractor's work under this Contract.

**Patent and Copyright Infringement:** Contractor will, at their expense, defend CES and its Members and Participating Entities 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 and Participating Entities are involved by any party in any way, the same provisions that apply to CES in this paragraph will apply to the CES Member or Participating Entity. 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 or Participating Entity to continue using the equipment and/or software, or to replace or so modify 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 or Participating Entity to return the equipment or software on written request by Contractor at Contractor's expense.

Contractor agrees to refund CES, its Members or Participating Entities 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 or Participating Entities, 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 or Participating Entity's modification of the equipment or software or combination, operation or use with apparatus, data or programs not furnished by Contractor. However, one Member's or Participating Entity's action will not preclude Contractor's obligation to others not having modified their equipment or software.

**Payment by CES:** CES will make every effort to collect payment from Members or Participating Entities for the purchase of goods and services within thirty (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 forty-five (45) days shall not be considered. CES must first receive payment from the Member or Participating Entity 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 public agencies always pay, but many are slow in processing payments.

**Payments by Member or Participating Entities:** For the purchase by a Member or Participating Entity directly from the Contractor for goods and services that have been received and accepted. Payment from the Member or Participating Entity to the Contractor will be made within forty-five (45) days after the receipt of a correct invoice, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. If a dispute arises or an agency's account becomes delinquent, the Contractor is encouraged to contact and request assistance from CES. Any offer that requires payment in less than forty-five (45) days shall not be considered.

**Payment of Administrative Fee:** When a CES Members or Participating Entities issue payment directly to the Contractor for goods and services received and accepted. The Contractor will, upon receipt of payment from a CES Member or Participating Entity, issue payment to CES for an administrative fee in an amount equal to two percent (2%) of the total invoice amount.

**Price List:** The AEPA Contractor will submit to CES and/or its Members and Participating Entities (if requested) or make available on its website all applicable pricing for all products and services proposed, approved, and awarded under this solicitation. Price lists submitted must be in accordance and comply with the AEPA's terms, conditions, and the requirements of the CES purchasing process utilized to facilitate eligible procurement agencies' staff to place and process orders. When utilizing any of the pricing methodologies identified and required within this solicitation, such discounts and pricing will include the CES two (2%) percent administrative fee, must be submitted in the format required, and can be

audited by CES.

**Public Record:** All documents associated with this AEPA contract will become the property of CES and be a matter of public record available for review, after the final award notification according to the "New Mexico Inspection of Public Records Act" (NMSA 1978, Chapter 14, Article 2). All proposals may be reviewed under the supervision of CES staff by appointment, from 9:00 a.m. to 4:00 p.m., Monday through Friday, at 4216 Balloon Park Road NE, Albuquerque, New Mexico, 87109.

**Safety Measures:** Contractor will comply with all federal and state of New Mexico safety regulations.

**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.

**Smoking:** All Contractors and subcontractors must adhere to CES Member or Participating Entity smoking policies.

**Taxes:** Prices offered will not include applicable State of New Mexico Gross Receipts Tax (NMGR). All applicable NMGR must be listed as a separate line item on all invoices. No gross receipts taxes can be collected on delivery charges to the agency's location.

1. There is no NM State Gross Receipt Taxes NMGR applied to the price of non-construction supplies, materials, and equipment.
2. There will be NM State Gross Receipt Taxes NMGR applied to any non-construction services, software, software licenses, and professional services based on the location of the provider.
3. There will be NM State Gross Receipt Taxes NMGR applied to any construction product and/or service based on the physical location of the construction site.
4. Indian Reservation or Tribal Tax: If goods or services are delivered to locations on a Indian reservation or purchased by tribal governments, they are subject to tribal taxes.
5. A Bidder will be required to provide tax indemnification number (CRS) issued by New Mexico Taxation and Revenue Department at time of contract award.

**Termination for Convenience:** CES can, by written notice stating the effective date, terminate the contract issued for convenience in whole or in part, at any time. CES shall pay Contractor as full compensation for performance until such termination as follows:

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

**Termination for Default:** CES reserves the right to terminate 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 or Participating Entity and then invoices them directly.
7. Any other conditions that, in the opinion of CES, warrants such action.

Upon receipt of a written notice, the Contractor will have ten (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 terminating the contract.

**Termination for 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.

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

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

5. Performing work or providing services under the contract prior to receiving a purchase order from CES for such work;
6. Accepting purchase orders based on this contract from CES Members and/or invoicing CES Members directly.
7. Fails to observe any or all of the terms and conditions of the contract.
8. Any other conditions that, in the opinion of CES, warrants such action.

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

**Termination for Non-Appropriation:** Any individual Member's or Participating Entities' project may be terminated if insufficient appropriations or authorizations do not exist due to changes in state or federal law, or because of court order, or because of insufficient appropriations made available to Members or Participating Entities governing board and/or the New Mexico State Legislature. Such termination will be effected by sending fifteen (15) days written notice to the Contractor. The CES Members or Participating Entities decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Contractor and shall be final.

## **B. Construction Terms and Conditions – For construction products and services.**

**Additional Contract:** A contract between the CES Member or Participating Entity and the Contractor for construction will be an industry standard agreement. The parties may agree to use the American Institute of Architects (AIA) General Conditions of Contract for Construction Form A201 as a guide.

### **Bonds:**

1. Upon execution of a contract between a CES Member/Participating Entity and the prime Contractor for a project with a value twenty-five thousand (\$25,000) or more, will provide performance and payment bonds from a surety company authorized to do business in New Mexico in accordance with the New Mexico Insurance Code and be a surety listed in the US Treasury Circular 570.
2. The prime Contractor will execute a performance bond in an amount equal to one hundred percent (100%) of the price specified in the contract between the CES Member or Participating Entity and the prime Contractor by a surety company authorized to do business in New Mexico in accordance with the New Mexico Insurance Code and be a surety listed in the US Treasury Circular 570. Performance bonds between the CES Member or Participating Entity and the prime Contractor will be on standard AIA or similar forms.
3. All suits for nonpayment or nonperformance will be filed as allowed under New Mexico law.
4. Any Subcontractor providing or performing one hundred and twenty-five thousand dollars (\$125,000) or more of work for an individual project, must submit to the prime Contractor a performance and payment bond equal to one hundred percent (100%) of the subcontract cost from a surety company authorized to do business in New Mexico in accordance with the New Mexico Insurance Code and be a surety listed in the US Treasury Circular 570.
5. Acceptable forms of bonds are AIA Document A310-2010 Bid Bond or NASBP that includes the same language as the AIA Document A310-2010.

**Construction:** As defined in the New Mexico Procurement Code Regulations under 13-1-40 NMSA 1978. Definition: "construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any road, highway, bridge, parking area or related project; building, stadium or other structure; airport, subway or similar facility; park, trail, athletic field, golf course or similar facility; dam, reservoir, canal, ditch or similar facility; sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; sewage, water, gas or other pipeline; transmission line; radio, television or other tower; water, oil or other storage tank; shaft, tunnel or other mining appurtenance; electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners; air conditioning conduit, heating or other similar mechanical work; or similar work, structures or installations. Construction shall also include: leveling or clearing land; excavating earth; drilling wells of any type, including seismographic shot holes or core drilling; and similar work, structures or installations.

**Construction Contractor and Subcontractor Licenses:** The prime Contractor and any Subcontractors shall possess the appropriate New Mexico Construction Industries Division (NMCID) Contractor's license required to provide the construction products services. Any Contractor using subcontractors must hold a current and appropriate Contractor's license, as defined in Construction Industries Licensing Act, 60-13-1 NMSA 1978. It is the responsibility of the Contractor to ensure that any subcontractors performing under this contract hold and maintain the appropriate Contractor's licenses as defined in Construction Industries Licensing Act, 60-13-1 NMSA 1978. The Contractor and any Subcontractors must maintain and keep current all licenses during the term of the contract.

**New Mexico Building Codes:** The Contractor when providing construction services must adhere to the most current version of the New Mexico Building Codes.

**New Mexico Construction Industries Division:** New Mexico Construction Industries Division (NMCID) is a state agency that is responsible for and enforce all licensing requirements for anyone engaged in construction-related contracting in New Mexico. This includes general construction work, electrical, mechanical, and plumbing and LP gas. The activities that are considered to be contracting in New Mexico are defined in the Construction Industries Licensing Act, NMSA 1978, Section 60-

**New Mexico Contractor Public Works Registration Requirement:** As defined in Public Works Minimum Wage Act 13-4-13.1 NMSA 1978. In order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than Sixty Thousand Dollars (\$60,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 to 13-4-17, NMSA 1978], the Contractor, serving as a prime Contractor or not, shall be registered with the New Mexico Department of Workforce Solutions. The State, or any political subdivision of the State, shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime Contractor that does not provide proof of required registration for itself. Contractors and subcontractors may register with the New Mexico Department of Workforce Solutions on a form provided by the division and in accordance with the Department of Workforce Solutions department rules.

Because this solicitation is for an indefinite quantity and the amount of work to be performed on individual projects is not known, CES is requiring that all Contractors be registered on or before the date of the proposal opening and keep their registration current during the term of the contract and all contract extensions.

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

**New Mexico Public Works Act:** Sections 13-4-1 through 13-4-43 NMSA 1978 may be cited as part of the "Procurement Code".

**New Mexico State Wage Rates:** It is the contractor's responsibility to be acquainted with the New Mexico Department of Labor's rules, regulations, procedures and requirements relating to state wage rates, and to comply with state and federal regulations regarding payment of wages on public projects. The contractor will pay state wage rates for every job performed under this contract with a total project cost of more than Sixty Thousand Dollars (\$60,000) on an individual basis. The contractor will pay all mechanics and laborers employed on the site of the project by the contractor, unconditionally and not less often than once a week, and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications.

**New Mexico State Wage Rate Documentation:**

1. The New Mexico Department of Workforce Solutions (NMDWS) requires that certain forms be completed for every project in excess of \$60,000. CES will submit for the wage decision and, upon receipt of the decision, will provide it to the prime Contractor. The Contractor is responsible for completing and submitting the required forms to the NMDWS and must provide CES with a copy of the following required forms: Notification of Award, Statement of Intent to Pay Prevailing Wages, and Affidavit of Wages Paid.
2. The prime Contractor must submit the Statement of Intent to Pay Prevailing Wages and the Notification of Award to NMDWS with a copy being mailed, faxed or e-mailed to CES, prior to the start of the project. The Affidavit of Wages Paid must be submitted to NMDWS with a copy being mailed, faxed or e-mailed to CES at the conclusion of your work on the project. The prime Contractor is responsible for ensuring that its subcontractor(s) also submit the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid to NMDWS, with a copy being mailed, faxed or e-mailed to CES.
3. CES will not make any payments until copies of the Notification of Award, Statement of Intent to Pay Prevailing Wages and for projects \$25,000 or greater until the Payment and Performance Bonds are received by CES. Final payment will not be released until CES receives a copy of the Affidavit of Wages Paid.

**New Mexico Workforce Solutions Contractor Registration Requirement:** In order to submit a bid or response to a request for proposal valued at more than sixty thousand dollars (\$60,000) or to be considered for an award of any portion of a public works project greater than sixty thousand dollars (\$60,000) and for a public works project that is subject to the Public Works Minimum Wage Act (13-4-10 NMSA 1978), the contractor, serving as a prime contractor or subcontractor, shall be registered with the New Mexico Department of Workforce Solutions, Public Works (13-4-14.1 NMSA 1978) before CES can issue a purchase order.

**Payment Retention, Progress Payments:**

1. In order to comply with New Mexico Statutes Annotated 1978, Article 28 Retainage, 57-28-1 to 57-28-11, CES will not retain any funds on progress payments during any construction projects. The prime contractor agrees to only request payment for goods and services delivered, received and accepted by the CES Member or Participating Entity.
2. Final payment of a contract, for which progress payments have been made, will not be made until the project is totally completed (including punch list items and close out document delivered), and the final application for payment is signed by the CES Member or Participating Entity, received and audited by CES.

3. If the CES Member or Participating Entity and the prime contractor agree to retainage or a substitute security, the agreement must be in full compliance with New Mexico Procurement Code and applicable laws. If a substitute security or retainage is agreed upon, written notice must be provided to all parties prior to the issuing of a CES purchase order.
4. If the CES Member, Participating Entity, or their designee issues a written statement to the contractor that the estimate of work is not approved and certified, an amount from the progress payment determined to be reasonably sufficient to cover the deficiency set forth in the written finding maybe withheld. In such cases, the contractor agrees to hold CES harmless for any deficiency of payment. If any payment is delayed beyond forty-five (45) days from the due date, the contractor agrees not to charge CES interest on the late payment

**Progress Payments for Construction:** All progress payments must be invoiced through CES. It is the responsibility of the CES using agency and/or its designee to review and approve any estimates of work completed. If the CES using agency or their designee issues a written statement to the contractor per 57- 28-5 NMSA 1978 A. "If an owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete..." In such cases, the contractor agrees to hold CES harmless for any deficiency of payment.

**Quality Control Issues:**

1. During the course of the contract, the Member's/Participating Entity's contact person may secure samples according to Construction Industries Division guidelines or industry standards of materials being used from containers at the job site and submit them to an independent laboratory for comparison to specified material.
  - a. Should test results prove that a material is not functionally equal to or better than specified, the prime Contractor will pay for all testing and any cost incurred to have materials installed to replace those found not to comply with the specifications and remove and dispose of the materials not complying.
  - b. Should test results prove that materials tested were functionally equal to the specified material, the prime Contractor will be notified of the results.
2. Should the Member/Participating Entity and the Contractor encounter a situation and/or condition that they cannot agree on or resolve during the execution of the project and/or during the project close-out process, CES has consultants under contract that either of the parties can engage to review, investigate, evaluate, and issue a written report on their findings and propose recommendations/solutions for addressing the concerns and issues.

**Site Cleanup:** Contractor will clean up and remove all debris resulting from its work as required by the CES Member or Participating Entity. The contractor shall comply with all laws and regulations governing disposal of construction and hazardous materials. Upon completion of the work, the premises will be left in a neat, unobstructed condition with everything in good repair and order.

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

**Site Preparation:** Prior to a purchase order being issued by a CES Member or Participating Entity, the size, location and site conditions that exist at the time the contractor takes possession and/or control must be clearly identified and stated in writing. The contractor will not begin a project for which the site is not prepared or in the condition agreed upon in writing by the CES Member or Participating Entity, unless contractor decides to accept the site as is and is willing to perform the preparation work necessary at no cost, or until the CES Member or Participating Entity has included the cost of site preparation in a purchase order to CES. Site preparation may include, but is not limited to, moving furniture, clearing the site, securing the site, installing wiring for networks or power and similar pre-installation requirements.

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

1. In accordance with the "Subcontractor Fair Practices Act", 13-4-31 to 13-4-42, NMSA 1978, the following information is required to be submitted with any job order project:
  - a. The name of each subcontractor who will be performing work or rendering service on the public works project and whose total contract will be the greater of:
    - i. Five Thousand Dollars (\$5,000); or
    - ii. One half of one percent (.005%) of the total project (to be estimated by the architect and/or engineer of record).
  - b. Address of the place of business
  - c. Subcontractor license number
  - d. Type of work or services to be performed by the subcontractor.
  - e. Pursuant to Section 13-4-38 NMSA 1978, if an Offeror fails to list a subcontractor in excess of the listing threshold on any job order contract, and they do not state that the provider is a sole source or that they will put all work that exceeds the threshold to individual bid each time, they are stipulating that they are fully qualified to perform the proposed products and services themselves and that they will perform all work themselves. After the specific job order contract award, any change in subcontractors must be approved by CES and the CES Eligible Agency, otherwise, the Offeror will be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided therein.



2. Subcontractor must be registered with New Mexico Department of Workforce Solutions, Public Works section.
3. CES and its Eligible Agencies reserves the right to approve, reject and replace any subcontractor proposed by the Offeror pursuant to 13-4-36 NMSA 1978.
4. Subcontractors will need to provide performance and payment bonds to prime Contractor if the sub-contract is greater than \$125,000 pursuant to 13-1-148.1.
5. Any agreements with subcontractors shall incorporate, by reference, the terms and conditions of this solicitation and each individual project contract.
6. No subcontract will be entered into with any unlicensed party. Contractor must use subcontractors openly, include such arrangements in the proposal and certify upon request that such use complies with the rules of the NMCID, New Mexico Public Works Act and New Mexico Procurement Code.
7. Subcontractor Payment: Contractor agrees to pay subcontractors in a timely manner and in accordance with the New Mexico Prompt Payment Act pursuant to 57-28-5 NMSA 1978. If Contractor receives a progress payment from CES, the Contractor will pay subcontractor(s), "...within seven days after receipt of payment from the owner, contractor or subcontractor..." pursuant to 57-28-5 C. NMSA 1978. CES will contract to provide release of liens from subcontractors within fifteen (15) days of date of payment. Failure to pay subcontractors, pursuant to 57-28-5 C. NMSA 1978, for work faithfully performed and properly invoiced can result in the suspension or cancellation of this contract.
8. Subcontractor's labor used must be of a standing or affiliation that will permit the work to be carried on harmoniously, without delay and will not cause any disturbance, interference or delay to the progress of the project. Subcontractor and lower-tier subcontractors will not employ anyone whose employment might be objected to by prime Contractor or Member.
9. It is the responsibility of the Contractor to inform all suppliers and subcontractors that this contract is a cooperative purchasing contract and that the CES Eligible Agency must make payments to CES before CES can issue progress payments to the Contractor. The Contractor must provide CES with all subcontractors and suppliers information utilized for any individual project performed.
10. Contractor and Subcontractor are responsible for obtaining background checks for any employee working on a CES project per the CES Member's background check policy.

## 20. OHIO COUNCIL OF EDUCATIONAL PURCHASING CONSORTIA (OCEPC)

### A. General Terms and Conditions that apply for all Categories:

#### **1. Compliance with Laws/Forum Designation**

Contractor shall comply with Federal, State, and Local Laws, Codes and Regulations while fulfilling the contract. It is the Contractor's responsibility to be aware of and comply with all state and local laws governing this procurement. Applicable laws, codes, and regulations (etc.) must be followed even if not specifically identified herein. Contractor shall verify to the Ohio Council of Educational Purchasing Consortia (OCEPC), its Member Agencies and other qualifying purchasers that the Contractor is complying with all Federal, State and Local Laws, Codes and Regulations while fulfilling the contract. Moreover, this contract shall be governed by and construed in accordance with the laws of the State of Ohio without giving effect to its principles of conflict of law. Legal proceedings arising under this contract shall be brought in an Ohio Court of Common Pleas of the County where the Member Agency's main office is located.

#### **2. Delinquent Tax Affidavit**

Contractor shall provide an affidavit relating to delinquent taxes as may be required by Ohio Revised Code Section 5719.042.

#### **3. Secretary of State Registration**

Contractor shall meet and maintain all registration requirements as necessary to conduct business in the State of Ohio, including but not limited to registration with the Ohio Secretary of State.

#### **4. Findings for Recovery**

Contractor warrants and represents that it is not subject to a finding for recovery under Ohio Revised Code Section 9.24, or that Contractor has taken the appropriate remedial steps required under Ohio Revised Code Section 9.24, or otherwise qualifies under Ohio Revised Code Section 9.24.

#### **5. Ohio Workers Compensation Insurance**

Contractor, and any subcontractors hired by Contractor shall, at their own expense, maintain in force for the duration of the project workers' compensation and employer's liability insurance as required by the laws of the State of Ohio.

#### **6. Project Personnel, Student Safety and Background Checks**

Member Agency shall have the right to reject the participation of any personnel of Contractor in the performance of the services if, in relation to the work assigned to them, the Member Agency deems such personnel to lack the skill, experience and expertise required to perform the services or if Member Agency considers their performance to be substandard or otherwise detrimental to the proper completion of the services. Contractor will advise Member Agency promptly of any change in the project manager or other key personnel assigned to the performance of the services.

Contractor acknowledges that the safety of the Member Agency's students, employees, officials and guests is of the utmost importance. Contractor will endeavor to ensure that its officers, employees, agents, representatives, and consultants will take no action that would jeopardize the safety of the Member Agency's students, employees, officials, or guests. The Member Agency reserves the right to require Contractor's officers, employees, agents, representatives and consultants to wear identification and stay in designated work areas at all times while on the Member Agency's property. The Member Agency shall have the right to effect the immediate removal of any person associated in any way with Contractor from Member Agency property for failure to wear identification, for being outside a designated work area, for fraternizing with or engaging in any improper behavior directed toward or in the vicinity of students, employees, officials, or guests of the Member Agency or for any other good cause.

Contractor shall perform or cause to be performed an Ohio Bureau of Criminal Investigation and Identification and Federal Bureau of Investigation criminal background check of any personnel that will be performing the services within the proximity of minors. Contractor shall notify the Member Agency of any proposed employee who has been convicted, pled guilty or pled "no contest" to a criminal offense, and the Member Agency reserves the right to reject the proposed employee with a criminal background. No person shall be employed by Contractor who has been found guilty of any of the criminal offenses enumerated in Ohio Revised Code Section 3319.39 without prior approval of the Member Agency.

#### **7. Independent Contractor**

Contractor shall be an independent contractor and neither Contractor nor any of its subcontractors, nor the employees of any thereof, shall be deemed to be the servants, employees, or agents of Member Agency. Contractor shall be responsible for paying all costs related to its employees and managers performing the services. Contractor shall remain liable and responsible to Member Agency for all of its obligations under this contract, regardless of whether the services are performed by the Contractor or a subcontractor of any tier.

## **8. Ownership of Instruments of Service**

Drawings, data and other documents prepared by, or with the cooperation of, the Contractor pursuant to this contract shall become, upon payment of all undisputed compensation due the Contractor from the Member Agency, the property of the Member Agency. Such drawings, data or other documents may be used by the Member Agency or others employed by the Member Agency without compensation to the Contractor.

## **9. Audit**

Member Agency may audit and inspect Contractor's records and accounts at any time during the Contractor's performance of the services and for a period of two (2) years following the completion or termination of the services for the purpose of verifying any invoice and underlying documentation presented by Contractor, it being understood that Contractor agrees to preserve all such documents through such two- (2) year period.

## **10. Notices**

Unless otherwise expressly provided in this contract, all notices and other communications given under the contract shall be in writing and shall be deemed effective upon receipt by the addressee at its address as set forth in the contract or at such other address as such party shall have notified the other in writing.

## **11. Non-Appropriation**

If the Member Agency fails to appropriate sufficient monies in any fiscal year for payments due under the contract and other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then Member Agency will give Contractor prompt notice of such Non-Appropriation. This contract shall thereupon terminate without penalty or expense to the Member Agency.

## **12. No Personal Liability**

It is understood and agreed that under no circumstances will the Member Agency's board members, officers, employees, or agents be personally liable for any obligations or claims arising out of or related to the contract.

## **13. Miscellaneous**

Headings and titles of articles, paragraphs and other subparts of this contract are for convenience of reference only and shall not be considered in interpreting the text of this contract.

This contract and any appendices constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto.

No contract amendments can be made without the approval of the AEPA membership.

## **B. Non-Construction Products and Services:**

### **1. Bus Purchases**

For the purchase of school buses, the successful Contractor shall provide bonds required by Ohio Revised Code Sections 153.54 and 153.571.

## **C. Construction Products and Services:**

For construction improvements, the following shall apply:

- 1.** The successful Contractor shall provide such bonds required by Ohio Revised Code Sections 153.54 and 153.571.
- 2.** Progress payments and retainage shall be in accordance with the provisions of the Ohio Revised Code including Ohio Revised Code Sections 153.12 and 153.14.
- 3.** In the event that the agreement is subject to the prevailing wage requirements of either Ohio Revised Code Chapter 4115 or the Davis-Bacon Act, then the contract between the Member Agency and the Contractor shall contain the applicable rates and such terms and provisions as may be required by law.
- 4.** Contractor shall comply with all applicable licensing requirements, including those of the Ohio Construction Industry Licensing Board.

## **D. Procedures for Processing Orders:**

The OCEPC will keep informed its Member Agencies and other qualified purchasers of contract information via web site and through other marketing strategies. A list of OCEPC Member Agencies along with addresses, phones, contacts, etc. will be made available to successful Contractors. After contracts are awarded, Contractors may contact the OCEPC

Member Agencies and other qualifying purchasers concerning their products and services.

Participating Member Agencies and other qualified purchasers will submit all purchase orders directly to the Contractor.

The Contractor price shall include a two percent (2%) administrative fee that the Contractor will collect from the Member Agency or other qualified purchaser. Administrative fees are to be remitted to the OCEPC on April 15, July 15, October 15 and January 15 of every calendar year with checks payable to the Southwestern Ohio Educational Purchasing Council, 303 Corporate Center Dr. Suite 208, Vandalia, OH 45377.

The Contractor will compile a quarterly report showing all purchases made by the OCEPC Member Agencies and other qualified purchasers under this contract at the conclusion of each calendar quarter. These reports shall be attached to the administrative fee remittance.

**E. Agencies Allowed to Purchase under Member Agency:**

All member cooperatives of the OCEPC and their individual Member Agencies are eligible to participate and purchase from the awarded AEPA contracts. All Ohio K-12 school districts, including Boards of Developmental Disabilities, Educational Service Centers, and Instructional Technology Centers, are eligible to participate and purchase from the awarded AEPA contracts. In addition, all colleges and universities, state, cities, counties, townships and other governmental agencies are eligible to participate if the AEPA contracts satisfy their individual procurement requirements.

*Revised: December 2, 2009*

*Approved: December 14, 2009*

*Reviewed: May 12, 2010*

*Revised: May 27, 2011*

*Reviewed and Approved: September 14, 2011*

*Reviewed and Approved: May 14, 2014*

*Revised and Approval: May 20, 2015*

*Reviewed and Approved: May 18, 2016*

*Revised and Approved May 17, 2017*

*Reviewed and Approved May 15, 2019*

## 21. Oregon, Intermountain Educational Service District (IMESD)

### ***A. Additional Agency Terms and Conditions – all categories***

Intermountain Education Service District (“IMESD”) is an educational service district organized under the laws of the STATE OF OREGON. Pursuant to Oregon Law ORS 279A and IMESD is authorized to cooperate with other entities and in such regard is authorized to cooperate with them in the purchasing of goods and services pursuant to these contract documents. As other entities cooperate with IMESD to take advantage of the goods and services made available pursuant to these contract documents, the terms and conditions of any such sales shall be in accordance with the contract documents.

Additionally Senate Bill 3184 enables Oregon's Education Service Districts to offer the services they provide to component school districts to other organizations. For the past 10 years, the InterMountain ESD (formerly Umatilla-Morrow ESD) has been a leader in expanding revenue available for schools and IMESD programs by providing these services outside of 19 local school districts. (Reference: [ORS 334.185](#))

Under Oregon public contracting rules, each individual public agency will have its own local rules it must adhere to, in addition to statewide public contracting laws. InterMountain Education Service District does not presume that its cooperative purchasing program will necessarily comply with every agency's internal public contracting rules. We always advise potential customers to review the bid solicitation carefully and recommend review by their legal department and/or procurement personnel to assure that contracting laws are complied with.

**ADVERTISING AND MARKETING:** Bidders must demonstrate they possess the necessary resources and have a proven track record to market, offer, obtain, deliver, install and provide the sales and technical support services to IMESD and its participating agencies within the state of Oregon in a timely and cost effective manner.

**APPLICABLE LAW AND VENUE:** Any dispute arising out of any of the contract documents, or out of their performance, shall be decided by litigation in the Circuit Court of the State of Oregon in the county of Owner's residence, the parties consenting to jurisdiction in said court and permanently waiving jurisdiction in any other court, state or federal. In the event of litigation the prevailing party shall be entitled to an award of reasonable attorney's fees and costs at trial and upon any appeal thereof. In the event that the successful bidder breaches a term of condition of a contract awarded, the IMESD may terminate the contract. In addition to the right to terminate due to the successful bidder's breach, and all other rights and remedies contained in other provisions, the IMESD reserves all its rights and remedies at law and in equity available due to the breach.

**HAZARDOUS CHEMICALS:** The Successful bidder shall supply current MSDS for all products as required below even if these sheets have been supplied in previous years.

The agencies participating on IMESD agreement will need MSDS and labels for certain products defined as hazardous chemicals by the State of Oregon in accordance with ORS 654.025(2) and 656.726(3). The successful bidder has the responsibility to determine such products and to provide MSDS and labels for such products. The MSDS shall be received by the IMESD by or at the time of the initial shipment of such products.

These requirements have been determined by the State of Oregon Workers Compensation Department, and published as Oregon Administrative Rules 437, Division 2 Hazard Communication. This document is available from Hazard Communication Coordinator, Accident Prevention Division, State of Oregon, Labor and Industries Building, 350 Winter St. NE, Salem, OR 97310, phone: (503) 378-3272 or (800) 922-2689 any local Accident Prevention Division Office.

**HOLD HARMLESS:** Bidders shall indemnify, hold harmless, and defend the IMESD from any and all liabilities, settlements, losses, penalties, costs, expenses, attorney fees (including attorney fees on appeal) in collection with any action, suit or claim based upon or allegedly based upon, resulting from or allegedly resulting from the successful bidder's negligence, omission, activities or services provided pursuant to a contract awarded to such bidder.

**LAW OF THE STATE OF OREGON:** Any contract between the IMESD and a bidder shall be entered into within the State of Oregon, and the laws of said state, whether substantive or procedural, shall apply to the contract.

In addition to any requirements listed, vendor shall comply with all, current, applicable state, federal and local laws, regulations and ordinances. If through mistake or otherwise any such provision is omitted then submission by either IMESD or the vendor-partner the contract shall be amended to make such inclusion or correction. IMESD Also reserves the right to amend the contract resulting from state law changes. Vendor-partners will be sent written notification of such changes.

**SEVERABILITY:** The parties agree that if any term or provision of a resultant contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**TAXES:** Taxes, whether State or Federal, shall not be included in bid prices. Our Employer Identification No: 93-6000924 indicated our tax exemption status as a political subdivision. Contractor must certify compliance with the Oregon tax laws in accordance with ORS 305.385 when applicable.

### ***B. Additional Agency Terms and Conditions – Non-construction Products and Services***

**None**

### ***C. Additional Agency Terms and Conditions – Construction Products and Services***

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#### **1. Prevailing wage rates/Davis-Bacon.**

As set forth in the conditions below, if this is a public works project (as defined below) Oregon State prevailing wage rates will apply unless exempted. If federal funds are being used, Bidders must take into account the need to comply with the Davis-Bacon Act. If both the federal and state prevailing wages are required the Contractor is required by law to pay the greater of the applicable prevailing wage. Pursuant to ORS 279C.365 no bid will be considered unless the bid contains a statement by the Bidder as a part of its bid that the provision of ORS 279C.840 will be complied with.

(a) If contract is \$50,000.00 or under and there are no federal funds involved the contract is exempted from prevailing wages pursuant to ORS 279C.810(2) (a).

(b) If contract exceeds \$50,000.00 and there are no federal funds involved, existing prevailing wage rate of the State of Oregon will apply. No worker may be paid by any Contractor or Subcontractor a wage less than the wage required by ORS 279C.840. Every subcontract shall include the requirements of this section. Prevailing wages, state and federal, can be seen at the websites referred to in Section 6(a), Additional Requirements of Oregon Law for Public Contracts, Public Works, and Improvements and Miscellaneous Provisions.

(c) If contract exceeds \$50,000.00 and/or federal funds are involved, unless otherwise exempted by law, Contractor shall comply with ORS 279C.800 to 279C.870 relating to the payment of prevailing wages; Contractor shall also comply with the federal Davis-Bacon Act to the extent applicable. No worker may be paid by any Contractor or Subcontractor a wage less than the wage required by ORS 279C.840 and if the state and federal prevailing wage laws both apply, Contractor shall pay as wages the great of the applicable prevailing wage. Every Subcontractor shall include the requirements of this section. Additional Requirements of Oregon Law for Public Contracts,

#### **2. Residence status of Bidder**

Each Bidder must identify in its bid whether the Bidder is a resident Bidder, as defined in ORS 279A.120.

#### **3. Licensure**

If the contract involves asbestos or asbestos abatement, the contractor or subcontractor must be licensed under ORS 468A.720.

#### **4. Bonding**

If this contract is a public improvement contract in excess of \$100,000.00, at the time of the execution of the contract, the successful Bidder shall also deliver to the Owner good and sufficient bonds endorsed on forms supplied by Owner, in sums equal to the contract price, for the faithful performance of the contract, and for the payment of all claims for labor, materials, equipment, and rental equipment that may result from work performed pursuant to the contract documents. The successful Bidder shall not be allowed to execute the contract without the concurrent delivery to the Owner of the bonds required by this paragraph on the required forms. At owner's sole discretion, Contractor shall be subject to disqualification and forfeiture of bid security for breach of this section. If Bidder is disqualified, Owner may award the contract to another Bidder.

#### **5. Subcontractor Disclosure**

Unless exempted by ORS 279C.370(1)(c) for public improvement contracts, all Bidders shall within two hours of the date and time of the deadline when bids are due submit information about certain first-tier Subcontractor when the contract value for public improvements is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier Subcontractor furnishing labor or labor and materials would be greater than or equal to:

(i) 5% of the project bid, or \$15,000, or

(ii ) \$350,000 regardless of the percentage, Bidders must disclose the following information about that Subcontractor:

(a) the Subcontractor's name, and

(b) the category of the work that the Subcontractor would be performing, and

(c) the dollar amount of the subcontract

If Contractor will not be using any Subcontractors that are subject to the above disclosure requirements, Contractor is required to indicate "NONE" on the reply form.

***THE OWNER MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE.***

#### **FIRST TIER SUBCONTRACTOR DISCLOSURE FORM**

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Project name:

Bid #:

Bid Opening Date:

Name of Bidding Contractor:

Required Disclosure Deadline:

*Bids which are submitted by Bid Closing, but for which a required disclosure submittal has not been made by the specified Disclosure Deadline, are not responsive and shall not be considered for Contract award.*

See the certification above the signature line on the second page of this form regarding the Subcontractors that must be disclosed.

The Owner will insert "NA" above if the contract value is not anticipated to exceed \$100,000. Otherwise this form must be submitted either with the bid or within two (2) working hours after the advertised bid closing date and time; but no later than the DISCLOSURE DEADLINE stated above.

This form may not be submitted by facsimile. It is the responsibility of Bidders to submit this disclosure form and any additional sheets, completely filled out and signed, by the specified disclosure deadline.

List below the name of each Subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the Subcontractor will be performing and the dollar value of the subcontract. Enter "None" if there are no Subcontractors that need to be disclosed. (Attach additional sheets if needed.)

NAME OF CATEGORY OF DOLLAR VALUE  
SUBCONTRACTOR WORK

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.*

#### CERTIFICATION

It is certified that the above listed first-tier Subcontractor(s) are providing labor, or labor and material, with a dollar value equal to or greater than:

(a) 5% of the total Contract Price, but at least \$15,000 [if the dollar value is less than \$15,000 do not list the Subcontractor above], or

(b) \$350,000 regardless of the percentage of the total Contract Price.

Form submitted by (insert Bidder name):

Contact name:

Telephone number:

#### **Additional Requirements of Oregon Law for Public Contracts, Public Works, and Improvements; Miscellaneous Provisions**

"Owner" means the public entity executing the Contract of which these provisions are a part.

"Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public Works" shall mean roads, highways, buildings, structures and improvement of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest by does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(1) In reference to ORS 279B.220 and 279C.505. Contractor shall:

(a) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in the contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or Subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.

(d) If the contract is for a public improvement, demonstrate to Owner that Contractor has an employee drug testing program in place.

(e) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) In reference to ORS 279C.515 regarding contracts for public improvements:

(a) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract.



(b) If the contract is for a public improvement and if the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract within thirty days after receipt of payment from the Owner or a Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty days after the date when payment was received from the Owner or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.

(c) If the contract is for a public improvement, or is related to a contract for a public improvement, and if the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract, that person may file a complaint with the Construction Contractor's Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(d) The payment of a claim in the manner authorized in this section of this contract shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid claims.

(3) Relating to ORS 279B.020 and ORS 279C.520. Contractor shall comply with ORS 279B.020 and ORS 279C.520 in their entirety (when applicable), and in this regard:

(a) No person shall be employed for more than ten hours in any one day, or forty hours in any one week except in cases of necessity, emergency, or where the Owner absolutely requires it, and in such cases, the employee shall be paid at least time and half pay:

(i) For all overtime in excess of eight hours a day or forty hours in any one week when the work week is five consecutive days, Monday through Friday; or

(ii) For all overtime in excess of ten hours a day or forty hours in any one week when the work week is four consecutive days, Monday through Friday; and

(iii) For all work performed on Saturday, Sunday, and on any legal holiday specified in ORS 279B.020 and 279C.540.

(iv) Contractor shall comply with the notice and posting requirements of ORS 279B.020 and 279C.520(2). Contractor shall pay employees for overtime work performed under this Contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq.).

(4) If the contract is for a public improvement, Contractor shall at its sole expense comply with any and all applicable statutes or ordinances, and all regulations of any agencies, whether federal, state, local or tribal, dealing with the prevention of environmental pollution and the preservation of natural resources including without limitation water that affect the performance of this contract.

*The following agencies, as well as others, may have pertinent regulations:*

Federal: Army Corps of Engineers, Federal Energy Regulatory Commission, Environmental Protection Agency, Dept. of Human and Health Services, Dept. of Interior including but not limited to the US Fish and Wildlife Service, Department of Labor, and Water Resources Council.

State: Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Human Resources, Soil and Water Conservation Commission, and Oregon Water Resources Department.

Local: City and County wherein the project is to be undertaken.

Tribal: Confederated Tribes of the Umatilla Indian Reservation.

(5) In relation to ORS 279B.230 and 279C.530, Contractor shall comply in their entirety, and in this regard:

(a) Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(b) All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

(6)

(a) If the contract is for public works and is over \$50,000, Contractor, unless otherwise exempted by law, shall comply with ORS 279C.800 to 279C.870 relating to the payment of prevailing wages; Contractor shall also comply with the

federal Davis-Bacon Act to the extent applicable. The prevailing rates of wage, state and federal, made available on the internet are hereby incorporated by reference; they may be seen at various sites including at [www.boli.state.or.us/BOLI/WHDPWR](http://www.boli.state.or.us/BOLI/WHDPWR) and [www.access.gpo.gov/davisbacon/or.html](http://www.access.gpo.gov/davisbacon/or.html). If the state and federal prevailing wage laws both apply, Contractor shall pay as wages the greater of the applicable prevailing wage. Contractor shall comply with all wage reporting and certification requirements of the prevailing wage laws and/or the Davis-Bacon Act, as applicable.

(b) Before starting Work the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond

(7) The following apply to contracts for public improvements:

(a) Contractor shall comply with ORS 279C.580, dealing with Contractor's relations with Subcontractors. Without limiting the generality of the foregoing, in this regard Contractor shall include a clause in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purposes of performing the contract:

(i) that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner; and

(ii) that obligates the Contractor, if payment is not made within thirty days after receipt of payment from the Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause required by the preceding paragraph. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and shall be computed at the rate specified in ORS 279C.515(2).

(b) Contractor shall include in each of its subcontracts, for the purpose of performance of work in relation to project, a provision requiring the first-tier Subcontractor to include a before clause and an interest penalty clause conforming to the foregoing standards in each of its contracts and to require each of its Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor or supplier.

(c) Nothing stated herein shall be construed to preclude the negotiations allowed pursuant to ORS 279C.580(5).

(8) If any work supplied pursuant to the contract requires licensing with the Construction Contractors Board or the State Landscape Contractors Board, Contractor must be so licensed in order to submit a bid for the contract, and Contractor and all relevant Subcontractors must remain licensed during the period required for performance. Contractor certifies that all Subcontractors and workers will be properly licensed to perform the work required by this Contract before their commencement of work.

(9) If this contract is for public improvements, then retainage in the amount of 5% of the amount due shall be withheld in accordance with Oregon laws, including ORS 279C.550 et seq.

(10) If this contract is for a public improvement, and unless exempted by resolution of the Owner, Contractor shall comply with ORS 279C.380 and execute and deliver to Owner a good and sufficient performance bond and payment bond to be approved by Owner in a sum equal to the contract price.

By way of supplement to, and equally binding as, all of the foregoing:

(10.1) Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.

(10.2) Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

(a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110).

(b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

(10.3) Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.

- (10.4) Unless contrary to federal law, Contractor shall certify that each landscape Contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape Contractor's license issued pursuant to ORS 671.560.
- (10.5) The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- (11) Contractor must certify compliance with the Oregon tax laws in accordance with ORS 305.385 when applicable.
- (12) Upon receipt by Contractor of any notice or claim, pursuant to ORS 279C.600 et seq (concerning action against bonds) Contractor shall immediately notify Owner in writing.
- (13) Unless agreed to by Owner in writing, Contractor may not assign, transfer, dispose of, or delegate its duties under the contract.
- (14) Contractor shall be responsible for compliance with all local, state, tribal, and federal laws, applicable to any aspect of the work to be performed. It shall be Contractor's responsibility to determine the applicability and requirements of any such laws and to abide by them. Contractor shall indemnify, defend, and hold harmless Owner for any default or breach of Contractor in this regard.
- (15) The submission of a bid for this contract is certification by Contractor that Contractor has not discriminated and will not discriminate in violation of ORS 279A.110 against any minority, women, or emerging small business enterprises in obtaining any required subcontracts.
- (16) If this contract is a public improvement contract for demolition, Contractor shall salvage or recycle constructions and demolition debris if feasible and cost-effective.
- (17) If this contract is a public improvement contract for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- (18) Any dispute arising out of any of the contract documents, or out of their performance, shall be decided by litigation in the Circuit Court of the State of Oregon in the county of Owner's residence, the parties consenting to jurisdiction in said court and permanently waiving jurisdiction in any other court, state or federal. In the event of litigation the prevailing party shall be entitled to an award of reasonable attorney's fees and costs at trial and upon any appeal thereof.

#### ***D. Procedure for Agencies Processing Orders under IMESD in Oregon***

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Once the award is made to the vendor, IMESD will market these contracts by: 1) including the contract on the IMESD website, 2) announcing the award in flyers, and 3) attending vendor events throughout school year. A list of schools, contact names, addresses and phone number can be accessed through the Oregon Department of Education website. At this point the vendor contacts schools and schools may contact the vendor. When the school/agency identifies a product or services and agrees on price it issues to Vendor a purchase order for that item or service, referencing the AEPA Bid number. The purchase order must include an additional one percent (2%) administrative fee in the total to be forwarded by the vendor to IMESD after the sale. All participating vendors agree to and are subject to audit proceedings of IMESD member sales.

Upon receipt of the purchase order, the vendor provides the goods or service listed on the purchase order. It is important to remember the vendor makes delivery to the member unless other arrangements are made in cooperation with IMESD. When all items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, vendor then invoices the member for the goods and service. This invoice includes the additional one percent (2%) administrative fee to the total amount invoiced of the goods or service provided by the vendor. This percent is based on the total sales of goods or services. The member then pays the vendor including the one percent (2%) administrative fee. IMESD then invoices the Vendor for the 2% administrative fee based on the sale of goods and services collected by the vendor.

#### ***E. Agencies Allowed to Purchase under IMESD in Oregon***

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The InterMountain Education Service District (IMESD) participates in a national non-profit organization, the Association of Educational Purchasing Agencies (AEPA), which is a procurement vehicle. The mission of IMESD's involvement with AEPA is to cooperatively serve Oregon state agencies members through a continuous effort to explore and solve present and future purchasing needs. AEPA goals include working to secure multi-state volume purchasing contracts with benefits that are measureable, cost-effective and continuously exceed our state member's expectations. InterMountain Education Service District is the member agency representing Oregon in AEPA through an IMESD board approved Memorandum of Understanding between all participating states that are all political subdivisions related to K-12 education. All AEPA bids have been advertised by IMESD in Oregon.

Pursuant to Oregon Law, ORS 279A, InterMountain Education Service District is authorized to offer these contracts to other government entities including school districts, state universities, community colleges, special districts, local and state government.

There is no fee or annual dues to become an IMESD agency member to purchase. InterMountain Education Service District's contract management efforts are funded by a nominal administrative fee paid by the vendor based on sales volume.

## 22. Pennsylvania, Central Susquehanna Intermediate Unit d/b/a Keystone Purchasing Network

### **A. Additional Member Agency General Terms and Conditions that apply to all categories**

The Keystone Purchasing Network (KPN) is a cooperative purchasing program operated by the Central Susquehanna Intermediate Unit under various state inter-governmental cooperation laws and includes members in several east coast states that currently includes Pennsylvania, Maryland, District of Columbia, New Jersey, New York and Delaware. All applicable Local, State and Federal laws and regulations will apply to any purchases of equipment, services or construction in any of these states and to other states that may be added under the KPN membership throughout the term of these contracts.

**Marketing and Advertising under this Agreement:** Vendor will actively promote the resulting contract in Pennsylvania, Maryland, District of Columbia, Delaware and New York States. Vendor will comply with the AEPA Marketing program along with the requirement listed below.

1. Vendor will include the approved KPN logo, web address, contract number and toll free number in all print electronic mail and other advertising and promotion intended for release to PA, MD, DC, DE and NY excluding national marketing releases.
2. The KPN logo and associated KPN information shall be of a clearly readable size and in appropriate proportion to other elements in the printed material.
3. Vendor agrees to provide KPN with a copy or proof sheet of the advertisement or promotion material. Vendor will provide KPN with date of release and name of publication, journal, etc.
4. Vendor shall place a supplied KPN vendor sign on booths, tables, etc. of any or all exhibits for which the vendor displays/participates at tradeshow, conventions and the like. Vendor will supply in advance scheduled exhibit dates. Vendor agrees to make available at the exhibit KPN supplied brochures or other promotion materials.
- e. Vendor agrees to insert the approved KPN logo, web address, contract number and toll free number on the vendor's web site promoting or a specific KPN landing page and providing a link to the KPN website.
- f. Vendor will supply product catalog information, product description, pricing, etc., in a spreadsheet format as specified by KPN for inclusion on the KPN website.
- g. Vendor agrees to cooperate in developing appropriate website content to promote its products, services and their advantages to KPN members.
- h. Requested materials will be submitted to KPN within 30 days.

**Pricing and Ordering:** Vendor will provide all pricing information in an electronic format and/or setup an electronic ordering system that would show the current contract prices along with the KPN administrative fee of 2% or as adjusted by the KPN. In the case of electronic ordering, the KPN would have administrative reporting capabilities with an online ordering system. The KPN administrative fee will apply to all purchases, installation, total lease, total rental prices and all construction and installation and annual maintenance fees and will be included in the net price offered to the purchasing agency.

### **B. Additional Member Agency General Terms and Conditions for Non-Construction Products and Services**

None

### **C. Additional Member Agency General Terms and Conditions for Construction Products and Services**

**The following items refer to all projects involving construction or construction related services:**

Vendor and/or Contractor agrees that, in performance of the services required under this Agreement, Vendor and/or Contractor shall abide by all Federal, State, Local, and Pennsylvania Department of Education laws, and regulations that may apply to renovation under this bid, including, but not limited to, those listed below. Vendor and/or Contractor shall also abide by the state and local laws and regulations of other states where a member is located. It is the responsibility of the Vendor or Contractor to determine applicability and requirements of any such laws and to abide by them. Additionally, Contractor has the sole responsibility for compliance with all other matters in conjunction with the services to be performed hereunder and in the Invitation for Bid.

**PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS:** the Contractor shall provide a performance bond and a labor and material payment bond, each in the amount of 100% of the contract price, before the award of the contract. (Sections 756 and 757 of the Public School Code of 1949, as amended, and the Public Works Contractors Bond Law of 1967.)

**DISCRIMINATION PROHIBITED:** According to 62 Pa.C.S.A. 3701, the Contractor agrees that:

- (1.) In the hiring of employees for the performance of work under the contract or any subcontract, no Contractor, Subcontractor or any person acting on behalf of the Contractor or Subcontractor shall by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (2.) No Contractor or Subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.
- (3.) The contract may be canceled or terminated by the government agency and all money due or to become due under the contract may be forfeited for a violation of the terms or conditions of that portion of the contract.

**HUMAN RELATIONS ACT:** The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P. L. 744) (43 P.S. Section 951, ET. Seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious

creed, ancestry, age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, Contractors and others. The Contractor shall agree to comply with the provisions of this Act as amended that are made part of this specification. Your attention is directed to the language of the Commonwealth's non-discrimination clause in 16 Pa. Code 49.101.

**COMPETENT WORKMEN:** Projects where the total estimated cost is \$25,000 or less, Section 7-752 of the Public School Code of 1949, no person shall be employed to do work under such contract except competent and first class workmen and mechanics. No workmen shall be regarded as competent first class, within the meaning of this Act, except those who are duly skilled in their respective branches of labor, and who shall be paid not less than such rates of wages and for such hours work as shall be established and current rates of wages paid for such hours by employers of organized labor in doing of similar work in the district where work is being done.

**PENNSYLVANIA PREVAILING WAGE RATES:** Projects where the total estimated cost is greater than \$25,000, paid for in whole or in part out of funds of a public body, except for maintenance work or work performed under a rehabilitation program or manpower training program must specify "Prevailing Wages." Further information on implementation of the act, definition of maintenance work and prevailing wage rates may be requested from the Pennsylvania Department of Labor and Industry (800-932-0665 or 717-787-4763). When applicable, use Davis-Bacon wage rates for federally assisted projects. This regulation and the general Pennsylvania prevailing minimum wage rates, (Act 442 of 1961, P.L. 987, amended), as determined by the Secretary of Labor and Industry, which shall be paid for each craft or classification of all workers needed to perform the contract during the anticipated term therefore in the locality in which public work is performed, are made part of this specification.

(1.) The general prevailing minimum wage rates including contributions for employee benefits as shall have been determined by the Secretary of Labor and Industry (hereinafter "Secretary"), which must be paid to the workmen, employed in the performance of the Contract.

(2.) The Contractor shall pay no less than the wage rates as determined in the decision of the Secretary and shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442), as amended August 9, 1963 (Act No. 342), and the Regulations issued pursuant thereto, to assure the full and proper payment of said rates.

(3.) These Contract provisions shall apply to all work performed on the Contract by the Contractor and to all work performed on the contract by all Subcontractors.

(4.) The Contractor shall insert in each of his subcontracts all of the stipulations contained in these required provisions.

(5.) No workmen may be employed on the Work except in accordance with the classifications set forth in the decision of the Secretary. In the event that additional or different classifications are necessary the procedure set forth in the Regulations shall be followed.

(6.) All workmen employed or working on the Work shall be paid unconditionally, regardless of whether any contractual relationship exists or the contractual relationship which may be alleged to exist between any Contractor, Subcontractor and workmen, not less than once a week without deductions or rebate, on any account, either directly or indirectly, except authorized deductions, the full amount due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in this Contract, the Act or the Regulations shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary to the workmen on the Work.

(7.) The Contractor and each Subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:

a. Name of project.

b. Name of public body of which it is constructed.

c. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.

d. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.

e. A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the Contractor and/or Subcontractor are not complying with the Act or the Regulations in any manner whatsoever, they may file a protest with the Secretary within three (3) months of the date of the occurrence, objecting to the payment to the Contractor to the extent of the amount or amounts due or to become due to them as wages for work performed on the Project. Any workmen paid less than the rate specified in the Contract shall have a civil right of action for the difference between the wage paid and wages stipulated in the Contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.

(8.) The Contractor and all Subcontractors, shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with the Work and such record must include any deductions from each workman. The record shall be preserved for two (2) years from the date of payment and shall open at all reasonable hours to the inspection of the Owner and to the Secretary or his duly authorized representative.

(9.) Apprentices shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and

employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the Rules and Regulation issued pursuant thereto shall be employed on the Work. Any workmen using the tools of a craft that does not qualify as an apprentice within the provisions of this submission shall be paid the rate predetermined for journeyman in that particular craft and/or classification.

(10.) Wages shall be paid without any deductions except authorized deductions. Employers not party to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workman.

(11.) Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act and the Regulations, regardless of the average hourly earnings resulting there from.

(12.) Each Contractor and each Subcontractor shall file a statement each week and a final statement at the conclusion of the Work on the Contract with Owner, under oath, and in form satisfactory to the Secretary, certifying that all workmen have been paid wages in strict conformity with the provisions of the Contract as prescribed by the Regulations, or if any wages remain unpaid, to the amount of wages due and owing to each workman respectively.

(13.) The provision of the Act and the Regulations are incorporated by reference in the Contract.

(14.) The current prevailing wage threshold for Pennsylvania is \$25,000. However the threshold may be increased during the term on the contract by legislated action. Vendor will then be required to adjust labor rate for job under the new threshold.

(15.) The following applies to all prevailing wage projects:

**E-Verify.** The successful Bidder and its subcontractors (as such term is defined in the act) are required to comply with the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637). All Bidders shall submit with their Bid a Public Works Employment Verification Form (the "Verification Form") to CSIU - KPN in the form published by the Commonwealth of Pennsylvania, Department of General Services. Per the act, the Verification Form is to be obtained from the Secretary of the Pennsylvania Department of General Services. The Verification Form is presently available on the Department of General Services website. Per the act, the Verification Form shall include a certification that the information in the statement is true and correct and that the individual signing the statement understands that the submission of false or misleading information in connection with the verification shall subject the individual and the public works contractor or subcontractor, as the case may be, to sanctions provided by law; and the verification form shall be signed by a representative of the public works contractor or subcontractor, as applicable, who has sufficient knowledge and authority to make the representations and certifications contained in the statement. Prior to award of a contract or purchase order by a Member Agency to the successful Bidder for a particular project, the successful Bidder shall submit to the Member Agency a Verification Form. Per the act, the successful Bidder's subcontractors shall provide to the Member Agency, and successful Bidder shall cause its subcontractors to provide to the Member Agency, their Verification Forms prior to commencing work on the Member Agency's project.

**STANDARD OF QUALITY:** The various materials and products specified in the specifications by name or description are given to establish a standard of quality and of cost for bid purposes. It is not the intent to limit the Bidder, the bid or the evaluation of the bid to any one material or product specified but rather to describe the minimum standard. When proprietary names are used, they shall be followed by the words "or alternatives of the quality necessary to meet the specifications". A bid containing an alternative, which does not meet the specifications, may be declared non-responsive. A bid containing an alternative may be accepted but if an award is made to that Bidder the Bidder will be required to replace any alternatives, which do not meet the specifications.

**PROVISIONS FOR THE USE OF STEEL AND STEEL PRODUCTS MADE IN THE U.S.:** In accordance with Act 3 of the 1978 General Assembly of the Commonwealth of Pennsylvania, if any steel or steel products are to be used or supplied in the performance of the contract, only those produced in the United States as defined therein shall be used or supplied in the performance of the contract or any subcontracts thereunder in accordance with Act 161 of 1982, cast iron products shall also be included and produced in the United States. Act 141 of 1984 further defines "steel products" to include machinery and equipment. The act also provides clarifications and penalties.

**PROHIBITION ON CASH ALLOWANCES:** Cash allowances are prohibited.

**TIME(S) OF COMPLETION OF THE PROJECT:** Contractor/Vendor shall complete all work within 180 days after entry into a contract with the individual Member. Member and Contractor/Vendor may agree in writing on a lesser number of workdays depending on the scope of the project.

**Owner's Compliance in Retaining Payments:** Unless a member stipulates otherwise, Payment Retentions and Progress Payments shall be as follows: Ten percent (10%) of all contract payments shall be retained by the member as insurance of proper performance of the prime Contractor. Prime Contractor agrees to identify the amount of the invoices sent to the member school districts, then send copies of the invoices to the KPN. When fifty percent (50%) of the work is completed, as determined by the school district, one-half (1/2) of the amount retained shall be paid to the prime Contractor, if the prime Contractor requests payment, provided that the prime Contractor is making satisfactory progress and there is no specific cause for greater withholding. After the work is fifty percent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments shall be retained, unless the governing board of the member determines that satisfactory progress is not being made, at which point ten percent retention shall be reinstated. If the member and the prime Contractor agree to a substitute security, the agreement must be in full compliance with Pennsylvania law. If the substitute security is agreed to, the prime Contractor must provide KPN and the member with assigned and acknowledged waiver of any right or

power of the obligor to set off any claim against KPN, the member, or the prime Contractor, in relationship to the security assigned. The prime Contractor, as authorized above, will pay any interest due a Subcontractor or material supplier. A Subcontractor to the prime Contractor may request, in writing, that the Subcontractor be notified by KPN within five (5) days of payment of each progress payment made to the prime Contractor. It is the responsibility of the prime Contractor to inform all suppliers and Subcontractors that this contract is a cooperative purchasing contract. Once all bonds are in place, the prime Contractor and the authorized agent of the member will agree in writing upon a schedule of payments based on identifiable milestones. Retaining of payments must be done in accord with 62 Pa.C.S.A. § 3921.

A contract containing a provision for retainage as provided in section 3921 (relating to retainage) shall contain a provision requiring the architect or engineer to make final inspection within 30 days of receipt of the request of the Contractor for final inspection and application for final payment. If the work is substantially completed, the architect or engineer shall issue a certificate of completion and a final certificate for payment, and the government agency shall make payment in full within 45 days except as provided in section 3921, less only one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the architect or engineer and, upon receipt by the government agency of any guarantee bonds which may be required, in accordance with the contract, to insure proper workmanship for a designated period of time. The certificate given by the architect or engineer shall list in detail each uncompleted item and a reasonable cost of completion. Final payment of any amount withheld for the completion of the minor items shall be paid upon completion of the items in the certificate of the engineer or architect.

**WORKERS' COMPENSATION ACT:** The Contractor shall accept, insofar as the work covered by their contract is concerned, the provisions of the Workers' Compensation Act 44 of 1993, and any supplements of amendments thereof, including any which may hereafter be passed, and shall insure the Contractor's full liability there under for all parts of their contract being performed by the Contractor, the Contractor's partners, associates, employees or those of any the Contractor may employ herein, or file with the Entity a certificate of exemption from insurance from the Bureau of Workers' Compensation of the Department of Labor and Industry.

The Contractor shall, at all times, indemnify and save harmless the school entities of and from all claims for Workers' Compensation which may be made by any of the employees of the Contractor or by any of the employees to whom the Contractor may have let the performance of any part of the work embraced by their contract and the Contractor shall appear for and defend the school entities against any and all such claims. The Contractor shall be covered by Employers' Liability Insurance with a minimum limit of \$250,000 for each employee, \$2,000,000 policy limit and \$250,000 for each accident.

**ACT 34 CRIMINAL BACKGROUND CHECKS:** Independent Contractors and their employees who provide services to a Pennsylvania school entity are required to obtain a report of "Criminal History Record Information" from the Pennsylvania State Police. In the case of non-Pennsylvania residents, a report of "Federal Criminal Record Information" from the FBI is required in addition to the Pennsylvania State Police Report.

Contractors shall be required to do the following:

(1.) Present the original document/s Report of Criminal History Records information from the Pennsylvania State Police, report of Federal Criminal History Record Information from the Federal Bureau of Investigation to the Superintendent or the Superintendent's designee prior to the beginning of work for the school entity. The school entity shall retain a copy of the background check information and shall note on that copy the date on which the original document was inspected and the name of the administrator who viewed the original. This copy shall be retained in the school entity records with the original being returned to the Contractor.

(2.) If any new employees are added to the workforce during the course of the work, such employee(s) must follow the same procedure described above prior to any work for the school entity.

(3.) All costs for the Criminal History Information check(s) shall be borne by the perspective Contractor.

(4.) The school entity shall notify the Contractor in writing if the decision not to employ the Contractor or the Contractor's employees is based in whole or in part on criminal history records information.

(5.) The school entity shall follow the regulations promulgated by the State Board of Education concerning the confidentiality of the Criminal History Report Information obtained pursuant to the Act.

Upon written notice from the school entity, Contractors shall have all such persons removed from the project. School entity's right to declare such persons unfit shall not be limited to the required exclusion of persons from school property as set forth in Section 1-111 of the Pennsylvania School Code and/or Act 151 of 1994.

**CHILD PROTECTIVE SERVICES BACKGROUND CHECKS:** Prior to commencing work under the contract, the Contractor shall submit for any employee or independent Contractor who would be working on a school entity's site pursuant to work contemplated in the contract, an official clearance statement obtain from the Pennsylvania Department of Welfare pursuant to Act 151 of December 16, 1994 (P.L. 1292) subchapter C2 of the Child Protective Services Act. Contractor shall not allow any prospective employee or independent Contractor on the job site prior to providing the school entity with the above-referred clearance statement for prospective employees or independent Contractors.

**ANTIBID-RIGGING ACT (NON-COLLUSION):** In accordance with the Commonwealth of Pennsylvania's Antbid-Rigging Act, 62 Pa. C.S.A. § 4501 et seq., the Contractor shall execute and submit with the bid a Non-Collusion Affidavit required by the Agency. Each party to the joint venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.

**PREVENTION OF ENVIRONMENTAL POLLUTION:** Section 3301 of the Pennsylvania Commonwealth Procurement Code requires that all invitations for Bids and requests for proposals for construction projects issued by any governmental agencies



shall set forth any provision of Federal and State statutes, rules, and regulations dealing with prevention of environmental pollution and the preservation of public natural resources that affect the Project. A Notice of said provisions prepared by the Pennsylvania Department of Environmental Resources under Act 247 of 1972, 52 P.S. § 1612 (repealed) is available from Jeffrey L. Kimball, Cooperative Purchasing Services Director at the Keystone Purchasing Network, 90 Lawton Lane, Milton, PA 17847. His telephone number is 570-523-1155 x2130, and his e-mail address is [jkimball@csiue.org](mailto:jkimball@csiue.org). Said Notice is hereby incorporated by reference. Contractor is hereby notified and agrees to comply with the terms of all statutes, rules and regulations enumerated in the Notice.

**ARCHITECTURAL SERVICES:** For those Members who are Pennsylvania Public School Districts, and whose projects require architectural or engineering services, your attention is directed to Section 7-751.1 of the Pennsylvania Public School Code (24 P.S. § 7-751.1), which requires a public school district to engage an architect/engineer that is independent from the Vendor/Contractor's architect/engineer.

**MULTIPLE PRIME CONTRACTORS:** For those Members who are Pennsylvania Public School Districts, your attention is directed to Section 7-751 of the Pennsylvania Public School Code (24 P.S. § 7-751), which requires a public school district to use separate prime Contractors for plumbing, heating and ventilating, and electrical work. To the extent a school district's project extends beyond general construction services, the school district will need to separately bid plumbing, heating and ventilating, and electrical work, and should consult with its individual solicitor for compliance with Section 7-751. For other Members who are subject to multiple prime requirements under applicable bidding laws, such Members should consult with their individual solicitors for compliance with said requirements.

#### **D. Procedure for Processing Orders**

Once the award is made to the Contractor/vendor, KPN will inform its members of the contract by: (1) including the contract in the agency database that is available on the KPN website, (2) announcing the award in its periodic newsletter, and (3) publishing the contract information in a catalog disseminated to all members. A list of members, institution names, contact names, addresses and phone number will be made available to the vendor in an electronic format. At this point the Contractor/vendor contacts the members and members may contact the Contractor/vendor. When the member identifies a product or service it issues a purchase order for that item to the vendor. The vendor's price to its members will include the following administrative fees: currently 2% (two percent) on all supplies, equipment and construction, rental or lease, annual subscription fee, etc.; and others administrative fees as approved by KPN and will be collected from the member or other qualifying purchaser. KPN reserves the right to adjust the administrative fee at any time during the duration of the contract and any renewal period or to modify the administrative fee based on volume of purchase. If the administrative fee is reduced do to the size of the project the vendor will show the adjustment on the quote. The vendor will also compile a quarterly report showing all purchases made by KPN members under this contract. The vendor will also produce an annual report for all purchases made under this contract for a period of beginning with the award of the contract through December 31<sup>st</sup> and all consecutive 12-month periods if contract is extended. The vendor will make all administrative fee payments to KPN by the 15<sup>th</sup> of the succeeding month of each 3-month period (quarterly) after they have received payment from the member agency and all checks are to be made payable to the Central Susquehanna Intermediate Unit (CSIU) and sent to Keystone Purchasing Network, 90 Lawton Lane, Milton, PA 17847, and Attention: Jeff Kimball. All reporting of purchases will be broken down by entity by state and will show purchaser, total dollar and date of purchase.

#### **E. Agencies Allowed to Purchase under the Member Agency**

The Keystone Purchasing Network (KPN) is a cooperative purchasing program operated by the Central Susquehanna Intermediate Unit under various state inter-governmental cooperation laws. Every public school district in the state is eligible to become a member and must complete a membership application with the KPN. No member is obligated to use these services, but they find the benefits of low price and not needing to go through the bidding process most advantageous. Only those members listed on an approved KPN membership list are eligible to purchase under these contracts. This list may change during the contract period and currently includes members from Pennsylvania, Maryland, New York, Delaware, District of Columbia and other Northeast & Mid-Atlantic states. Vendors may choose to offer KPN in other non-AEPA member states where cooperative purchasing laws allow.

Additional members may include other public educational institutions in the state, college, university, community colleges, vocational schools, charter schools, municipal and county governments and other non-profit organizations from Pennsylvania or any other state where a member is located. Membership from other entities is permitted by various intergovernmental cooperative purchasing laws or regulation from their home state.

As member agencies from other states are added to the membership of the KPN the awarded vendor(s) agrees to abide by all state and local laws and/or regulations that may apply to any purchase of products, services or construction by these agencies. KPN reserves the right to market any AEPA contract under any cooperative program name that it may choose in the future on a national basis in any non-AEPA member state.

## 23. South Carolina, Carolinas Alliance 4 Innovation

### 1. General Overview

- a. Carolinas Alliance 4 Innovation (CA4I) is now the AEPA representative for the state of South Carolina.
- b. CA4I is a non-profit public benefit corporation whose mission is to promote innovative solutions in transportation, infrastructure, engineering and education for the purpose of economic development.

### 2. Eligible Entities

- a. CA4I is able to serve City, County, and State Government; K-12 Public and Private Schools; Colleges and Universities; Public Libraries; and Non-Profit Organizations.

### 3. General Terms and Conditions that apply for all categories

- a. **Governing Law:** The laws of the State of South Carolina govern all contracts resulting from this solicitation. Each provision of law and clause required by law to be included in a contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.
- b. **Governing Venue:** The resulting contract award shall be deemed to have been made and performed in Greenville County, South Carolina. For venue, all legal arbitration or causes for action arising out of the resulting agreement shall be brought to the courts of Greenville County, South Carolina.
- c. **Hazardous Substances:** All hazardous products purchased by members shall include a Safety Data Sheet (SDS) with the delivery.
- d. **Award:** Upon acceptance and approval of the Vendor's offer by AEPA, CA4I will independently consider the recommendation based on the value of the potential contract for its participating agencies. In the event of an award, CA4I will inform its members of the award and contract by the following methods along with contract instructions and ordering process.
- e. **Processing Orders:** When the member identifies a desired product or service, the member and the vendor may negotiate with each other to establish a description of items and/or services. The vendor shall quote a price to the member, in writing, using AEPA established discounts and including the two percent (2%) administrative fee in the quoted price. The administrative fee shall be based upon the total cost of goods and/or services including installation costs. The administrative fee shall not be listed as a separate line item on the quote. When a member decides to purchase through the CA4I-AEPA contract, the member issues the purchase order directly to the vendor. The purchase order must include the total invoiced cost, based on
  - i. The total cost of goods, service, and installation, including the 2% administrative fee.
  - ii. Notification will be made to the vendor in the event the purchase order is not in compliance with the contract and adjustments will be made at that time. CA4I and the Vendor will mutually resolve any issues concerning past purchases. The purchase orders are to continue to be processed and viewed as approved unless notified by CA4I otherwise. All sales and transactions may continue without delay or in anticipation of the CPC purchase order verification.
  - iii. Once all the items and services on the purchase order have been delivered to the member completely and satisfactorily, the Vendor then files a copy of the final invoice, which is available to CA4I by request in support of the quarterly sales summary.
  - iv. The Vendor makes all deliveries and installations of products and services. CA4I does not warehouse items or provide installation services.
  - v. This administrative fee is to be paid by the vendor to CA4I, quarterly, within 20 working days after the end of each fiscal quarter. The AEPA vendor shall also submit to CA4I a sales report, in Excel format, listing the following information:
    1. Name of purchasing agency
    2. Address of purchasing agency (city, state, zip code)
    3. Date of purchase
    4. Invoice number
    5. Amount of purchase
    6. Administrative fee generated by sale
    7. Savings generated by sale

This report shall include all sales made and payments received by the vendor in the said quarter. The sales report shall be emailed to Fred Payne, fred.payne@ca4i.org

**24. TexBuy, a Cooperative Purchasing Shared Services Cooperative Sponsored by the Region 16 Education Service Center Education Service Center**

**A. Additional Agency Terms and Conditions**

- (1) **TexBuy funding:** The total cost of the TexBuy program is funded through a participation fee up to two percent (2%) paid to TexBuy by the Contractors. This fee shall be included in all pricing to TexBuy and its participating agencies. The fee is based on actual Contractor sales. TexBuy does not charge any fees to participating government agencies.
- (2) **Tax exempt status:** All government agencies participating in TexBuy are exempt from payment of taxes under Texas Tax Code §151.309 for the purchase of tangible personal property.
- (3) **Minority and Women Business Enterprise (MWBE) participation:** It is the policy of some TexBuy participants to involve MWBE Contractors in the purchase of goods and services. Contractors shall indicate on the proposal form whether or not they are an MWBE.
- (4) **Bid awards** shall not consider whether a vendor is a member of or has another relationship with any organization and bid specifications (and subsequent contracts) shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization in accordance with Texas Education Code §44.043.
- (5) **Felony Conviction Notice** (TexBuy Contractors will be required to sign a standard affidavit required by the State of Texas): Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.
- (6) **SB 9: Criminal History and Background Checks**, in accordance with Texas Education Code Chapter 22, shall be required should any employee or agent of a contractor awarded a bid have "continuing duties related to the contracted services" with a school district and that employee or agent will have "direct contact with students" (as those terms are defined in 19 Texas Administrative Code §153.1101).
- (7) **Debarment and Suspension:** Under Executive Order 12549 in the Federal Register and Rules and Regulations, TexBuy and TexBuy participants shall not do business with a vendor that has been debarred, suspended, or is otherwise ineligible for participation in Federal Assistance Programs.
- (8) **Conflict of Interest:** In accordance with Texas Local Government Code Chapter 176, vendors/contractors who have a business relationship as defined by Section 176.001(1-a) with a local government entity and meet the requirements under section 176.006(a) must file a Conflict of Interest Questionnaire (Form CIQ) with the local government entity when:
  - (a.) The vendor/contractor has entered into a contract with the local government entity or the local government entity is considering entering into a contract with the vendor.
  - (b.) AND the vendor provides certain income or gifts to a Local Government Officer (LGO) or first-degree relatives as defined in the Texas Government Code
  - (c.) OR a family relationship exists between the LGO and the vendor's employees or agents as defined in the Texas Government Code.
- (9) **EDGAR Certification (Education Department General Administrative Regulations):** In accordance with Federal Regulations under 2 CFR § 200.318(c)(1) – When a Cooperative member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (also known as the "Uniform Guidance" or new "EDGAR"). All Vendors submitting Proposals must complete this EDGAR Certification Form regarding the Offeror's willingness and ability to comply with certain requirements which may be applicable to specific TexBuy member purchases using federal grant funds. This completed form will be made available to TexBuy members for their use while considering their purchasing options when using federal

grant funds. Members may also require Vendors to enter into ancillary agreements, in addition to the TexBuy's general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

- (10) **Antitrust Certification:** In accordance with Texas Government Code 2155.005, a local government entity shall not enter into contract with a vendor/contractor that has violated any provision of the Texas Antitrust laws referenced in Texas Business & Commerce Code Chapter 15 or any Federal antitrust laws.
- (11) **H.B 89 Verification:** In accordance with chapter 2270 of the Texas Government code, a local government entity (city, school district, special district, etc) may not enter into a contract with a for-profit company unless the local government entity obtains written verification that the company does not and will not boycott Israel during the term of the contract.

**B. Additional Agency Terms and Conditions for Non-Construction Products and Services**

- (1) **State of Texas Franchise Tax:** By signature hereon, the bidder certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.
- (2) **Agricultural products,** including textiles and other similar products, are not to be made available to Texas school districts through the agreement, unless such products produced, processed, or grown in the state of Texas are given a preference in accordance with Texas Education Code §44.042.

**C. Additional Agency Terms and Conditions for Construction Products and Services as required by law in the State of Texas:**

- (1) **Certification of Residency (TexBuy Contractors will be required to sign a standard affidavit required by the State of Texas):** The State of Texas has a law concerning non-resident Contractors. This law can be found in Texas Government Code under Chapter 2252, Subchapter A. This law makes it necessary for TexBuy to determine the residency of its Contractors. In part, this law reads as follows:
  - (a.) **Section: 2252.001**  
"Non-resident bidder" refers to a person who is not a resident. "Resident bidder" refers to a person whose principal place of business is in this state, including a Contractor whose ultimate parent company or majority owner has its principal place of business in this state."
  - (b.) **Section: 2252.002**  
"A governmental entity may not award a governmental contract to a non-resident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located."
- (2) **Security**
  - (a.) **Bid Security,** when required by Texas Law, shall be furnished with the bid. The Bid Security shall consist of a certified check, cashier's check or a bid bond in the amount of ten percent (10%) of the total bid (or as otherwise stated in the RFB) that shall be a guarantee to furnish Performance and Payment Bonds. Bid Security shall be to TexBuy.
  - (b.) **The Successful Bidder's Security** will be retained until the Contract is signed and the required Performance and Payment Bonds have been furnished. If any bidder refuses to enter into a contract within 30 days or fails to furnish the required bonds, TexBuy will retain the Bid Security as liquidated damages, but not as a penalty.
  - (c.) **Performance Bonds** when required by Texas Law, shall be furnished by the successful bidder in an amount equal to one hundred percent (100%) of the total amount of the contract sum, underwritten by such Surety Company as the Participating Agency may approve, conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the Participating Agency.
  - (d.) **Payment Bonds** when required by Texas Law shall be furnished by the successful bidder, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided in said contract, for the use of each claimant.

(e.) **Prevailing Wage** must be paid to any contractors or subcontractors or their employees or agents in performing any work under the awarded bid.

(f.) **Criminal History Background Checks** in accordance with Texas Education Code §22.0834 shall be required should any employee or agent of a contractor awarded a bid have “continuing duties related to the contracted services” with a school district and that employee or agent will have “direct contact with students” (as those terms are defined in 19 Texas Administrative Code 153.1101).

(3) **Insurance:** The Contractor shall file with the Participating Agency’s designee, Insurance Certificates, as described herein, evidencing the coverage required, and shall be supplied within ten (10) calendar days after receipt of the written “Notice of Award”. In no instance shall the Contractor begin work prior to the filing of the insurance requirements. Failure to do so shall be grounds to void the contract. The Participating Agency’s designee shall be given ten (10) days notice prior to the cancellation or change of any of the required insurance coverage. The Participating Agency shall be named as Certificate Holder.

(a.) Contractor’s Liability Insurance: Produce and maintain in force the following kinds of insurance of companies acceptable to the Owner. Minimum Limits of Liability are stated.

Contractor’s Liability Insurance:

Employer’s Insurance Workers’ Compensation—Statutory Employer’s Liability  
Bodily Injury by Accident Each Occurrence—\$100,000.00  
Bodily Injury by Disease Each Employee—\$100,000.00  
Policy Limit—\$500,000.00

Commercial General Liability -Combined Limits of Bodily and Personal Injury and Property Damage:  
Single Limit—\$500,000.00  
Unimpaired Aggregate—\$500,000.00

Comprehensive Automobile Liability - Including non-ownership, hired and owned vehicle coverage:  
Bodily Damage Each Person—\$250,000.00  
Each Occurrence—\$500,000.00  
Property Damage Each Occurrence—\$250,000.00

(b.) Owner’s Insurance: Carry and pay for Owner’s Protective Liability Insurance in the same amounts as specified above for the Contractor’s General Liability. Name the Architect, Engineers, and Consultants as additional insured if applicable.

(c.) Comprehensive Catastrophic Liability: excess over the above liability policies in the amount of \$2,000,000.00 each occurrence. (Combined Limit)

#### ***D. Procedure for Processing Orders***

- (1) Purchase orders are issued by participating agencies to the Contractor.
- (2) “Automated contracts” may be negotiated with TexBuy that provide for purchase orders to be sent directly to the Contractor with reports of usage submitted periodically to TexBuy.
- (3) Contractors deliver goods/services directly to the participating agency and then invoice the participating agency. The Contractor receives payment directly from the participating agency.
- (4) TexBuy shall receive quarterly reports from the Contractor reflecting total sales made through the TexBuy contract with the Contractor. The Contractor shall remit payment of their participation fee up to two percent (2%) to TexBuy at net thirty-day (30) terms.

#### ***E. Members Purchasing Under the Agency***

TexBuy is operated by Region 16 Education Service Center, Amarillo, Texas and is available for use by all public and private schools, colleges, universities, cities, counties and other government agencies in the State of Texas.

## 25. Virginia, Fairfax County Public Schools

### Additional Agency Terms and Conditions that apply to all categories

**AUTHORITY**-The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned Buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

NOTE: Fairfax County does not discriminate against faith-based organizations, in accordance with the *Code of Virginia*, § 2.2-4343.1, or against a Bidder or Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

### **GENERAL**

#### **1. DEFINITIONS-**

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BIDDER/BIDDER: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "Bidder" will be used throughout this document and shall be construed to mean "Bidder" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

COUNTY: County of Fairfax.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

SERVICES: Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

STATE: Commonwealth of Virginia.

**2. FUNDING**-A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

**3. CONTRACT ALTERATIONS**-No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

**4. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS**-It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

**5. NEW GOODS, FRESH STOCK**-All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

**6. INSPECTION-ACCEPTANCE**-For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

**DELIVERY/SERVICE FAILURES**-Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

**7. GUARANTEES & WARRANTIES**-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

**8. INSPECTIONS**-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear

the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

9. **POINT OF DESTINATION**-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
10. **ADDITIONAL CHARGES**-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
11. **TERMINATION OF CONTRACTS**-Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
  - a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
  - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
12. **TERMINATION FOR CONVENIENCE**-A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
13. **TERMINATION OF CONTRACT FOR CAUSE**-
  - a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
14. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
15. **CHANGES**-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
16. **GENERAL GUARANTY**-Contractor agrees to:
  - a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
  - b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
  - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other Contractors, for which his or her workers are responsible.
  - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
  - e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
17. **SERVICE CONTRACT GUARANTY**-Contractor agrees to:
  - a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
  - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
  - c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules,



regulations, methods and procedures of all government boards, bureaus, offices and other agents.

- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.

Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

- 18. INDEMNIFICATION**-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the Subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

- 19. NON-DISCRIMINATION**-During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each Subcontractor or vendor.
- e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

- 20. DRUG FREE WORKPLACE**-During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- 21. OFFICIALS NOT TO BENEFIT**-

- a. Each Bidder or Bidder shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible

benefit.

- c. In the event the Bidder or Bidder has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Bidder or Bidder shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

**LICENSE REQUIREMENT**-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: [http://www.fairfaxcounty.gov/dta/business\\_tax.htm](http://www.fairfaxcounty.gov/dta/business_tax.htm). The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

- 22. REGISTERING OF CORPORATIONS**-Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

- 23. COVENANT AGAINST CONTINGENT FEES**-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**24. OFFICE OF SMALL BUSINESS-**

- a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
- b. In connection with the performance of this contract, the Contractor agrees to use his or her best effort to carry out this policy and to insure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract.
- c. As used in this contract the term "small business" means a corporation, partnership, or sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees, or less than \$1,000,000 in annual receipts.
- d. As used in this contract, the term "minority business" means a business enterprise that is at least 51 percent owned and controlled by a minority person or persons. Such persons include African Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos and Aleuts; women regardless of race or ethnicity; and persons with a physical impairment that substantially limits one or more of the major life activities of such individuals, a record of such impairment, or who are regarded as having such an impairment.
- e. Contractors may rely on oral or written representations by Subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation.
- f. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

**PAYMENTS**

- 25. TAX EXEMPTION**-The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a Bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

- 26. PAYMENT**-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

- 27. PARTIAL PAYMENTS**-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
- 28. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING**-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

#### REMEDIES

#### **29. INELIGIBILITY-**

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
  1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
  2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
  1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
  3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
  4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
    - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
  5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
  6. The Contractor has abandoned performance or been terminated for default on any other Fairfax County project;
  7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

#### **30. CONTRACTUAL DISPUTES-**

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time

of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**31. LEGAL ACTION**-No Bidder, Bidder, potential Bidder or Bidder, or Contractor shall institute any legal action until all statutory requirements have been met.

#### C – Member Purchasing

**32. COOPERATIVE PURCHASING**-The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government. Bidders are advised that the *resultant* contract(s) may be extended, with the authorization of the Bidder, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. It is the Contractor's responsibility to notify the public body(s) of the availability of the contract(s). Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contract's terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.

## **26. Washington, King County Directors' Association (KCDA)**

### **(General Contracts and Construction/Public Works Projects)**

#### **A. KCDA Additional General Terms and Conditions**

**General Intent:** KCDA may participate in all or any part of the goods and services listed in this IFB, upon completion of contracts currently in effect, whichever is deemed in the best interest of KCDA members. KCDA cannot be restricted by the successful bidder from choosing which parts of these contracts to use.

Both the Contractor and KCDA member using this Contract agree that it is the member's responsibility to perform due diligence as to the legality of their usage of this contract. In this regard, KCDA suggests that, at a minimum, Contractor and member considering such usage consult with their legal counsel before doing so.

#### **Advertising/Marketing:**

KCDA requires all vendors to develop a marketing program to include printed, web-based, e-mail, telemarketing and other methods approved by KCDA.

All promotional marketing materials must have the prior approval of KCDA before distribution and must include the KCDA logo and other contract information.

KCDA staff will work jointly with all vendors and their representatives to market the AEPA contracts to KCDA members and prospective members. Vendors may be requested to make joint presentations to KCDA or its members in either a one to one or a group setting. Some group presentations may be done in conjunction with other vendors.

Displaying exhibits at various statewide conferences are encouraged. Contractor agrees to make available KCDA supplied brochures or other promotional materials at these events. Contractor will provide KCDA with scheduled exhibit dates in advance.

Contractor agrees to insert the approved KCDA logo, web address and contact information on the Contractor's website promoting and providing a link to the KCDA website. Contractor will also provide KCDA with text, links and logos to be posted on the KCDA website.

#### **Assignment:**

Contractor shall not subcontract, assign, transfer, convey, sublet or otherwise dispose of contractual duties to any other person, firm or corporation without the previous written consent of KCDA and any member that has an outstanding open purchase order or financing arrangement. In no case shall such assignment of Contract relieve the Contractor from obligations or change the terms of the Contract.

#### **Cancellation/Default/Termination:**

KCDA reserves the right to cancel the whole or any part of this contract due to the failure by the Contractor to carry out any obligation, term or condition of the contract. KCDA will issue written notice to the contractor for acting or failing to act in any of the following:

- The Contractor fails to adequately perform the services set forth in the contract
- The Contractor fails to make progress in the performance of the contract and/or gives KCDA reason to believe the Contractor will not or cannot perform to the requirements of the contract
- The Contractor fails to observe any of the terms and conditions of the contract
- The Contractor fails to pay any applicable administrative fees.
- The Contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by KCDA.

If the contract is to be terminated KCDA shall do the following:

Step 1 – Issue a warning Letter of Concern outlining the violations and length of time to correct the problem(s). Upon receipt of the letter, the Contractor shall have ten (10) business days to provide a satisfactory response to KCDA. Failure on the part of the Contractor to address adequately all issues of concern may result in contract cancellation.

Step 2 – Issue a letter of intent to cancel the contract if the problems(s) are not resolved by the date specified.

Step 3 – Issue a letter to terminate the contract.

#### **Compliance with Laws**

In addition to any requirements set forth herein, vendor shall comply with all applicable state, federal and local laws, rules, regulations and ordinances.

**Contract Amendments:**

KCDA reserves the right to amend the contract resulting from state law changes or internal boilerplate changes due to state law changes. Contractors/Vendors will be sent written notification of the changes.

**Employees who have been Convicted of Crimes Against Children:**

The Contractor, or any subcontractors, shall not utilize any employee at a school site or allow any contact between school children and any employee when an employee has plead guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.444 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under 9A.88 RCW, or violation of similar laws of another jurisdiction.

Contractors/Vendors who have regularly scheduled unsupervised access to children, and/or who hire employees who will have regularly scheduled unsupervised access to children, shall perform a record check through the Washington State Patrol criminal identification system under RCW 43.43.830-43.43.834, 10.97.0303 and 10.97.050, and through the Federal Bureau of Investigation before hiring the employee. The record check shall include a fingerprint check using a complete Washington State criminal identification fingerprint card. The Contractor shall provide a copy of the record to the person applying for employment to the school location. If the Contractor or applicant has had a record check within the previous two years, the Contractor may waive the requirement. The Contractor shall determine whether the applicant or the Contractor shall pay costs associated with the record check.

In addition, pursuant to RCW 9.96A.020 and 1993 Chapter Law 71, a person is disqualified from employment by school districts, and their Contractor from hiring employees who will have regularly scheduled unsupervised access to children because of a prior guilty plea or conviction of a felony crime specified under RCW 28A.400.322, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

**Governing Law and Venue/Legal Litigation:**

All applicable local, state and federal laws and regulations will apply to any purchases of equipment, service or public works in any of the states KCDA currently services, as well as any other non-AEPA states where members may be added to KCDA membership throughout the term of these contracts. The laws of the State of Washington govern the Contract. Each and every provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. Venue for any litigation arising out of or related to the Contract shall take place in the State of Washington.

**Hazardous Materials:**

If any hazardous chemicals/materials are supplied under a contract/purchase order arising out of this solicitation, a Safety Data Sheet (SDS) shall accompany the delivery of any hazardous chemicals/materials supplied by the vendor. All SDA sheets shall be sent to KCDA and the KCDA member. Any products not appropriately labeled will be refused and the vendor will be responsible for additional freight charges.

**Indemnification/Hold Harmless:**

The Contractor agrees to defend, indemnify and hold harmless KCDA and the member agency, and their respective officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits including attorney fees arising out of or resulting from the acts, errors or omissions in performance of this Agreement, except for injuries and damages caused by the sole negligence of KCDA or the member agency. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor, KCDA or the member agency and their respective officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. Use of this contract certifies that the waiver of immunity specified by this provision was mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of the Agreement.

**Independent Contractor:**

The Contractor shall not be held or deemed in any way to be the agent or employee of KCDA and /or a KCDA member. It is the intention of the parties that the Contractor shall be and is to be considered an independent Contractor.

**Minority and Women Owned Businesses:**

KCDA encourages all minority and women owned businesses to participate in the bid process. Washington State law does not allow KCDA to provide any financial advantage for minority and women owned businesses who participate, however, KCDA believes that a diverse range of suppliers benefits all.

**Quality of Goods:**

Bidder shall bid and provide new (not used or refurbished) items only. Seller warrants all supplies, materials and equipment and services covered by a contract/purchase order with KCDA or with a KCDA member will:

- (a) conform to the specifications, drawings, written instructions, samples, or descriptions; (b) be of good quality and workmanship; (c) be free of defects in design, materials and workmanship; (d) be merchantable;
- (e) be fit for particular purposes applicable to the design, function or use of the supplies, materials and equipment.

**Taxes:**

The KCDA Members and Associate Members are to be taxed.

**Term of Contract:**

The term of the agreement shall commence on the date of the award and continue as stipulated in the General Terms and Conditions, unless terminated, canceled or extended.

**Use of Tobacco on School Districts/Public Agency Premises:**

RCW 28A.210.310 prohibits the use of tobacco in any form on school district property. Smoking or other use of tobacco will not be permitted at the job site.

**B. Procedure for Processing Orders** Order  
Procedure

After entering into an agreement with KCDA, KCDA will confirm the directions for placement of orders with the Contractor, and will post directions on the KCDA website for both Contractor and members. These directions will also be posted on each awarded Contractors/Vendors website.

- Once the award is made to the Contractor, KCDA will inform members of the contract.
- At this point the Contractor may directly contact members or the member may contact the Contractor.
- A list of members, addresses and phone numbers is available to the Contractor upon request.
- Before a Contractor may enter into business with a KCDA member, they need to verify membership through the KCDA website, which can be viewed under Membership.

**Invoicing/Reporting**

- KCDA will contact Contractors/Vendors about invoicing procedures.
- KCDA is funded through a service fee paid to KCDA by the participating Contractors/Vendors. The service fee percentage is based upon the total sale of goods and services, including installation, if applicable. This fee shall be reflected in all price quotations under the KCDA agreement. The service fee will be 2%. Do not print the service fee as a separate line item on the quotation.
- The Contractor will compile an electronic quarterly report listing each purchase made by participating members. Within 30 days after each quarterly period the report will be sent to the e-mail address of the KCDA Purchasing Director, Thomas Kim, [tkim@kcda.org](mailto:tkim@kcda.org) and Director of Finance, Robert Payne [rpayne@kcda.org](mailto:rpayne@kcda.org)
- These reports shall be in Microsoft Excel format and shall have file names that identify the Contractor and the quarterly period being reported. They shall include the following fields and allow for sorting on any of the fields: Date of order, name of member, item purchased, quantity, unit price, extended price, member PO #, Contractor order number.
- KCDA reserves the right to change the contact name of existing KCDA personnel administering the contract. If there are personnel changes, reports and payments will be sent to the new contact(s) specified.

**C. Agencies Allowed to Purchase under KCDA**

King County Director's Association (KCDA) is a member owned purchasing cooperative representing 295 Washington State school districts. In addition, KCDA provides purchasing and procurement services for more than 1,200 public agencies and political subdivisions in Washington and other states, including but not limited to Alaska, Idaho, and Montana. KCDA also provides purchasing services for accredited private K-12 schools in Washington State.

A listing of all KCDA members is available on the KCDA website, [www.kcda.org](http://www.kcda.org).



#### D. KCDA Additional Terms & Conditions for Construction Products and Services

Contractor agrees that, in performance of the services required under this agreement, Contractor shall abide by all federal, state, local and Washington law and regulations that may apply to construction and public works. It is the responsibility of the Contractor to determine applicability and requirements of any such laws and to abide by them.

- **Bid Bond:** The bid must be accompanied by a bid bond using the KCDA form included in these contract provisions, issued by a surety licensed to do business in the State of Washington and made out to King County Directors Association in an amount not less than 5% of the amount of the bid as identified in Part B, Section 4 of the solicitation. A Power of Attorney must accompany the bid bond and must appoint the surety's true and lawful attorney-in-fact to make, execute, seal and deliver the bid guarantee bond. Failure to submit the required bid security with the Bid shall render the bid non-responsive and the bid shall be rejected.
- **Public Works:** State of Washington statute requires workers be paid prevailing wages when employed on public works projects and on public building service maintenance contracts. (RCW 39.04.010, RCW 39.12.010 and 020) It is the contractor's responsibility to be acquainted with and comply with State regulations regarding payment of prevailing wages on public works projects. Prevailing Wages are established by the Washington State Department of Labor and Industries and can be obtained on the web at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp> or by contacting Labor and Industries at 360-902-5335. KCDA serves all counties in Washington State. The County in which the project is located will be identified once a member initiates a request for the service, and the effective wage rate to be applied to a specific project is to be based on the date of this bid during the original contract term, and if contract extensions are granted, the prevailing wage rate in effect at the time of the latest extension. A copy of the applicable prevailing wage rates are also available for viewing at the office of KCDA. Upon request KCDA will mail a hard copy of the applicable prevailing wages.
- **Application:** The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive administrative or professional in nature. It does not apply to work of a secretary, engineer or administrator, unless they are performing construction work, alteration work, repair work, etc. Prevailing wage application depends on the work that is performed, regardless of the worker's job title. (RCW 39.12.020 and WAC 296-128-510 through 530). Definition: Public Works is all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction. (RCW 39.04.010). Public Building Service Maintenance Contracts: Prevailing wages are also required on all public building service maintenance (janitorial) contracts. (RCW 39.12.020). **Contractors bidding a Public works project exceeding \$1,000,000.00 must declare who their HVAC, Plumbing and Electrical subcontractors will be and submit this information with bid documents in order for the bid to be responsive (RCW 39.30.060).** Such projects also have special considerations pertaining to prefabricated materials (RCW 39.04.370) and use of apprentices (39.04.320).
- **Reciprocity:** In accordance with RCW 39.04.380 any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280 or other procurement exempt from competitive bidding.
- **Prevailing Wage:** Definition: Prevailing Wage is the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers and mechanics. The rate is established by the Department of Labor and Industries for each trade and occupation employed in the performance of public work. If Federal funds are used, bidders must comply with provisions of Davis-Bacon Act.
- **Basic procedures:** A Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid must be filed and approved for the contractor and all subcontractors. No payments can be made until all Contractors/Vendors have submitted an approved intent form. KCDA cannot release retainage until all Contractors/Vendors have an approved Affidavit of Wages Paid form certified by the Industrial Statistician. (RCW 39.12.030, 040, 042). Costs for filing shall be the responsibility of the Contractor. Once the work is successfully completed, KCDA will release 95% of the project cost and withhold 5% retainage for as dictated by law. The final 5% will be paid when the following is completed: acceptance of project completion to the satisfaction of the KCDA ordering member, followed by receipt of approved Affidavit of Wages Paid Forms, Releases from Washington State Department of Labor & Industries, Employment Security Department and the Department of Revenue.
- **Federally Funded Projects:** In addition to the Federal Requirements of Section III General Terms and Conditions, Davis-Bacon prevailing wage requirements apply to public works construction contracts of \$2000 or more when a project includes any federal funding of any amount. When there is a difference between applicable state and federal prevailing wages for a particular classification of labor, contractors and subcontractors are required to pay the higher of the two prevailing wages. Applicable federal prevailing wage determinations can be found at <http://www.wdol.gov/>. Contractors/Subcontractors must be knowledgeable and adhere to all federal prevailing wage requirements, including but not limited to paying workers weekly and providing certified weekly payrolls for the contractor and subcontractors of any tier as required in the Davis-Bacon Act and applicable U.S. Department

of Labor regulations. Falsification of any prevailing wage payroll records may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code. Contractor shall inform all subcontractors of the Davis-Bacon requirements and the prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses. Contractor must coordinate all requirements related to federal funded projects with the KCDA member Agency.

- **Responsible Bidder**

Before award, the bidder must meet the following state responsibility criteria and, if applicable, supplemental responsibility criteria to be considered a responsible bidder. The bidder is required to submit documentation demonstrating compliance with the criteria.

Low Responsible Bidder

A. State Responsibility Criteria. The Bidder must meet the following state responsibility criteria:

1. At the time of submittal of bid to AEPA, the contractor must hold a current Washington State Contractors License in the name of the company signing the bid. Failure to have the license prior to submitting the bid is a violation of chapter 18.27 RCW and is a gross misdemeanor.
2. Have a current Washington State Unified Business Identifier (UBI) number.
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. If applicable:
  - a. Have Industrial Insurance (workers' compensation) coverage for the Bidder's employees working in Washington State, as required in Title 51 RCW;
  - b. Have a Washington State Employment Security Department number, as required in Title 50 RCW; and
  - c. Have a Washington State Department of Revenue state excise tax registration number, as required in Title 82 RCW.

B. Supplemental Bidder Responsibility Criteria. If supplemental criteria apply to this project, the criteria are included in "Attachment A." The Bidder may make a written request to modify any or all of the supplemental criteria. Modification of supplemental criteria shall be at KCDA's discretion. Any modifications to the supplemental criteria shall be made by addenda prior to bid opening.

**Subcontractor Responsibility:**

The contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. At the time of bid submittal, have a current certification of registration in compliance with chapter 18.27 RCW.
2. Have a current Washington State Unified Business Identifier (UBI) number.
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
4. If applicable:
  - a. Have Industrial Insurance (workers' compensation) coverage for the Bidder's employees working in Washington State, as required in Title 51 RCW;
  - b. Have a Washington State Employment Security Department number, as required in Title 50 RCW; and
  - c. Have a Washington State Department of Revenue state excise tax registration number, as required in Title 82 RCW
5. Have an electrical contractor license, if required by Chapter 19.28 RCW;
6. Have an elevator contractor license, if required by Chapter 70.87 RCW;

- **Bonds- Payment & Performance:**

The prime Contractor shall provide a Performance and Payment Bond at 100% of the contract price to the KCDA member with a copy to KCDA before work begins. The only exception is for contracts of thirty-five thousand (\$35,000) dollars or less. In this instance, at the option of the Contractor, the member may in lieu of the bond retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter

60.28 RCW, whichever is later. The bond shall be issued by a surety company authorized to do business in the State of Washington and shall be on standard forms used for public projects (RCW 39.08.010) and as directed by the KCDA member. Performance and Payment bonds for KCDA members outside Washington must be provided by

companies licensed to provide bonds for public entities in the member's state.

- **Licenses:** The prime contractor shall possess and maintain in current status all federal, state, and local licenses, bonds, and permits required for the performance and delivery of any and all products and services offered in its response to the bid solicitation. Before submitting a bid, Bidders must hold a current, valid contractor's license as required in Washington. The contractor's license must be in the name of the legal entity submitting and signing the bid. A bidder may not substitute a contractor's license held by a subcontractor or joint venture. Bidders submitting bids in Washington State without a valid contractor's license in the name of the Bidder are in violation of RCW 18.27.010. It is the responsibility of the prime contractor to ensure any subcontractors performing under this contract hold and maintain appropriate licenses. The contractor shall verify that appropriate licenses are in place at the time of response to this bid. Copies of licenses must be submitted to the member prior to performing the work. The Contractor agrees to keep and ensure subcontractors keep any required license, permit or bond current and in compliance with Washington rules, regulations and statutes, as well as in states outside Washington in which contractor performs work under this contract. For work performed for any Washington State school district, public agency or municipality, the Contractor must comply with the bidder responsibility requirements of RCW 39.04.350 prior to the KCDA member awarding a contract. The contractor must verify the responsibility of all subcontractors used in accordance with RCW 39.06.020.
- **Permits:** The acquisition of all permits as well as any drawings needed to obtain those permits is the responsibility of the successful Contractor/Bidder unless otherwise acknowledged by the KCDA member.
- **Certificate of Insurance:** A certificate of insurance demonstrating current coverage of the types and amounts of insurance required by KCDA and the KCDA member must be provided to KCDA and the KCDA member prior to performance of any work. In addition, the Commercial General Liability policies must be endorsed to name KCDA and the KCDA member as additional insureds. Such policies must be further endorsed to provide that the insurance is primary as respects KCDA and the KCDA member, and that any other insurance maintained by KCDA and the KCDA member shall be excess and not contributing insurance with the Contractor's insurance. These endorsements must be provided along with the certificate of insurance. KCDA and the KCDA member must both approve the certificate of insurance and endorsements.
- **Acceptable Pricing Method:** KCDA is unable to accept Alternative Costing Method quotations except in certain limited instances, (i.e. sole source) in which KCDA and Contractor may mutually determine the Alternative Costing Method is acceptable. This will be the exception rather than the rule. RS Means or line item bid pricing is acceptable.
- **Progress Payments:** The Contractor shall be paid, upon submission of a proper Payment Request, the prices stipulated herein for work performed (less deductions, if any), in accordance with all payment and retainage instructions herein. Submitted Payment Requests must contain the following minimum information:
  - a. Contract Number
  - b. Bid item ID, bid quantity, unit, unit price and description as appropriate
  - c. Sales Tax as applicable

The Payment Request will be reviewed by the Member before payment is made. If the Member is in disagreement with the Payment Request, KCDA will issue a notice requesting a revised Payment Request. In accordance with RCW 51.12.050, KCDA reserves the right to deduct from the payment any outstanding industrial insurance premiums owed by the Contractor or Subcontractors.

- **Payment Retainage:** In accordance with RCW 60.28 a contract retainage of not to exceed five percent of the moneys earned by the contractor toward completion of a public improvement contract shall be withheld and reserved as a trust fund for the protection and payment of 1) the claims of any person arising under the contract, and 2) the state with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from such contractor. Upon completion of a contract, the member agency shall notify the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries of the completion of contracts over thirty-five thousand dollars. KCDA will issue payment on the retainage amount forty-five days after notice from the KCDA Member Agency that the contract has been accepted as complete or upon receipt of all necessary releases, whichever is later.

**27. Wisconsin, Cooperative Educational Service Agency - CESA Purchasing**

**A. Additional Terms and Conditions**

(Note: anything that is not already in Part A – General Terms and Conditions for AEPA) Terms and Conditions must be compliant with Wisconsin State Statutes 16.70 to 16.848

- B. *Additional Participating Agency Terms and Conditions for Non-Construction Products and Services*** Some larger districts, like Milwaukee Public Schools, may require an additional one page “piggyback” memorandum of understanding to utilize the contract.

**C. Additional Participating Agency Terms and Conditions for Construction Related Products and Services**

Construction contracts are subject to Wisconsin State Statutes 16.855 or 66.0901.

**D. Procedure for Processing Orders**

All districts directly process orders with the CESA Purchasing AEPA vendor partner unless otherwise arranged.

**E. Members Purchasing Under CESA**

CESA Purchasing membership is free. Membership is available to the following agencies based on WI State Statutes Chapter 116 which governs the work of WI Cooperative Educational Service Agencies: school districts, University of Wisconsin System institutions, and technical colleges. All public, private, and tribal schools, and all public and private agencies and organizations, that provide services to pupils. Please note in Wisconsin we do not require additional registration of members and define members as those defined by WI Statute 116 that guides our work.

**28. West Virginia, West Virginia Regional Education Service Agencies Cooperative Purchasing**

**A. General Terms and Conditions that apply for all Categories:**

**1. Compliance with Laws/Forum Designation**

Contractor shall comply with Federal, State, and Local Laws, Codes and Regulations while fulfilling the contract. It is the Contractor's responsibility to be aware of and comply with all state and local laws governing this procurement. Applicable laws, codes, and regulations (etc.) must be followed even if not specifically identified herein. The terms of the Agreement Addendum which is attached hereto and incorporated herein shall govern and supersede any contract terms to the contrary with respect to each procurement. Contractor shall verify to the West Virginia Regional Education Service Agencies (WVRESA), its Member Agencies and other qualifying purchasers that the Contractor is complying with all Federal, State and Local Laws, Codes and Regulations while fulfilling the contract, and shall provide a copy of this contract and any addenda to each Member Agency when providing a price quotation. Moreover, this contract shall be governed by and construed in accordance with the laws of the State of West Virginia without giving effect to its principles of conflict of law. Legal proceedings arising under this contract shall be brought in a West Virginia Court of the County where the Member Agency's main office is located.

**2. Delinquent Tax Affidavit**

Contractor shall provide an affidavit relating to delinquent taxes as may be required by West Virginia State Code §11-12-10.

**3. Secretary of State Registration**

Contractor shall meet and maintain all registration requirements as necessary to conduct business in the State of West Virginia, including but not limited to registration with the West Virginia Secretary of State.

**4. West Virginia Workers Compensation Insurance**

Contractor, and any subcontractors hired by Contractor shall, at their own expense, maintain in force for the duration of the project workers' compensation and employer's liability insurance as required by the laws of the State of West Virginia.

**5. Project Personnel, Student Safety and Background Checks**

Member Agency shall have the right to reject the participation of any personnel of Contractor in the performance of the services if, in relation to the work assigned to them, the Member Agency deems such personnel to lack the skill, experience and expertise required to perform the services or if Member Agency considers their performance to be substandard or otherwise detrimental to the proper completion of the services. Contractor will advise Member Agency promptly of any change in the project manager or other key personnel assigned to the performance of the services.

Contractor acknowledges that the safety of the Member Agency's students, employees, officials and guests is of the utmost importance. Contractor will endeavor to ensure that its officers, employees, agents, representatives, and consultants will take no action that would jeopardize the safety of the Member Agency's students, employees, officials, or guests. The Member Agency reserves the right to require Contractor's officers, employees, agents, representatives and consultants to wear identification and stay in designated work areas at all times while on the Member Agency's property. The Member Agency shall have the right to effect the immediate removal of any person associated in any way with Contractor from Member Agency property for failure to wear identification, for being outside a designated work Contractor shall perform or cause to be performed by the West Virginia State Police and Federal Bureau of Investigation criminal background check of any personnel that will be performing the services within the proximity of minors. Contractor shall notify the Member Agency of any proposed employee who has been convicted, pled guilty or pled "no contest" to a criminal offense, and the Member Agency reserves the right to reject the proposed employee with a criminal background. No person shall be employed by Contractor who has been found guilty of any of the criminal offenses enumerated in West Virginia State Code without prior approval of the Member Agency.

**6. Independent Contractor**

Contractor shall be an independent contractor and neither Contractor nor any of its subcontractors, nor the employees of any thereof, shall be deemed to be the servants, employees, or agents of Member Agency. Contractor shall be responsible for paying all costs related to its employees and managers performing the services. Contractor shall remain liable and responsible to Member Agency for all of its obligations under this contract, regardless of whether the services are performed by the Contractor or a subcontractor of any tier.

- 7. Ownership of Instruments of Service**

Drawings, data and other documents prepared by, or with the cooperation of, the Contractor pursuant to this contract shall become, upon payment of all undisputed compensation due the Contractor from the Member Agency, the property of the Member Agency. Such drawings, data or other documents may be used by the Member Agency or others employed by the Member Agency without compensation to the Contractor.
- 8. Audit**

Member Agency may audit and inspect Contractor's records and accounts at any time during the Contractor's performance of the services and for a period of two (2) years following the completion or termination of the services for the purpose of verifying any invoice and underlying documentation presented by Contractor, it being understood that Contractor agrees to preserve all such documents through such two- (2) year period.
- 9. Notices**

Unless otherwise expressly provided in this contract, all notices and other communications given under the contract shall be in writing and shall be deemed effective upon receipt by the addressee at its address as set forth in the contract or at such other address as such party shall have notified the other in writing.
- 10. Non-Appropriation and Other Contract Terms Applicable to Member Agencies as Political Subdivisions of the State**

If the Member Agency fails to appropriate sufficient monies in any fiscal year for payments due under the contract and other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then Member Agency will give Contractor prompt notice of such Non-Appropriation. This contract shall thereupon terminate without penalty or expense to the Member Agency other than for goods and services already provided.
- 11. No Personal Liability**

It is understood and agreed that under no circumstances will the Member Agency's board members, regional council members, officers, employees, or agents be personally liable for any obligations or claims arising out of or related to the contract.
- 12. Price Quotation**

Contractors must quote to a Member Agency the pricing listed in the current contract awarded by the Association of Educational Purchasing Agencies. Vendor will follow the procedures for price reductions to AEPA Member Agencies and Participating Entities set forth in the AEPA general terms area, and conditions. The price quotation must be submitted to a Member Agency and Participating Entity in writing, and any other expenses that the Contractors intend to charge a Member Agency or Participating Entity must be separately itemized on the quotation page in bold font with a good faith estimate of the dollar amount of each item, such as use tax if applicable. The failure to list an item or include a good faith estimate of the dollar amount on the quotation page will preclude a Contractor from charging the same.
- 13. Miscellaneous**

Headings and titles of articles, paragraphs and other subparts of this contract are for convenience of reference only and shall not be considered in interpreting the text of this contract. This contract and any appendices constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto and all agreements or understandings with a Member Agency. No contract amendments can be made without the approval of the AEPA membership.
- B. Construction Products and Services:**

For construction improvements, the following shall apply:

  1. The successful Contractor shall provide such bonds required by West Virginia State Code §38- 2-39.
  2. Contractor shall comply with all applicable licensing requirements, including those of the West Virginia Contractor Licensing Board pursuant to West Virginia State Code §21-11-3.
- C. Procedures for Processing Orders:**

The WVRESA will keep informed its Member Agencies and other qualified purchasers of contract information via web site and through other marketing strategies. A list of WVRESA Member Agencies along with addresses, phones, contacts, etc. will be made available to successful Contractors. After contracts are awarded, Contractors may contact the WVRESA Member Agencies and other qualifying purchasers concerning their products and services.

Participating Member Agencies and other qualified purchasers will submit all purchase orders directly to the Contractor.

The Contractor price shall include a two percent (2%) administrative fee that the Contractor will collect from the Member Agency or other qualified purchaser. Administrative fees are to be remitted to the WVRESA on April 15, July 15, October 15 and January 15 of every calendar year with checks payable to the RESA 2, 2001 McCoy Road, Huntington, WV 25701

The Contractor will compile a quarterly report showing all purchases made by the WVRESA Member Agencies and other qualified purchasers under this contract at the conclusion of each calendar quarter. These reports shall be attached to the administrative fee remittance.

**D. Agencies Allowed to Purchase under Member Agency:**

All member cooperatives of the WVRESA and their individual Member Agencies are eligible to participate and purchase from the awarded AEPA contracts. All West Virginia PK-12 school districts, including Career and Technical Education Centers, Regional Education Services Agencies, West Virginia Department of Education (WVDE) and all Institutional Education Programs operated by WVDE are eligible to participate and purchase from the awarded AEPA contracts. In addition, all colleges and universities, state, municipalities, counties, other governmental agencies and non-profit agencies are eligible to participate if the AEPA contracts satisfy their individual procurement requirements

29. Wyoming, Northeast Wyoming Board of Cooperative Educational Services (NEW BOCES): Upon execution of this document, the respondent hereby agrees to submit bids and NEW BOCES agrees to accept such bids under the following conditions: PREFERENCES Wyoming Statutes provide for percentage preferences for items supplied by Wyoming resident bidders and for items produced or grown in the State of Wyoming. Preferences may not be applied when federal funds are involved. Preference will be given in accordance with W.S. 16-6-101, 16-6-102, 16-6-103, 16-6-104, 16-6-105, 16-6-106, 16-6-107, and 16-6-301, as amended. For bids involving federal funds please refer to W.S. 16-6-108. Please contact the Department of Workforce Services, Division of Labor Standards

Resident & Non-Resident VENDOR REGISTRATION REQUIREMENTS:

Secretary of State 2020 Carey Avenue Cheyenne, WY 82002 Phone: (307) 777-7378 website: <http://soswy.state.wy.us/>  
Department of Workforce Services Division of Unemployment Insurance 100 W. Midwest P.O. Box 2760 Casper, WY 82602 Phone: (307) 235-3217

Public Works and Contracts: Vendor shall comply with all laws, whether local, state, federal, or otherwise, applicable to any aspect of the service or product to be provided in relation to the contract. It shall be the vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them. Vendor shall indemnify, defend, and hold harmless NEW BOCES for any default or breach of vendor in this regard. To the extent applicable for the product or service bid, vendor shall comply with W.S. 16-6-101 to 16-6-602 and to W.S. 21-3-110(a) (viii)

Every Contracted Vendor Employee shall provide a valid State issued Identification Card upon entry of any educational facility. Members Customer Client Purchasing: NEW BOCES NEW BOCES is an educational cooperative authorized under the provisions of W.S. 21-20-101 to 21-20-111. All K-12 school districts, Community Colleges, Child Development Centers, Residential Child Care Institutions, Utah Educational Service Agencies, all Non-Profits and all Municipalities are eligible to participate in NEW BOCES cooperative purchasing programs within the State of Wyoming and Other States as requested. "Agencies" means Counties, Municipal Corporations, School Districts, Community College Districts, the joint business council of the Eastern Shoshone and Northern Arapaho Indian tribes, the business council of the Eastern Shoshone Indian tribe, the business council of the Northern Arapaho Indian tribe. Providing facilities or functions enumerated in W.S. 16-1-104(c);

No member user is obligated to use these services, but they find the benefits of economy and efficiency made possible by cooperative purchasing to be advantageous.

Procedure for Processing Orders: Upon bid award to the Contractors/Vendors, NEW BOCES will inform its members and other qualifying purchasers of the contract:

- When the customer identifies a desired product or service as available through the AEPA/NEW BOCES contract and agrees on price as presented to the customer by the awarded AEPA/NEW BOCES vendor, the customer then issues to the vendor a purchase order for that item or service.
- The vendor's price shall include a two percent (2%) administrative/marketing fee on all sales of products and or services that the vendor will collect from the member or other qualifying purchaser. This fee will be remitted to NEW BOCES on a quarterly basis.
- Administrative/Marketing fees will be payable to NEW BOCES on the 15th in the months of April, July, October, and January with all checks payable to NEW BOCES, 410 North Miller Avenue, Gillette, Wyoming 82716.
- Vendor makes all deliveries and installation of products and services. NEW BOCES does not warehouse items nor provide services.
- No other Cooperative shall be offered or used by awarded Contracted Vendors within the participating member customer clients of NEW BOCES.

Vendor Contact: Vendor will designate to NEW BOCES an individual(s) who will represent them. This contact person(s) will correspond with each ordering member for technical assistance, problems, or questions that may arise. Include instructions if different contacts for different geographical areas are needed; this information will be distributed to NEW BOCES members upon award of this bid.

NEW BOCES Commitment to Awarded Contract Vendors:

- 1) Website postings [www.newboces.com](http://www.newboces.com) under Cooperative Purchasing. Includes but not limited to News & Announcements, Public Calendar Events, Awarded Contracts, and Flyers.
- 2) Announcing the contract in its quarterly newsletter and other events completed with vendors which includes savings reports and rebates to members and users of NEW BOCES Cooperative Contracts.
- 3) Publish the Vendor information in a catalog disseminated to all members and marketing for new members.
- 4) Attend Annual Conferences for Trade Show product purposes of all contracts held by NEW BOCES. Including any other suggestions or support from Vendors. A list of members and other qualifying purchasers, addresses, and phone numbers will be made available to the Contracted Vendor.





## Part F.1 – Base Bid Schedule

### AEPA IFB #021-B Hardwood & Synthetic Flooring

Bidding Company Name:

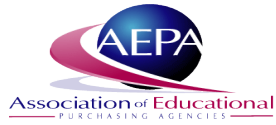
Enter company name here

**INSTRUCTIONS:** Part B: Specifications refer to the type and quality of products and services being bid. In the form below, enter your bid prices for those items indicated, the prices and/or discounts offered for providing all equipment, goods, services, supplies and related items. The prices you offer on these pages affirm that you have accepted the specifications to obtain, deliver and provide those goods and services requested. Each Bidder is encouraged to offer its complete product line and provide the lowest and best prices for the complete product line(s) offered. Bidders are encouraged to include new technologies and may add additional pricing sheets as necessary. Bidders may also provide catalogs or pricing sheets that provide different discounts by category to ensure the most aggressive pricing structure. Please provide price lists and/or catalogs that state a list/retail/regular price, AEPA discount and the AEPA price. *If additional clarification, price sheet(s) and/or catalog(s) pertaining to the bid being submitted are needed, include them behind the last tab.* Clearly indicate and identify the items involved and what you wish to communicate in your response.

**Part F.1 is a REQUIRED FORM**

No.	Description	Manufacturer	Manufacturer Number	Unit of Measure	List Price	Percentage Discount	Bid Price	Comments	No.
<b>Installation of New or Replacement Maple Flooring including Subfloor, Labor, Supplies and Materials For:</b>									
<b>Resilient Pre-Engineered Fixed Panel System</b>									
1	First grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		1
2	First grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		2
3	First grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		3
4	First grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		4
5	Second grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		5
6	Second grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		6
7	Second grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		7
8	Second grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		8
9	Third grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		9
10	Third grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		10
11	Third grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		11
12	Third grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		12
<b>Resilient Fixed Plywood Sleeper w/ Continuour Floor System</b>									
13	First grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		13
14	First grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		14
15	First grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		15
16	First grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		16
17	Second grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		17
18	Second grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		18
19	Second grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		19
20	Second grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		20
21	Third grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		21
22	Third grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		22
23	Third grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		23
24	Third grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		24
<b>Double Plywood Floor System</b>									
25	First grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		25
26	First grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		26
27	First grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		27
28	First grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		28
29	Second grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		29
30	Second grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		30
31	Second grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		31
32	Second grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		32
33	Third grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		33
34	Third grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		34
35	Third grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		35
36	Third grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		36
<b>Sleeper Floor System</b>									
37	First grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		37
38	First grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		38
39	First grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		39
40	First grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		40
41	Second grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		41

No.	Description	Manufacturer	Manufacturer Number	Unit of Measure	List Price	Percentage Discount	Bid Price	Comments	No.
42	Second grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		42
43	Second grade hard Maple - 25/32" x 2 1/2"			Per Sq. Ft.			\$ -		43
44	Second grade hard Maple - 25/32" x 3 1/4"			Per Sq. Ft.			\$ -		44
45	Third grade hard Maple - 25/32" x 1 1/2"			Per Sq. Ft.			\$ -		45
46	Third grade hard Maple - 25/32" x 2 1/4"			Per Sq. Ft.			\$ -		46



## Part F.2 – State Multiplier

### AEPA IFB #021-B Hardwood & Synthetic Flooring

**Bidding Company Name:** *Enter company name here*

**INSTRUCTIONS:** For each of the states listed below provide your multiplier/factor (wage and transportation) to be applied to the *Net Effective Bid Pricing (shown in F.1)* provided to arrive at the individual AEPA state price for each item. Complete all tables on this form, including all cost factors and service rates for installation services, if provided.

**Part F.2 is a REQUIRED FORM**

#### Wages - Percentage added to the Catalog

Project types	CA State Multiplier	CO State Multiplier	CT State Multiplier	FL State Multiplier	GA State Multiplier	IN State Multiplier	IA State Multiplier	IL State Multiplier	KS State Multiplier	KY State Multiplier	MA State Multiplier	MI State Multiplier	MN State Multiplier	MO State Multiplier
	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Non-prevailing wage project:														
Prevailing wage project:														
Davis Bacon wage project:														

Project types	NE State Multiplier	NJ State Multiplier	NM State Multiplier	ND State Multiplier	OH State Multiplier	OR State Multiplier	PA State Multiplier	SC State Multiplier	TX State Multiplier	VA State Multiplier	WA State Multiplier	WV State Multiplier	WI State Multiplier	WY State Multiplier
	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Non-prevailing wage project:														
Prevailing wage project:														
Davis Bacon wage project:														

Product Description	Unit of Measure	Bid Price	Comments
<b>Description of Cost Factors</b>			
Per diem rate - meals and lodging per 24 hour period	Per Day	\$ -	
Performance and payment bond - bonding rate (percent of project)	Percent	0%	
Alternative methods of costing - percent of overhead/markup to cost	Percent	0%	
Discounts offered of alternative costing methods (cost + profit & overhead) Rate of discount.	Percent	0%	
R.S. Means Multiplier/Factor - Normal Hours - Non-Prevailing Wage Rates	Percent	0%	
R.S. Means Multiplier/Factor - Out Side of Normal Hours - Non-Prevailing Wage Rates	Percent	0%	
R.S. Means Multiplier/Factor - Normal Hours - Prevailing Wage Rates	Percent	0%	
R.S. Means Multiplier/Factor - Out Side of Normal Hours - Prevailing Wage Rates	Percent	0%	
Performance and payment bond - bonding rate (percent of project)	Percent	0%	
Bonding capacity - total amount of capacity available	Dollar Amount	\$ -	
<b>Service/Labor Rates</b>			
Consulting	Per Hour	\$ -	
Design	Per Hour	\$ -	
Installer	Per Hour	\$ -	
Tradesman	Per Hour	\$ -	
Engineering, Electrical	Per Hour	\$ -	
Engineering, Mechanical	Per Hour	\$ -	
Crew Supervision	Per Hour	\$ -	
General Laborer	Per Hour	\$ -	
Training	Per Hour	\$ -	
Other	Per Hour	\$ -	
	Per Hour	\$ -	
	Per Hour	\$ -	
	Per Hour	\$ -	
	Per Hour	\$ -	

#### Maintenance Plans

[illegible]

## Part F.3 – Volume Discounts Schedule

### AEPA IFB #021-B Hardwood & Synthetic Flooring

**Bidding Company Name:**

*Enter company name here*

**Part F.3 is an OPTIONAL FORM**

**Instructions.** Complete the form below if your company is offering additional discounts on a purchase of flooring beyond the pricing offered in F.1 - Base Bid Pricing. Please note that the pricing listed on this form is considered the Net Bid Price. If a multiplier/factor has been listed in F.2 - State Multiplier, that factor will be applied to the offered volume pricing found on this form. Please note this is an optional form.

System Type	Cost Per Sq. Ft. for 0 to 2,000 Sq. Ft.	Cost Per Sq. Ft. for 2,000 to 4,000 Sq. Ft.	Cost Per Sq. Ft. for 4,000 to 6,000 Sq. Ft.	Cost Per Sq. Ft. for 6,000 to 8,000 Sq. Ft.	Cost Per Sq. Ft. for 8,000 to 10,000 Sq. Ft.	Cost Per Sq. Ft. for 10,000 to 12,000 Sq. Ft.
<b>Hardwood Flooring Systems</b>						
<b>Resilient Pre-Engineered Fixed Panel Floor System</b>						
First grade hard Maple - 25/32" x 1 1/2"						
First grade hard Maple - 25/32" x 2 1/4"						
Second grade hard Maple - 25/32" x 1 1/2"						
Second grade hard Maple - 25/32" x 2 1/4"						
Third grade hard Maple - 25/32" x 1 1/2"						
Third grade hard Maple - 25/32" x 2 1/4"						
<b>Resilient Fixed Plywood Sleeper w/Continuous Floor System</b>						
First grade hard Maple - 25/32" x 1 1/2"						
First grade hard Maple - 25/32" x 2 1/4"						
Second grade hard Maple - 25/32" x 1 1/2"						
Second grade hard Maple - 25/32" x 2 1/4"						
Third grade hard Maple - 25/32" x 1 1/2"						
Third grade hard Maple - 25/32" x 2 1/4"						
<b>Double Plywood Floor System</b>						
First grade hard Maple - 25/32" x 1 1/2"						
First grade hard Maple - 25/32" x 2 1/4"						
Second grade hard Maple - 25/32" x 1 1/2"						
Second grade hard Maple - 25/32" x 2 1/4"						
Third grade hard Maple - 25/32" x 1 1/2"						
Third grade hard Maple - 25/32" x 2 1/4"						
<b>Sleeper Floor System</b>						
First grade hard Maple - 25/32" x 1 1/2"						
First grade hard Maple - 25/32" x 2 1/4"						
Second grade hard Maple - 25/32" x 1 1/2"						
Second grade hard Maple - 25/32" x 2 1/4"						
Third grade hard Maple - 25/32" x 1 1/2"						
Third grade hard Maple - 25/32" x 2 1/4"						
<b>Sleeper w/ Plywood Floor System</b>						
First grade hard Maple - 25/32" x 1 1/2"						
First grade hard Maple - 25/32" x 2 1/4"						
Second grade hard Maple - 25/32" x 1 1/2"						
Second grade hard Maple - 25/32" x 2 1/4"						
Third grade hard Maple - 25/32" x 1 1/2"						
Third grade hard Maple - 25/32" x 2 1/4"						
<b>Basket Weave Systems</b>						
First grade hard Maple - 25/32" x 1 1/2"						
First grade hard Maple - 25/32" x 2 1/4"						
Second grade hard Maple - 25/32" x 1 1/2"						
Second grade hard Maple - 25/32" x 2 1/4"						
Third grade hard Maple - 25/32" x 1 1/2"						
Third grade hard Maple - 25/32" x 2 1/4"						
<b>Basket Weave w/ Pad System</b>						
First grade hard Maple - 25/32" x 1 1/2"						
First grade hard Maple - 25/32" x 2 1/4"						
Second grade hard Maple - 25/32" x 1 1/2"						
Second grade hard Maple - 25/32" x 2 1/4"						
Third grade hard Maple - 25/32" x 1 1/2"						
Third grade hard Maple - 25/32" x 2 1/4"						
<b>Synthetic/Rubber Flooring Systems</b>						
<b>Cast-In-Place Synthetic Flooring</b>						
Full depth polyurethane floors						
Padded polyurethane floors or sandwich system						
<b>Pre-Fabricated Synthetic Flooring System</b>						
Rolled rubber floor systems						
Rubber tile systems						
PVC sheet flooring systems						
Suspended polypropylene tile systems						