

KPC – KENTUCKY PURCHASING COOPERATIVES
GRREC – KEDC - NKCES – SE/SC - WKEC
KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION (KEDC)
904 ROSE ROAD
ASHLAND, KY 41102-7104
Bidding Department (606) 928-0205
www.kedc.org or www.kybuy.org

***** INVITATION TO BID *****

BID TYPE: DISCOUNT FROM:
CATALOG – PRICE LIST
RETAIL STORE SHELF PRICE

BID REFERENCE: CLS 2010

BID SUPPLEMENT NUMBER: 005

BID PUBLIC NOTICE DATE: April 19, 2010

BID OPENING TIME & DATE: May 03, 2010, 9:00 am EST

BID CONTRACT PERIOD: May 03 – December 31, 2010

STANDARD TERMS AND CONDITIONS

1. **BID PURPOSE:** The Kentucky Educational Development Corporation (KEDC) Board of Directors, as the Legal Education Agency (LEA) for the Kentucky Purchasing Cooperatives (KPC) solicits sealed bids that would, if accepted by the KEDC Board of Directors or its designee, establish contracts, with the general and detailed terms, conditions, and specifications contained in these standard terms and conditions and in the bid specific terms and conditions.
2. **INSTRUCTIONS FOR BIDDERS:** These standard terms and conditions along with the bid specific terms and conditions apply to all bids submitted. Any deviations or exceptions are to be explained as a part of the bid proposal. In the event of a discrepancy between the standard and bid specific terms the bid specific terms will govern.

The public notice for this invitation, the invitation itself, and any addendums can be viewed, downloaded, or printed from the Internet at www.kybuy.org or www.kedc.org on the bid public notice date and until the time and date specified for the bid opening. Bid tabulations will be made by KEDC staff and, after the Board or its designee has taken official action, will be posted to the above websites.

3. **CLARIFICATION:** For clarification or additional information relative to this bid invitation contact the KEDC Member Services Team by email at KPCMemberServices@kybuy.org or phone (606) 928-0205. For issues related to the online bid application contact eSchoolMall Customer Care at (877) 969-7246. PLEASE DO NOT CONTACT MEMBERS.

4. AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST AND COMPLIANCE WITH THE KENTUCKY MODEL PROCUREMENT CODE:

By my signature on the bid certification, I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:

I am the bidder (if bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority on its behalf (if the bidder is a corporation).

The costs quoted in the bid response are correct and have been arrived at by the bidder independently and have been submitted without collusion and without agreement, understanding, or planned common course of action, with any vendor of materials, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition.

The contents of the bid or bids have not been communicated by the bidder, or its employees, or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bids and will not be communicated to any such person prior to the official opening of the bid or bids. Contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

The Kentucky Educational Development Corporation collective bidding process is conducted consistent with KRS Chapter 45A:345 through 45A:460, the Model Procurement Code and that the contents of the bid proposal and the actions taken by the bidder in preparing and submitting the bid proposal are in compliance with above sections of the Model Procurement Code.

The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, gratuities and kickbacks including those prohibited by the provisions of the Model Procurement Code (KRS Chapter 45A). Any employee or official of KEDC or member institution, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.

5. CERTIFICATION CONCERNING DISBARMENT AND SUSPENSION: I certify on behalf of myself, the company and its key employees that I, the company, or its key employees have not been proposed for debarment, debarred, or suspended by KPC, the Commonwealth of Kentucky, or any Federal Agency and are not listed on the Excluded Parties List System provided by the United States Government General Services Administration at www.epls.gov.

6. **BID FORMS AND RETURN INSTRUCTIONS:** KPC has licensed the eSchoolMall (ESM) Sourcing Solutions Suite for secure, confidential, and encrypted electronic bid submission. Bidders must register with ESM prior to bidding by visiting www.eschoolmall.com. Once a bidder has registered with ESM they should contact KPC at KPCMemberServices@kybuy.org and request that the specific bid of interest be published to them. For assistance with registration or technical questions regarding the bid interface contact ESM Customer Care at (877) 969-7246.

All bids must be submitted via the online application and any attachments provided therein. No other form of bid submission (e.g., paper, telephone, facsimile, telegraph, mail, etc.) will be accepted. Bids submitted on company forms may be rejected.

The bidder acknowledges that the bidder has read this invitation, understands it, and agrees to bind by its terms and conditions.

7. **CORRECTION OF MISTAKES:** Bidders are cautioned to re-check their bid for possible errors. No bid can be corrected, altered, or signed after being opened. Errors discovered after public opening cannot be corrected and bidder will be required to accept a bid contract if offered.
8. **ERROR IN BID:** No bid will be altered, or amended after the specified time and date set for the bid opening. The KEDC Board or its designee reserves the right to waive defects and informalities in bids, to reject any or all bids, or to accept any bid as may be deemed to its interest.
9. **WITHDRAWAL OF BID:** All bids shall be valid for a period of thirty (30) days from the bid opening date to allow for tabulation, study, and consideration by the KEDC Board or its designee. A bidder may withdraw a bid, without prejudice, after it has been submitted only if a written request is submitted and received prior to the expiration of the time during which bids may be submitted.
10. **ADDENDUMS:** KPC may issue an addendum to the bid after the bid has been released. In no instance will an addendum be issued within five (5) working days prior to the bid opening.
11. **REVIEW:** After the public opening of proposals received from the Bid Invitation, KEDC staff and member officials will review the results, develop a preliminary tabulation, and may contact bidders for the purpose of clarification only. If necessary, members may purchase from the apparent low bidder pending approval by the KEDC Board of Directors or its designee.
12. **PRE-QUALIFICATION:** KPC reserves the right to pre-qualify a potential contractor, especially any firm which has not previously participated in the KPC bid program. Criteria for qualification shall include:
 - a. **Product Line:** The potential contractor shall provide proof that all items listed in the catalog are in stock or can be quickly obtained.

- b. Physical Facilities: KEDC staff may inspect the potential contractor's warehouse. The warehouse shall be clean and adequate for storing and delivery of products that the potential contractor proposes to supply.
 - c. Financial Capacity: The potential contractor shall have financing adequate to purchase items in the most economical quantities. References may be requested to document adequate financial capacity.
 - d. Service Level: A successful bidder must have a proven (or believable) record of service, particularly with respect to delivering all items on a regularly scheduled basis, at favorable prices. A distributor may be designated as unacceptable if the requirements listed herein have been previously violated and/or poor communications exist between the seller and the membership. If KEDC does not have adequate historical data to determine the contractor's ability to provide the products bid in a timely manner, then three letters of reference from previous school district customers shall be provided.
 - e. Accounting Practices: A potential contractor must clearly demonstrate to KEDC the capacity to provide accurate, reliable, and timely reports in terms of invoices, statements, credits, and usage data.
13. NON-ASSIGNABILITY OF AWARDED BID: The bid award will be made only to the individual or entity which actually submits a bid. The awarded bid cannot be conveyed to an awarded bidder's successors or assigns without the prior, express approval of the Board of Directors of KEDC or its designee.
14. TRANSMITTAL OF ORDERS: KEDC shall issue purchasing guidelines to KPC members. The members will use formal purchase orders in ordering from the awarded bidder. The successful bidder acknowledges that orders from KPC members may be transmitted from KEDC's office on the member's behalf. The successful bidder may use salespeople for in-person and/or telephone solicitation of orders in accordance with a mutually arrived schedule developed between the members and the awarded bidder.

KEDC has licensed the ESM Direct Buy module for the KPC online catalog. At KEDC's option, the vendor shall 1) provide an interface between their existing website and KEDC's online catalog utilizing "punch-out", and/or 2) provide a listing of all items on the contract in an electronic format specified by KEDC (including description, pricing, picture of item, etc.) to be imported into KEDC's online catalog, and/or 3) accept faxed orders, and/or 4) accept e-mailed orders. The vendor shall accept orders electronically from KEDC and/or KPC members. The vendor is responsible for the initial and on-going accuracy of item information in the on-line catalog and for all programming and configuration costs on their existing web site for Option 1 and for all costs associated with compiling the data file containing the list of items in the bid contract for Option 2. KEDC may provide setup assistance at an additional charge.

15. QUANTITIES: It shall be understood that the bid contract will not obligate KPC or its members to purchase from the Bid Contract.

16. **ITEM SUBSTITUTION AND OUT-OF-STOCK BACK-ORDERS:** No substitutions are allowed without prior written authorization from the member. Member must be notified if item is out of stock, backordered or if timely delivery cannot be made. Upon member notification, the contractor must receive written directions from the member on how to proceed, i.e. cancel, process, etc.
17. **WARRANTY:** The awarded vendor shall make available and honor all manufacturer's warranties, both standard and extended, to all KPC members.
18. **RETURNS:** The successful bidder must provide a Return Material Authorization within 1 working day of the request by KPC member. Returned materials shall be restocked at no charge to the member (special order and custom crafted items excluded).
19. **RECALLS:** The contractor shall notify KPC and its members immediately of any products recalls. Any products that have been recalled and have been delivered shall be issued a credit and/or a comparable substitute immediately. All costs associated with voluntary and involuntary product recalls shall be borne by the awarded vendor.
20. **PENALTY:** The designated supplier(s) reciprocally agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. Failure to deliver 100% of stock items -- within 10 business days -- shall be considered a default.
21. **PRODUCT AND SAFETY INFORMATION:** The successful bidder shall provide upon request by any member, the most recent MSDS information sheets for any products the vendor may deliver to said member. It is the vendor's responsibility to comply with all local, state, and federal regulations.
22. **LIABILITY:** The contractor agrees to protect, defend, and save harmless KEDC, KPC, and members from any suits or demands for payment that may be brought against it for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and contractor further agrees to indemnify and save harmless KEDC, KPC, and members from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties by, or for any of the acts of the contractors, his servants or agents.
23. **VELOCITY REPORTS:** Velocity reports in an electronic format (Microsoft Excel, Access, or SQL) specified by KPC shall be issued to KPC upon request. Contractor shall compile velocity reports by member. The reports shall indicate purchasing entity, vendor item number, manufacturer item number, item description, quantity sold, and dollar value of each item sold. KEDC will routinely request procurement data from participating KPC members to verify velocity report accuracy.

24. **CONTRACT SUSPENSION:** KPC may, at its sole discretion, suspend a contractor for a period of up to 90 days to investigate alleged instances of breach of contract or non-compliance. The contractor is prohibited from accepting new orders from KPC members while suspended, however, orders already in process can be completed. If the Awarded Bidder is found to be in breach of contract or non-compliant, the contract is rendered null and void. The Awarded Bidder agrees that they have no legal recourse of any nature against KEDC, KPC, or its member entities except for payment of goods, supplies and services that are due for prior purchases which were permitted to be sold by the Awarded Bidder under this bid. The decision of KPC regarding suspension and/or termination is final.

25. **WARNING AND TERMINATION OF CONTRACT:** KEDC may terminate the contract if the contractor fails to perform at the service level specified in the bid document. Contracts may be terminated at any time with 30 days notice or at the discretion of KEDC, in a shorter period of time, if the terms of the contract are violated in any way. In the event of termination, the members shall not be liable to any costs other than the cost of items delivered and accepted prior to the termination date. The contractor may terminate the contract if the members fail to meet mutually agreeable and specified payment terms.

Each party shall follow the following procedure if the contract is to be terminated:

Step 1 - Issue a warning letter outlining the violations and state the length of time to correct the problem(s).

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

Step 3 - Issue a letter to cancel contract.

In the event the physical facilities of the contractor are destroyed or a labor dispute makes performance under the terms of the contract impossible, the contractor shall not be held liable by KPC or the members.

26. **OTHER CONDITIONS:**

- A. Contractors shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to this bid and the rendering of goods and /or services.
- B. This contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
- C. Contractors providing services under this bid invitation, herewith assure KEDC they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
- D. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.
- E. Contractor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with the contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, age, sex, disability, or religious creed.
- F. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400

Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.

- G. Contractor agrees to retain all books, records, and other documents to this agreement for three years after final payment. KEDC and its members, its authorized agents and/or state/or federal representatives shall have full access to, and the right to examine any or said materials during said period which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions. If the investigator or audit is in progress, records shall be maintained until stated matter is closed.
- H. Contractor shall comply will all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 187 [h], Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency (EPA) regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included in the EPA list of violated facilities.
- I. Contractor shall comply with all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- J. By signing this document, the contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
- K. Prohibition against conflicts of interest, gratuities, and kickbacks: Any employee or official of KEDC or member institution, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
- L. The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, and KRS 42.990.
- M. The provisions of KRS 365.080 and KRS 365.090 which permit the regulation of resale price by contract, does not apply to sales to the State.
- N. The bidder is fully knowledgeable of KRS 45A.335-45A.490, Kentucky Model Procurement Code, including the provisions for violation of the Code. KRS 45A.455 prohibits conflicts of interest, gratuities, and kickbacks to employees of KEDC or member institutions in connection with contracts for supplies or services whether such gratuities or kickbacks are direct or indirect. KRS 45A.990 provides severe penalties for violations of the laws relating to gratuities or kickbacks to employees that are designed to secure a public contract for supplies or services.
- O. KEDC reserves the right to reject any and/or all bids and to waive informalities.

CATALOG-PRICE LIST and STORE SHELF TERMS AND CONDITIONS

1. **INSTRUCTIONS FOR BIDDERS:** These bid specific terms and conditions along with the standard terms and conditions apply to all bids submitted. Any deviations or exceptions are to be explained as a part of the bid proposal. In the event of a discrepancy between the standard and bid specific terms the bid specific terms will govern.

The public notice for this invitation, the invitation itself, and any addendums can be viewed, downloaded, or printed from the Internet at www.kybuy.org or www.kedc.org on the bid public notice date and until the time and date specified for the bid opening. Bid tabulations will be made by KEDC staff and, after the Board or its designee has taken official action, will be posted to the above websites.

2. **PARTICIPATING MEMBER INSTITUTIONS:** Any institution that is a member of the GRREC, KEDC, KPC, NKCES, SESC, or WKEC (hereinafter referred to as member or members) is eligible to utilize the Bid Contract; however this does not mean that all members will participate.

A list of eligible members is included as an attachment to the bid packet. A bidder will not be required to serve all eligible members. Any bidder that cannot serve all members is required to include in their bid proposal a copy of the provided list of members with the members that the bidder can and will serve selected. Download and complete the Service Area Attachment and then upload the completed file with your bid. If this list is not returned then the bid contract will be available to all members.

3. **AWARD:** After the review of the bid proposals, the KEDC Board or its designee may accept one or more bid contracts based on the needs of the members. A bidder whose bid proposal is accepted shall hereinafter be called contractor. Multiple bid contracts may be accepted based on separate pricing structures as follows:
 - The bidder's current catalog or price list
 - The bidder's current store shelf prices

Bidders who are current contract holders of a CLS 2007 bid agree that if awarded this bid opportunity, their CLS 2007 bid will be terminated.

4. **PRICING:** The purpose of this bid is to obtain bid contracts that provide a fixed percentage discount from any or all of the following:
 - The bidder's current catalog or price list
 - The bidder's current store shelf prices

Bid Contracts may be accepted from multiple bidders. Contract discounts shall remain in effect for the entire contract and any agreed upon contract extensions, however additional discounts and/or special pricing are encouraged and may be accepted when consistent with other terms and conditions of the contract and offered equally to all members marked to be served by the Bid Contract.

Fuel surcharges and other similar charges are not permitted.

Bidders are to provide one discount level per category and list the KPC member(s) they propose to service. The bidder shall provide each item on this bid to all KPC members at the same price. Bidders MAY NOT submit multiple discount levels for the same product by KPC member (i.e., regional bidding is NOT acceptable).

Should a contractor negotiate or bid a lower price for an item included in this bid with any KPC member, the bidder agrees to provide the product to all KPC members they propose to serve at the lower price. For example: Bidder is proposing to serve Member A and not serve Member B on their KPC bid documentation. The Bidder is providing service to the area where Member A and Member B reside. Bidder then establishes a price with Member B for items that are on the KPC bid thru negotiation or a local bid that is lower than the bid price with KPC. The lower prices provided to Member B become the bid price for Member A and all KPC members served by that bidder.

5. SUPPLEMENTAL ITEMS: Each bidder submitting a bid acknowledges that the purpose of the bid is solely to allow members to purchase goods, supplies and services that are not available as a line item through KPC's Prime Vendors. For example, if a specific item is not available as a line item from a KPC Prime Vendor, the member entity can purchase it from an awarded Catalog-Price List, or Store Shelf Vendor. Contractors that violate this limitation, render their bid contract null and void. If the contract is rendered null and void, the Contractor agrees that they have no legal recourse of any nature against KEDC, KPC, or its member entities except for payment of goods, supplies, and services that are due for prior purchases which were permitted to be sold by the Contractor under this bid.
6. CONTRACT PERIOD: The bid contract is for the time period indicated on page one of this bid document. The contract may be extended on an annual basis by KEDC not to exceed five years in total including the first contract period. The determination to renew the contract beyond the initial contract period will be determined in part by the performance of the contractor as reflected by performance evaluations. KPC may periodically provide evaluation summaries to the contractor. KEDC shall notify the contractor of its intent to extend or not to extend the contract by October 1 of each year. If KEDC notifies contractor of intent to extend the contract by one year, contractor shall respond by October 15 if they elect not to extend or with any necessary discount level increases or decreases for the extended year. Contracts will automatically be renewed with the most current terms if the contractor does not respond within 14 days of an offer to extend. If discount decreases submitted are deemed excessive by KEDC then KEDC shall have cause to not extend the contract. Price change notifications will follow the same pattern as above for any years in which this contract is extended. KEDC reserves the right to extend the term for up to 180 days to continue a source of supply until new or replacement contracts are completed. Since this bid request is subject to multiple contracts being accepted, KEDC reserves the right to renew and/or solicit additional bids for subsequent contract periods. The bid will not be automatically extended beyond any current year unless expressly approved by KEDC.

7. **DELIVERY CHARGES:** All individual items weighing 70 pounds or less procured from this Bid Contract are to be delivered free of freight charges (FOB destination) with the exception of hazardous materials, live materials, and over sized items that must ship freight.. Shipping charges may be added to individual items weighing 71 pounds or more. Vendor must disclose shipping costs to KPC members prior to shipment.

8. **USAGE REPORTS:** Usage reports in electronic format (Excel or comma delimited) shall be issued to KPC quarterly by the 25th day of the next month following the end of each quarter during the period of the bid utilizing the format provided by KPC. Since the usage report data is useful to both KPC and the contractor, it is of benefit to both parties to share this information. **IT IS THE CONTRACTOR’S RESPONSIBILITY TO TRACK AND REPORT ALL PURCHASES MADE BY KPC MEMBERS.**

9. **ORDERING, PAYMENTS, AND ADMINISTRATIVE FEES:** Each member shall be responsible for making payment to the contractor, unless KEDC has been established as the Purchasing Agent for the contractor, in which case, KEDC will coordinate orders and payments directly to the contractor with the individual members being the ship to party. Normally, members pay bills only after approval from the member board. KEDC reserves the right to negotiate upon mutual agreement to serve as Purchasing Agent for any Bid Contract including charging an additional administrative fee to the contractor beyond the one percent (1%) fee detailed below.

The contractor’s price will include an administrative fee of one percent (1%) on all purchases made by members in the catalog-price list category. The purchase price shall be inclusive of any and all shipping charges less actual freight costs for those items weighing over 70 pounds if those charges are passed to the member. Maintenance agreements, lease agreements, and professional service contracts are considered purchases and must be reported under this agreement. The contractor will remit reports and fees to KEDC on the following schedule:

Bid Period	Reporting and Payment Schedule
January 1 – March 31	April 25 th
April 1 – June 30	July 25 th
July 1 – September 30	October 25 th
October 1 – December 31	January 25 th

Purchases made by members at a retail outlet under the store shelf bid are exempt from the one percent administrative fee. Examples of exempted purchases would include but not be limited to: a walk-in purchase at “XYZ Trophy Shop” or purchases made at the local Wal-Mart, Lowes, Target, etc. If you have questions as to which type of bid you operate under, please contact KPCMemberServices@kybuy.org.

The minimum administrative fee is \$25.00 per quarter. The contractor will compile and provide to KEDC a quarterly report showing all purchases made by members under this contract in a format provided by KEDC. The sales report shall be submitted electronically. Sales must be reported in the quarter in which the member is invoiced. It is the contractor's responsibility to track and report all purchases made by KPC members. All sales to KPC members are considered to be made under this contract unless the contractor holds an individual bid with the member. It is the vendor's responsibility to provide proof of individual bids.

The contractor will remit the administrative fee payment to KEDC, 904 Rose Road, Ashland, KY 41102-7104. For your reference, KEDC's FEIN is 61-0659010. Report and payment schedule may be modified at the discretion of KEDC. If the contractor is awarded multiple KPC bids, the highest fee structure will apply.