

Green River Regional Educational Cooperative
Kentucky Educational Development Corporation
Northern KY Cooperative for Educational Services



Ohio Valley Educational Cooperative
Southeast/Southcentral Educational Cooperative
West Kentucky Educational Cooperative

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

***** BID RENEWAL OFFER *****

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

BID REFERENCE: CLS 2010

BID CONTRACT PERIOD: January 1, 2012 – December 31, 2012

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. Explain any requested deviations or exceptions as part of your bid proposal. KEDC may, at its discretion, accept or reject any or all deviations or exceptions proposed. 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 are available for view, download, or print 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 technical 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. The bidder certifies that this proposal is 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 bidder 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 found 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 registered the bidder should contact KPC at KPCMemberservices@kybuy.org and request publication of the specific bid of interest. For assistance with registration or technical questions regarding the bid interface contact ESM Customer Care at (877) 969-7246.

Submit all bids and any attachments via the online application. No other form of bid submission (e.g., paper, telephone, facsimile, telegraph, mail, etc.) will be accepted. Bids submitted on company forms are subject to rejection.

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:** Recheck bid for possible errors; KPC will not accept any alterations or corrections, including signatures, once the bid opens. 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 may 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. The bidder may withdraw a bid, without prejudice, prior to the published bid opening date.
10. **ADDENDUMS:** KPC reserves the right to issue addendum(s) to the bid. KPC shall issue no addenda within seven (7) calendar days of the published bid opening date.
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 the bidder 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 any bidder, especially those which has not previously participated in the KPC bid program. Criteria for qualification shall include:
 - a. **Product Line:** The bidder shall provide proof that all items listed in the catalog are in stock or quickly obtained.
 - b. **Financial Capacity:** The bidder shall have financing adequate to purchase items in the most economical quantities and provide references to document adequate financial capacity upon request.

- c. Service Level: A 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. If the bidder has a history of violating the listed requirements or of poor communication with KPC or the membership, KPC may designate a bidder as unacceptable. The bidder will provide three letters of reference from previous school district customers if KEDC does not have adequate historical data to determine the bidder's ability to meet the obligations of the contract.
 - d. Accounting Practices: A potential bidder 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 awarded bidder cannot convey this contract to its 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 transmitted from KEDC's office on the member's behalf are acceptable. 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 bidder shall

- 1) 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,
- 2) accept faxed orders, or
- 3) accept e-mailed orders.

The bidder shall accept orders electronically from KEDC and/or KPC members. The bidder is responsible for all costs associated with compiling the data file containing the list of items in the bid contract. KEDC may provide setup assistance at an additional charge.

Catalog/price list bidders may also take advantage of eSchoolMall's dynamic link option and provide an interface between their existing website and KPC's online catalog utilizing "punch-out." The bidder is responsible for the initial and on-going accuracy of item information in the on-line catalog and for all programming and configuration costs to establish the dynamic link.

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:** Substitutions require prior written authorization from the member. The bidder is required to notify the member if an item is out of stock, backordered, or if timely delivery is not feasible. Upon member notification, the bidder must receive written directions from the member on how to proceed (i.e. cancel, process, etc.).
17. **WARRANTY:** The awarded bidder shall make available and honor all manufacturer's warranties, 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 a KPC member. Bidder must restock returned materials at no charge to the member (special order and custom crafted items excluded).
19. **RECALLS:** The bidder shall notify KPC and its members immediately of any products recalls. The bidder will issue a credit or comparable substitute for any delivered, recalled product. All costs associated with voluntary and involuntary product recalls shall be borne by the awarded bidder.
20. **PENALTY:** The bidder agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. The bidder is to deliver 100% of stock items within 10 business days; repeated failure to do so will result in 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 bidder may deliver to said member. It is the bidder's responsibility to comply with all local, state, and federal regulations.
22. **LIABILITY:** The bidder 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 bidder 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 bidders, 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. Bidder shall compile velocity reports by member. The reports shall indicate purchasing entity, bidder 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 bidder for a period of up to 90 days to investigate alleged instances of material breach of contract or material non-

compliance. The bidder will not accept new orders from KPC members while suspended. However, the bidder may complete orders already in process. Breach of contract, default, or noncompliance renders the contract null and void. The awarded bidder agrees that they have no legal recourse of any nature against KEDC, KPC, or member entities except for payment of goods, supplies and services that are due for prior purchases sold 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 with 30 day notice without cause. KEDC may terminate the contract in a shorter timeframe if the bidder violates the contract terms and conditions. In the event of termination, the members shall not be liable for any costs other than the cost of items delivered and accepted prior to the date of termination. The bidder 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 bidder are destroyed or a labor dispute makes performance under the terms of the contract impossible, the bidder shall not be held liable by KPC or the members.

26. **OTHER CONDITIONS:**

- A. Bidders 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. Bidders 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 issued upon request.
- E. Bidder shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with the bidder's performance of work under this contract, bidder 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. Federal law and U.S. Department of Agriculture policy, prohibit this institution 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. If required by USDA, the bidder agrees to retain all books, records, and other documents to this agreement for five 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. The bidder is to maintain all records until all active audits or investigations are closed.

- H. Bidder 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. Bidder 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 bidder certifies that this proposal is 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 bidder 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. Explain any requested deviations or exceptions as a part of the bid proposal. KEDC may, at its discretion, accept or reject any or all deviations or exceptions proposed. In the event of a discrepancy between the standard and bid specific terms the bid specific terms will govern.
2. **PARTICIPATING MEMBER INSTITUTIONS:** Any institution that is a member of the Kentucky Purchasing Cooperative (KPC) - 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. Bidder is not 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. Failure to return the list indicates the contract is available to all KPC 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.
4. **ADMINISTRATIVE FEES:** The catalog/price list bidder's price will include an administrative fee of one and a quarter percent (1.25%) on all purchases made by members under the catalog-price list bid. The minimum administrative fee is \$100.00 per quarter.

Any awarded catalog/price list bidder found to have failed to report sales or underreported sales to any KPC member is subject to a nonrefundable fee of \$150.00 for each quarter in which the underreporting occurs; NO credit accrues for past, current, or future administrative fees. Catalog/Price List bidders new to the KPC program will not be subject to this fee during the quarter of their award.

The catalog/price list bidder will compile and provide to KEDC a quarterly sales report showing all purchases made by members under this contract in the electronic format provided by KEDC. The bidder must report sales to KPC in the quarter the bidder invoices the member. **IT IS THE BIDDER'S RESPONSIBILITY TO TRACK AND REPORT ALL PURCHASES MADE BY KPC MEMBERS.**

Catalog/price list bidders are to report all sales to KPC members regardless of category. It is the catalog/price list bidder's responsibility to track and report all purchases made by KPC members. All sales to KPC members occur under this contract unless the bidder holds an individual bid with the member. It is the catalog/price list bidder's responsibility to provide proof of individual bids.

The catalog/price list bidder must report all maintenance agreements, lease agreements, and professional service contracts as purchases.

The bidder 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 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 under which you operate, please contact KPCMemberServices@kybuy.org.

Remit the administrative fee payment to KEDC, 904 Rose Road, Ashland, KY 41102-7104. For your reference, KEDC’s FEIN is 61-0659010. KEDC may modify the report and payment schedule at its discretion.

If the bidder holds multiple bid awards from KPC, the highest fee structure applies to all purchases.

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

Bidders shall NOT select both bid types.

Bidders are to enter one discount percentage for all items through the eSchoolMall interface and then mark the categories on the attached spreadsheet in which they desire listing. The category spreadsheet is for search purposes only; all items sold by the bidder are available under this contract. Bidders may also note category discount exceptions on the same spreadsheet.

KPC will accept contracts 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.

The bidder shall provide each item on this bid to all KPC members at the same price, assuming equal quantities and purchases made within the same timeframe. Bidders MAY NOT submit

multiple discount levels for the same product by KPC member (i.e., regional bidding is NOT acceptable).

Should a bidder 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.

The bidder may not add fuel surcharges or other similar charges to KPC members.

6. **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). The bidder may charge shipping for all hazardous materials, live materials, oversized items that must ship freight, and all individual items weighing 71 pounds or more. Bidder must disclose shipping costs to KPC members prior to shipment.
7. **ORDERING AND PAYMENTS:** It is the responsibility of each KPC member to make payment to the bidder. 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 bidder beyond the fee detailed in this document. Where KEDC serves as a Purchasing agent KEDC will coordinate orders and payments directly to the bidder and the bidder will ship directly to the member.

KPC members may purchase any and all items from the awarded bidder, regardless of category.

8. **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. Bidders that violate this limitation, render their bid contract null and void.

The 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 due for prior purchases under this bid.

9. **CONTRACT PERIOD:** The bid contract is for the time period indicated on page one of this bid document. KEDC may extend the contract on an annual basis, not to exceed ten years total including the first contract period. The bidder's performance will in part determine the decision to renew. KPC may periodically provide evaluation summaries to the bidder. KEDC shall notify the bidder of its intent to extend or not to extend the contract by October 1 of each year. If KEDC notifies bidder of intent to extend the contract by one year, bidder 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 renew with the most current terms if the bidder does not respond within 14 days of an offer to extend. The submission of excessive contract discount decreases, as determined by KEDC, is cause not to extend the contract. Price change notifications follow the same pattern as above for any contract extensions. 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. KEDC reserves the right to renew and/or solicit additional bids for subsequent contract periods. The bid will not automatically extend beyond any current year unless expressly approved by KEDC.