

# **PECOS CYBER ACADEMY**

## **Request for Proposal and Contract 2021-2022-1**

This is a  
**REQUEST FOR PROPOSAL**  
by  
**PECOS CYBER ACADEMY**  
**TO OPERATE AND MANAGE THE 6-8 SCHOOL CURRICULUM, PLATFORM,  
AND INSTRUCTIONAL TECHNOLOGY**  
  
**COMMENCING ON JULY 1, 2022, AND  
AND ENDING ON JUNE 30, 2023**  
**RENEWABLE FOR FOUR ONE-YEAR TERMS**

PROPOSALS WILL BE RECEIVED BY PECOS CYBER ACADEMY UNTIL  
1:30 PM, March 31, 2022

PROPOSALS WILL BE CONSIDERED AND A CONTRACT EXECUTED  
PURSUANT TO THE PROPOSED TIMELINE

Dr. Kim Hite-Pope  
Head Administrator  
Pecos Cyber Academy  
1503 West Pierce  
Carlsbad, New Mexico 88220

**I. LEGAL PUBLICATION OF REQUEST FOR PROPOSALS FOR SCHOOL FOOD SERVICE MANAGEMENT SERVICES**

**GOVERNMENT LEGAL PUBLICATION**

6-8 Curriculum, Platform, and IT

Pecos Cyber Academy, a public charter school located in Carlsbad, New Mexico will receive sealed Requests for Proposals (RPF's) proposals until 1:30 p.m. local time, Thursday, March 31, 2022. Services are being requested for operation and management of its 6-8 curriculum. The Contract will operate from July 1, 2022 through June 30, 2023 and is renewable for four one-year terms.

A list of qualifications and specifications, instructions to Offerors and RFP forms can be obtained upon request by email to Dr. Kim Hite-Pope, Head Administrator, Dr. Kim Hite-Pope, [khitepop@pecosca.us](mailto:khitepop@pecosca.us) or through download at <https://www.pecosca.us/page/procurement>.

The Pecos Cyber Academy reserves the express right to accept or reject any or all bids.

/S/  
Dr. Kim Hite-Pope, Head Administrator

PUBLISH: Thursday, March 3, 2022 and Sunday, March 6, 2022

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## 1. INTRODUCTION

### A. Overview

On behalf of its students Pecos Cyber Academy (PCA) invites experienced Contractors to submit proposals in accordance with the outlines and specifications contained herein. Proposals are requested from qualified respondents who can provide 6-8 Curriculum, Platform, and Instructional Technology (IT). Selection for the award will go to the responsive Offeror whose proposal is most advantageous to PCA. The method by which the Offeror or Offerors will be selected is detailed further in the evaluation section. In preparing a response to this solicitation, the Offeror is creating the contract document, if the contract is awarded. This contract may be extended to Participating Entities.

The Offeror that supplies 6-8 Curriculum, Platform, and IT Services in response to this RFP will be referred to as the Contractor. The Contract will be between the Contractor and PCA.

### B. Examination of Documents

Offeror will carefully examine the Request for Proposal, which includes six sections as follows:

1. Introduction,
2. Conditions Governing the Procurement,
3. Response Format and Organization,
4. Specifications and Requirements,
5. Evaluation and Contract Award, and
6. Proposal Forms and Attachments.

### C. Questions

E-mail any questions that may arise to PCA. Submit all questions about the Request for Proposals (RFP) in writing to PECOS CYBER ACADEMY, Attn: Gloria Lopez, Business Manager, by email to [glopez@pecosca.us](mailto:glopez@pecosca.us). Any list of questions shall include a return email address for delivery of answers and specifically reference the section of this RFP in question. All questions must be submitted in writing and confirmation of email receipt by Gloria Lopez will be made within 24 hours. Questions and answers will be distributed to all listed potential Offerors via email to all Offerors that provided the Acknowledgment of Receipt prior to its deadline. Additional copies will be posted on the website <https://www.pecosca.us/page/procurement> to avoid any unfair advantage. These guidelines for communication have been established to ensure a fair and equitable evaluation process for all respondents. Any attempt to bypass the above lines of communication may be perceived as establishing an unfair or biased process and could lead to disqualification as a potential vendor. Questions received after Thursday, March 16, 2022, at 5:00 p.m. local time will not be answered.

### D. Anticipated Timelines

PCA will make its best effort to adhere to the following schedule of events.

	Action	Response	Date/Time (local)
1	Issue RFP	PCA	March 2, 2022
2	Acknowledge of Receipt Deadline	Potential Offerors	March 16, 2022
3	Deadline to Submit Written Questions	Potential Offerors	March 16, 2022
4	Response to Written Questions via email	Procurement Manager	March 18, 2022
5	Deadline to Submit Proposal	Offerors	March 31, 2022
6	Proposal Evaluation	Evaluation Committee	April 7, 2022
7	Interview/Presentation	Evaluation Committee	April 8, 2022
8	Recommendation for Award to Governing Council	Procurement Manager	April 18, 2022
9	Contract Negotiations	PCA	April 19-22, 2022
10	Notice of Award	PCA	April 25, 2022
11	Protest Deadline	Offerors	May 10, 2022

## E. Award

Award shall be made to the qualified and responsible Offeror whose proposal is most responsive to this solicitation and in the best interests of PCA. A responsible Offeror is one that provides financial, technical, and other resources indicating an ability to perform the services required by this solicitation. The most advantageous proposal may or may not have received the most points. Accordingly, each initial proposal should be submitted with the most favorable price and service standpoint.

Offerors and their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the Offeror's own risk, and he, she or they cannot secure relief on the plea of error. PCA is not liable for any cost incurred by the Offeror prior to the signing of a contract by all parties.

## 2. CONDITIONS GOVERNING THE PROCUREMENT

### A. Listing of General Terms and Governing Conditions

For the purposes of this REQUEST FOR PROPOSAL, the following terms and conditions shall be defined as indicated below.

**Acceptance of Delivered Services:** PCA will be the determining judge of whether materials and services delivered under the contract satisfy the requirements as identified in the RFP.

**Addendum:** Written changes, responses to questions and/or drawings issued before the closing date and time for an RFP. An addendum may interpret or modify the bidding documents by making additions, deletions, clarifications, or corrections.

**Amendment of Offer:** An offer can be amended up to the time of opening by submitting a sealed letter to the place indicated on the front of the response to this RFP.

**Announcement of Successful Offerors:** Selection will be made via written communication to the entities that provided a timely response to this RFP.

**Applicable Law:** This contract will be governed by the laws of the State of New Mexico, both as to interpretation and performance. Suits pertaining to this contract can be brought only in courts in the State of New Mexico. Offerors doing business with PCA must be in compliance with, but not limited to, the Federal Civil Rights Acts of 1964, Title VII of that Act, Rev. 1979 Family Education Rights and Privacy Act (FERPA), Protection of Pupil Rights Amendment (PPRA), and Health Insurance Portability and Accountability Act of 1996 (HIPAA). All work under this contract will be done in strict accordance with the most recent edition of any relevant regulation, standard, document or code that relates to these laws. Where conflict among the requirements or with these specifications exists, the most stringent requirement will be used.

**Arbitration:** This contract is subject to arbitration to the extent required by the New Mexico Procurement Code.

**Assignees, Mergers, Dissolution and Successors:** The Contractor agrees that during the term of the contract, it will maintain its existing business structure and adhere to the terms and provisions of the contract. The parties will be bound by and inure to the benefits of the successors and the respective parties involved, the business structure will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another business structure or permit one or more other

business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure can:

1. Qualify to do business in the State of New Mexico and holds the appropriate licenses, registrations, etc.;
2. Assume, is capable of, and has the capacity and qualifications and agrees in writing to perform all of the existing and future obligations of the original Contractor;
3. Provide PCA with all of the documents required for it to review, evaluate and approve; and
4. Receive PCA written approval.

**Attachment:** Any item this Solicitation requires an Offeror to submit as part of the Offer.

**Audit Rights:** In accordance with applicable New Mexico and federal law, the Contractor's books and records related to any process and/or activity that occurs under this contract may be audited at a reasonable time and place.

**Authority:** This RFP, as well as any resultant agreement, is issued under the New Mexico Procurement Code, and PCA, Governing Board Bylaws, and Policies.

**Awarding of Contract:** A response to the RFP is an offer to contract with PCA based upon the terms, conditions, scope of work and specifications contained in this request for proposal.

**Background Check:** All Contractor staff and subcontractors that are on the charter school grounds for completion of work under this RFP shall have a fingerprint-based background check as required by the New Mexico Department of Education. PCA will periodically audit the background check records and may require copies of the background check.

**Best and Final Offer:** After initial receipt of proposals, PCA reserves the right to conduct discussions with responsible Offerors who submit responsive proposals and request a Best and Final offer from the Proposer.

**Bidder:** The term Bidder, Offeror and Proposer can be used to identify the person(s) or firm(s) submitting a response to a Request for Bid or Request for Proposal.

**Billing:** All invoices will be from the Contractor to Pecos Connections Academy dba Pecos Cyber Academy, 1503 West Pierce, Carlsbad, NM 88220, or via email, as approved by PCA.

**Bribes, Gratuities and Kickbacks:** Sections 13-1-191 and 13-1-198 Procurement Code, NMSA, 1978 prohibits bribes, gratuities, and kickbacks, and provides for criminal prosecution for the violation thereof.

**Buyer:** Refers to PCA as an entity.

**CFR:** Code of Federal Regulations.

**Civil and Criminal Penalties:** The New Mexico Procurement Code, Sections 13-1-28 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.

**Clarification:** As used in this RFP, clarification means communication with a Contractor for the sole purpose of eliminating minor irregularities, informalities, or apparent or learning facilitator clerical mistakes in the proposal. It is achieved by explanation or substantiation, either in response to an inquiry by PCA, or as initiated by the Contractor. Unlike "Discussions" (see below), clarification does not give the Offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision.

**Competitive Sealed Proposals:** As required in the New Mexico Procurement Code, PCA has determined that competitive sealed bids are neither practical nor advantageous for this solicitation. These PCA contracts will be awarded through competitive sealed proposals for one or more of the following reasons:

1. PCA desires to conduct oral or written discussions with potential Offerors prior to an award.
2. PCA desires to allow vendors to clarify proposals.
3. PCA's intent is to award a contract(s) on which price is only one of many determining factors.
4. Offeror meets or exceeds the minimum Offeror's qualifications.
5. Offeror provides the necessary documentation to demonstrate that it complies with all solicitation requirements.
6. There is value in exceeding the industry standards and guidelines established for use in public facilities and for public use.
7. Offeror must provide the necessary information and documentation to substantiate and demonstrate its ability and capacity to provide, perform and comply with all of the terms, conditions, specifications, and requests for information stated herein, and there is value to this response.

**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, the proposer must claim protections at the time of submission of its 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 the 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, PCA shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit PCA 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 PCA Head Administrator will review the statement and will determine in writing whether the information will be withheld. If the Head Administrator determines that the information should be disclosed, the Offeror will be informed in writing of such determination and, should the Offeror object in writing within five (5) days after notification thereof, no disclosure will be made and the Offeror's response may be rejected.

**Conflict of Interest:** Any contract issued related to this RFP is subject to cancellation by PCA if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of PCA is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or as a consultant to any other party of the contract with respect to the subject matter of the contract.

**Contingencies:** The total amount of all purchase orders to be issued against this contract is not known, and



PCA will not be bound to purchase a minimum quantity during the contract period. This is an indefinite quantity agreement.

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

**Contract Changes:** PCA can make changes within the general scope of this contract by giving notice to the Contractor, and subsequently confirming such changes in writing. If such changes affect the cost and/or the time required for performance of this service, an equitable adjustment in the price or delivery or both will be made. No change by the Contractor will be recognized without written approval of PCA. Any claim by Contractor for any adjustment must be made in writing within thirty (30) days from date of receipt of notification of such change, unless PCA waives this condition. Nothing in this section will excuse Contractor from proceeding with performance of the service as changed hereunder.

**Contract Deviations:** Any additional terms and conditions, which may be the subject of negotiation, will be discussed between PCA and the selected offer, and shall not be deemed an opportunity to amend the Offeror's proposal.

**Contract Term and Extension:** The term of the agreement will commence on July 1, 2022, and continue until June 30, 2023, or until terminated, canceled, or extended. By mutual written agreement, the contract may be extended for up to four (4), additional 12-month periods. PCA reserves the right to offer month-to-month extensions if that is determined to be in the best interest of PCA. However, no contract extension exists unless Contractor is so notified by PCA. Extension and renewal of contract shall include, but are not limited to:

1. Contract usage and volume;
2. Satisfactory delivery of products and services during the preceding contract term;
3. Ability to continue the delivery of quality products and services;
4. Adherence to the contract terms and conditions;
5. Ability to provide competitive prices for products and the services under the contract; and
6. PCA, at its option, may require an update of statements of qualifications annually.

**Contract Type:** The term contract shall be a percent discount off Contractor's or Manufacturer's price list or catalog, fixed price, or a combination of both with indefinite quantities.

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

**Costs:** All costs of products, services, licensing fees, installation and training services, annual support, maintenance, software updates or subscription fees will be clearly identified and stated with the terms, conditions and stipulations within any proposal issued under this solicitation. Any yearly site license, technical support fees or other annual costs must be disclosed to PCA prior to acceptance of a purchase order for product and services. It should be noted that annual costs will not be automatically renewed; it is the Contractor's responsibility to communicate and receive authorization from PCA prior to the renewal period.

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

**Current Products:** All offers will be for equipment, supplies, services, commodities, and/or software in current production and marketed to the public, and educational/governmental agencies.

**Days:** Refers to calendar days unless otherwise specified.

**Delivered Services:** PCA will be the determining judge of whether materials and services delivered under the contract satisfy the requirements as identified in the RFP.

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

**Dynamic Learning Maps (DLM) - DLM** measures proficiency on the Essential Elements (EEs) for English Language Arts, Math, and Science.

**Essential Standards (EE) - EE**s are alternate standards linked with the Common Core State Standards and Next Generation Science Standards, although at less-complex skill levels.

**Evaluation Committee:** Refers to a body constituted in accordance with Section 13-1-121 NMSA 1978 to perform the evaluation of Offeror's proposals. The committee's evaluation activities are facilitated and coordinated by PCA, and the committee consists of PCA and Charter School Board members, staff and/or consultants. The committee reviews, evaluates and makes an award recommendation to the PCA Governing Board who is responsible for a final determination.

**Execution of Contract and Compliance with Proposal Instructions:** By submitting a proposal, the Offeror acknowledges its understanding of the Instructions to Offerors and its willingness to comply with the requirements of the bid documents.

**Force Majeure:** Except for payments of sums due, neither party shall be liable to the other, nor deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of either party affected and occurs without fault or negligence, including, but not limited to, the following: acts of nature, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, earthquakes, famine, volcanic eruptions, meteor strikes, lockouts, injunctions-interventions-acts or failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement. Force majeure shall not include late deliveries of software or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies and poor management practices, or similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party in writing of such delay within 48 hours.

**Indemnification:** Contractor shall indemnify and hold harmless PCA and its officers and employees, against liability, claims, damages, losses or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, Contractor's and/or its employees, own negligent act(s) or omissions(s) while Contractor, and/or its employee's sub-contractors, perform(s) or fails to perform its obligations and duties under the terms and conditions of this agreement. This save harmless and indemnification clause is subject to the immunities, provisions, and limitations of the Tort Claims Act (41-4-1, et seq., N.M.S.A. 1978 comp.) and any amendments thereto. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create the public or any Member thereof a third party beneficiary or to authorize anyone not a party to the

agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or any other claims(s) whatsoever pursuant to the provisions of this agreement. Contractor shall provide all insurance necessary to employees on the work site, including, but not limited to, general liability and workman's compensation.

**Indemnification Intellectual Property:** The Contractor shall defend, at its own expense, PCA 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 PCA based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse PCA for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, PCA 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.

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 PCA the right to continue using the product or service and fully indemnify PCA against all claims that may arise out of PCA 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 PCA to the extent such modification is the cause of the claim.

**Independent Contractor:** Contractor recognizes that it is engaged as an independent contractor and is not and shall not claim to be an officer, partner, employee, or agent of PCA. Nothing contained herein or inferable here from shall be deemed or construed to make Contractor the agent, servant, or employee of PCA or creating any partnership, joint venture, or other association between PCA and the Contractor.

**Information Systems:** All Offerors of information systems must include information on the total lifecycle cost and application benefit to PCA. An information system is a system of hardware, software or Contractor support that processes information or data by electronic data processing methods and devices.

**Inquiries:** Any question related to this RFP will be directed to PCA. All questions must be submitted via email. Submit questions about the solicitation in writing to Gloria Lopez, Procurement Manager at [glopez@pecosca.us](mailto:glopez@pecosca.us). Replies will be made, via email and website posts, to all who have returned the Acknowledgment of Receipt contained in this RFP. PCA requires that all questions be submitted in writing.

**Installation:** Equipment or products that require professional installation will be installed within two (2) weeks of product delivery, unless PCA asks that installation be delayed. If delayed, the Contractor will establish and confirm in writing to PCA the revised installation date.

**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 PCA prior to official award and if issued, upon annual renewal. If policy changes occur during the life of the contract, it is the Contractor's responsibility to provide updated proof of coverage to PCA.

1. Offerors will submit proof of coverage under the Workman's Compensation Insurance, as required by the Labor Laws and New Mexico Statutes.
2. Offerors 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 \$1,000,000 combined single limit for bodily injury and property damage, or \$750,000 bodily injury and \$250,000 property damage (each occurrence). The Offeror will name PCA as co-insured up to the limits of the Tort Claims Act. Additional punitive damages liability to \$500,000 will be provided naming PCA as co-insured. As required for professional services the Offerors will submit a certificate of errors and omissions insurance for damages caused by an error, omission or any negligent acts caused by Contractor's and its Sub-contractors in the performance under this agreement. Combined single limit per occurrence is one million dollars (\$1,000,000) and annual aggregate limit of not less than two million dollars (\$2,000,000). The Offeror will provide “Tail” coverage at the completion of any contract entered by PCA for a minimum of 12 months, or the maximum time period reasonably available in the marketplace. 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 by PCA.

3. 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. In addition, Contractor must provide, upon request, identical certification of insurance to any PCA charter school, local public body, state agency or external procurement entity using this contract. Prior to commencing any work, any Subcontractors must procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime Contractor. All Subcontractors will provide Workers’ Compensation Insurance, which waives all subrogation rights against the prime Contractor and PCA.

**Interviews:** If an interview is required by this RFP or should the evaluation committee elect to conduct interviews, PCA board/staff will coordinate with each interviewee as to the time, date, place, and the time allowed for each presentation. The evaluation committee members may question each interviewee during or after its presentation. Interviews will be closed to any persons not representing the interviewee. At the conclusion of all interviews, each evaluation committee member shall freshly rate each interviewee in accordance with the criteria and standards stated. PCA will not be responsible or reimburse any interviewee for the cost of their presentation or travel.

**Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**Invoice:** PCA is a New Mexico public charter school. The contractor must invoice PCA the total amount of each invoice.

The flow of finances is that contractor invoices PCA and receives payment within 30 days from PCA. Goods and services will be invoiced at applicable contract prices; New Mexico Gross Receipts Tax as applicable and must not exceed the amount of the PCA purchase order. All payment invoices must be received by PCA no later than fifteen (15) days after the termination of the agreement. Payment invoices received after such date WILL NOT BE PAID.

**Irregularities in Proposals:** PCA may waive technical irregularities in the form of the bid or proposal of the low Offeror which do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offered (NMSA 13-1-132).

**Late Offers:** Late offers will be considered non-responsive, and the Proposer will be notified in writing. If the Proposer feels that its failure to meet this requirement is due to unforeseen conditions or “Acts of God”, the Proposer will need to provide detailed documentation as to the reason(s) why the proposal did not arrive by the due date and time. PCA will review the documentation submitted and make a written determination whether to accept or reject the proposal.

**Laws:** Laws mean any federal, state, and local laws, and rules, regulations and guidelines of applicable

governmental bodies and agencies.

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

As required by New Mexico law, any lease agreement with PCA 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 PCA (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 Lessee. It is up to PCA to determine sufficiency of funds, which determination shall be accepted by the Lessor and is final. Lessee shall give Lessor 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 13-1-28 through 13-1-199.

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

**Lobbying:** Offerors are hereby advised that lobbying is not permitted with any PCA or PCA Board Member or employee.

**Local Time:** Mountain Standard or Mountain Daylight Savings Time (MST/MDT), whichever is in effect on the date given.

**Mandatory Requirements:** The terms "must," "shall," "will," "is required," or "are required" identify a mandatory requirement of this RFP. Failure to comply with such a mandatory factor shall result in the rejection of the Offeror's proposal. Rejection of the proposal will be subject to review by the PCA Evaluation Committee and a final decision on rejection will be made by the PCA Executive Committee.

**Marketing:** Awarded contractor agrees to allow PCA to use their name and logo within the PCA website, marketing materials and Newsletters. Any use of PCA name and logo by the awarded contractor must have prior approval from PCA.

**Minimum Hardware Requirements:** Any software offered will clearly state and identify the minimum hardware and operating system requirements.

**Multi-Term Contract:** A multi-term contract is being utilized for this procurement because such a contract will serve the best interest of PCA by encouraging effective competition or otherwise promoting economics in the PCA procurement.

**Negotiations:** Where there is no competition that would result in a better contract, negotiation may be conducted until a detailed agreement is reached upon the approval of PCA.

**New Mexico Public Education Commission:** abbreviated as NMPEC

**New Mexico Public Education Department:** abbreviated as NMPED

**New Technology and Products:** New products announced by the manufacturer may be added to the existing contract. Pricing shall be equivalent to the percentage discount of other products. Dealers may replace or add product lines to an existing contract if the line, (i) is replacing previous products; (ii) is substantially superior to the original products offered; (iii) is discounted in a similar or to a greater degree; and (iv) if the products meet the requirements of the original RFP. No products may be added to avoid competitive procurement procedures. PCA can reject any additions, without cause.

**No Replacement of Defective Tender:** Every tender of materials must fully comply with all provisions of this contract. If tender is made which does not fully conform, this will constitute a breach, and Contractor will not have the right to substitute a conforming tender without written consent of all parties involved.

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

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

**Offer Acceptance Period:** In order to allow opportunity to evaluate the proposals offered, PCA requires that an offer in response to this solicitation be valid and irrevocable for one hundred and twenty (120) days after opening time and date.

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

**Options:** Optional equipment, services or products can be added to the contract at the time it becomes available under the following conditions:

1. The option meets and complies with the solicitation's scope of work, specifications, and requirements.
2. The option is priced at a discount similar to other options.
3. The option is an enhancement to the unit that improves performance or reliability.
4. The enhancement is approved in writing PCA,

**Ownership of Materials and Documents:** PCA shall be the sole owner of all right, title and interest, including copyright, in and to all student and teacher data, documents, software, plans, diagrams, facilities, and tools (hereafter "materials") which are originated or created through Contractor's work pursuant to this Contract unless otherwise noted in the Contract. NO student or teacher data will be considered Contractor-owned. The Contractor must identify ownership such that PCA-owned items are easily distinguishable from Contractor-owned items. Contractor, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in PCA 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. PCA shall have exclusive right and re-use at any time without further compensation or restrictions. Contractor shall neither use any such materials on other work nor disclose such material or information to any other party without PCA written approval.

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

**Participating Entities:** A participating entity is a charter school, school district, local public body, state agency or external procurement unit using this contract with the authority of PCA.

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

**Patent and Copyright Infringement:** Contractor will, at their expense, defend PCA against any claim that any equipment or software supplied hereunder (even if such equipment or software are modified by PCA 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, PCA must:

1. Give Contractor a 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.

PCA will be reimbursed for all expenses incurred by PCA in fully cooperating with Contractor as specifically requested by contract. PCA is not required to incur any expenses specified in this paragraph, which are not reimbursable by the Contractor. Contractor's obligation under this section is conditioned on PCA agreement that if the subject of such a claim, PCA will permit the Contractor, at its expense and option, either to procure the right for PCA 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 PCA will return the equipment or software on written request by Contractor at Contractor's expense.

Contractor agrees to refund PCA 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 a prorated amount. Contractor will have no obligation with respect to any such claim based upon modification of the equipment or software or combination, operation or use with apparatus, data or programs not furnished by Contractor.

**Payment Discounts:** Any payment discount offered must be made directly to PCA. Quick-Payment discounts will be included as part of the evaluation process.

**PCA:** Pecos Cyber Academy is a locally authorized public charter school. If Pecos Cyber Academy is renamed or rebranded any time during the contract, the contract shall continue under the same terms and conditions.

**Preferences:**

1. **Resident Business Preference:** Pursuant to NMSA 1978 13-1-21, a Request for Proposal shall include a provision for Residential Business preference for those businesses that submit a valid resident business certificate issued by the taxation and revenue department pursuant to Section 13-1-22.
2. **Resident Veteran Business Preference:** Pursuant to NMSA 1978 13-1-21, a Request for Proposal shall include a provision for Residential Veteran Business preference for those businesses that submit a valid resident veteran business certificate issued by the taxation and revenue department pursuant to Section 13-1-22.

Pursuant to NMSA 1978 13-1-21, applicable preference will be awarded to responding Offerors that submit a copy of a valid resident business certificate issued by the New Mexico Taxation and Revenue Department. For joint proposals submitted by both a resident and nonresident Offeror, preference will be applied to the

percentage of work produced or performed by the resident firm. If federal funds will be used in whole or part as a funding source, Residential Business, Residential Veteran Business, Residential Contractor or Residential Veteran Contractor Preference will not apply pursuant to NMSA 1978, 13-1-21 G and 13-4-3.

**Prevailing Wage:** It shall be the responsibility of the Contractor to comply, when applicable, with the prevailing wage legislation in effect. It shall further be the responsibility of the Contractor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

**Price List:** The Contractor will furnish PCA with copies of or access to the approved price list for products and services for any contract based on this solicitation. The price list must be in the format and contain the detailed information required by PCA. When Contractor offers a discount off a published list, catalog price list, retail price, or Manufacturer's Suggested Retail Price (MSRP), such discounts must be submitted in the format required and be auditable by PCA. Individual pricing must be from the price list, not negotiated per client. However, schools often have financial constraints that prohibit paying even the discounted PCA amount on the price list. Contractor requested special exceptions for less than 20% of the clients may be negotiated with PCA approval in writing. PCA is requesting a volume discount off listed products and services.

**Price Quote or Proposal:** When preparing a quote/proposal under a PCA awarded contract, the Contractor must clearly identify and break out supplies, materials, equipment, and services into individual line items as they appear on the Contractor's awarded price schedule or pricing methodology. Stated prices shall include any required New Mexico Gross Receipts Tax.

**Price Reduction and Adjustment:** A price reduction can be offered at any time and will become effective on the pricing method to be utilized and by PCA. Special and/or promotional pricing, time-limited reductions are permissible under the following conditions:

1. The price reduction is for a specific time period; and
2. The original price is not exceeded after the time limit.

**Pricing:** Offeror will describe discounts and special pricing offered. This RFP is to gain economies of scale; the current contracts will generate over three million dollars during the current year. Should a lesser cost be provided to any other client of the Offeror, the preceding and existing services/work through this contract will be reduced in price to meet that rate. Documentation and/or other evidence of the current retail, manufacturers or offerors price list will be included in the proposal submitted.

**Prime Contractor:** Any Contractor paid directly by PCA is a Prime Contractor; a Subcontractor is paid by the prime Contractor. Prime Contractors using Subcontractors are responsible for all actions of their Subcontractor. PCA will make contract payments only to the Prime Contractor. PCA will consider a proposal from multiple prime contractors in the form of a joint venture response to the RFP. If accepted, PCA will enter into separate contracts with each of the multiple Prime Contractors. PCA will accept no more than three (3) multiple contractors in a single joint venture. The specific responsibilities of each of the multiple Prime Contractors must be clearly described in the joint venture proposal.

**Procurement Code:** Sections 13-1-28 through 13-1-199 NMSA 1978 may be cited as the "Procurement Code".

**Product Discontinuance:** In the event that a service or product or product model is discontinued by the manufacturer or Offeror, the Contractor can substitute a new service, product or product model, if the replacement service or product meets or exceeds the performance of the discontinued model, and the discount from retail is the same or greater than the discontinued service or product.

**Product Line:** Contracts are awarded to Offerors able to provide their complete product line of equipment, software, and services described in the specifications. Offerors with a published catalog can submit the



entire catalog; however, PCA reserves the right to select products within the catalog for award without having to award all the contents.

**Progress Payments:** Under this solicitation, PCA may allow progress payments to be made on goods and/or services received and accepted under the following conditions:

1. PCA and the Contractor agree to the terms of the progress payments in writing prior to PCA issuing a purchase order to the Contractor.
2. The quote or proposal in which the purchase order is based must clearly identify and describe the amount(s) to be paid and the date(s) payment(s) are to be made for the service and/or goods delivered.
3. Payments will be made only after actual goods and/or services are verified, received, and accepted by PCA or the charter school.
4. Payments will be made in full compliance with the PCA administrative procedures, board policies and any/all other applicable state rules, regulations, and statutes.
5. If the estimate of work and/or goods received are not approved and certified, PCA can withhold an amount from the progress payment that reasonably represents the deficiency identified in the Contractor's payment request. In such cases, the Contractor agrees to hold PCA harmless for any deficiency of payment.
6. Acceptance of final payment is a waiver of all claims, except unsettled claims previously made in writing.

**Protests:** Protests will be filed and resolved in accordance with the State of New Mexico Procurement Code §13-1-172 NMSA 1978 and applicable PCA Board Policies and Procurement Guidelines. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Venue for any and all legal actions regarding or arising out of the transactions covered herein shall be solely in the District Court, in and for, the County of Eddy, State of New Mexico. The laws of the State of New Mexico will govern any resulting transactions.

A protest period of fifteen (15) days shall begin on the day following the contract award notice and end at 5:00 p.m. local time at the end of the fifteenth (15) day. A protest must be written and include:

1. The company name, contact name, address, and telephone number of the protester;
2. The original signature of the protester or its representative;
3. Identification of the Request for Proposal (RFP) by title;
4. A detailed statement of the legal and factual grounds of protest, including copies of any relevant and supporting documents and exhibits; and
5. The form of relief requested.

Protests must be filed with Dr. Kim Hite-Pope, Head Administrator of Pecos Cyber Academy, 1503 West Pierce, Carlsbad, NM 88220 and also emailed to Dr. Kim Hite-Pope at [khitepoppe@pecosca.us](mailto:khitepoppe@pecosca.us). Any protest received after the deadline will not be accepted.

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

**Public Record:** All proposals submitted in response to this invitation will become the property of PCA and the State of New Mexico and will become a matter of public record available for review, after the award notification, under the supervision of PCA staff.

**Qualifications:** In order to qualify, an Offeror must possess the knowledge, experience, license(s) and registration(s) required by state and local government agencies; demonstrate their background, experience, capacity and resources necessary to provide products and services; and meet individual project

requirements. All work under this contract will be done in strict accordance with the most recent edition of any relevant regulation, standard, document or code in effect. PCA prefers that the Offeror have the experience with the products and services offered as stated in this RFP document.

**Quality:** Unless otherwise noted in this solicitation, Contractor warrants that for one (1) year after acceptance of the equipment or materials or work performed by PCA, they shall be:

1. Of a quality to pass without objection in the industry or trade normally associated with them;
2. Fit for the intended purpose(s) for which they are used;
3. Of even kind, quantity, and quality within each unit and among all units, within the variations permitted by the contract;
4. Adequately contained, packaged, and marked as the contract may require; and
5. Conform to the written promises or affirmations of fact made by Contractor.

**Registered Sex Offender Notification:** Contractor represents and warrants that no employee of the Contractor, or of its subcontractor, who has been adjudicated to be a registered sex offender will perform work on PCA premises at any time. Contractor is required to provide background checks as required by NMPED to PCA for all contractor employees working at a school location when school students may be present.

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

**Responsible Offeror:** An Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

**Responsive Proposal:** An offer which conforms, in all material respects, to the requirements set forth in the Request for Proposals. Material respects of a request for a proposal include, but are not limited to, price, quality, quantity, or delivery requirements.

**Right to Assurance:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, it may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

**Right to Waive Minor Irregularities:** The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements if all the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

**Serial Numbers:** Offers must be for equipment on which the original manufacturer's serial number has not been altered in any way.

**Severability:** The provisions of this contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract, which may remain in effect without the invalid provision or application.

**Sexual Harassment:** Sexual harassment of employees or students of PCA, or participating entities is strictly forbidden.

**Shipment under Reservation:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

**Shipping Errors:** Contractor agrees that shipping errors will be at the expense of the Contractor. For example, if a Contractor ships a product that was not ordered by PCA, a member charter school or participating entity, it is the responsibility of the Contractor to pay for shipping charges back to the manufacturer or distributor, etc. at the convenience of PCA or the member charter school.

**Shipping Terms:** Prices shall include shipping to any location in the State of New Mexico, delivered to the specific receiving point as identified in the purchase order issued by PCA to the Contractor. The Contractor will retain title and control of all goods until they are delivered and received. All risk of transportation and all related charges will be the responsibility of the Contractor. The receiving agency will notify PCA and the Contractor promptly of any damaged goods and will assist the Contractor in arranging for inspection.

**Smoking:** All Contractors and Subcontractors must adhere to smoking policies of PCA where they are working.

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

**State Agency:** State Agency means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state of New Mexico.

**Stop Work Order:** PCA may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this contract for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a 'Stop Work Order' issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered.

**Stored Materials:** Upon prior written agreement between the Contractor and PCA, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for use at a later date. An inventory of the stored materials must be provided to PCA prior to payment. Such materials must be stored and protected in a secure location and be insured for their full value by the Contractor against loss and damage. Contractor agrees to provide proof of insurance coverage and/or addition of PCA as an additional insured upon charter school's request. Additionally, the materials must also be clearly identified as property of the using charter school and be separated from other materials. The using charter school must be allowed a reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by PCA it shall be the Contractor's responsibility to protect all materials and equipment. The Contractor warrants and guarantees that title for all work, materials and equipment shall pass to PCA upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

**Sub-contractors:** The use of subcontractors is allowed. The Prime Contractor SHALL be wholly responsible for the entire performance of the contractual agreement whether subcontractors are used. The Prime Contractor MUST receive approval, in writing, from PCA prior to awarding any resultant contract before any subcontractor is used during the term of this agreement. All work subcontracted by the Contractor is the responsibility of the Contractor. Payments will be made only to the Prime Contractor. All qualifications of the Prime Contractor are extended to the subcontractors and are the responsibility of the Prime Contractor to enforce.

**Support Services Requirements:** All training and staff development services offered under this solicitation must be provided by qualified and experienced educational consultants who have the knowledge and background with the solutions offered as well as the curriculum content. The Contractor must be able to provide training services online or on or off-site as required by PCA and may include services relating to supporting instructional staff with implementation and ongoing day-to-day solution management, troubleshooting and operation whether it deals with curriculum or technology issues.

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

**Taxes:** Prices offered will include applicable state gross receipts tax and local taxes. All applicable taxes must be listed as a separate item on all invoices. No gross receipts tax can be collected on delivery charges to PCA.

**Tax Numbers:** Offerors are required to provide their New Mexico Tax Number and New Mexico Sales Tax Rate, and Federal Tax Identification Number, if applicable, in the space provided.

**Technical Irregularities:** These are matters of form rather than substance evident from the proposal documents or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, PCA reserves the right to waive such irregularities or allow an Offeror to correct them if either is in the best interest of PCA. Examples may include, but are not limited to, the failure of an Offeror to:

1. Submit both a printed and electronic copy of proposals required by the RFP;
2. Sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or
3. Acknowledge receipt of an amendment to the RFP, but only if: a) it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or b) the amendment involved had no effect on price, quality, or quantity.

**Termination by PCA:** The Charter School has the right to terminate any Agreement or Contract with the Contractor given 90 days' notice unless Contract or Agreement states otherwise and has been previously approved by PCA.

**Termination for Convenience:** PCA can, by written notice stating the effective date, terminate this contract issued because of this RFP for convenience in whole or in part, at any time upon 90 days' notice. PCA shall pay Offeror as full compensation for performance until such termination as follows:

1. The unit or pro-rata order price for the delivered and accepted portion; and
2. A reasonable amount, not otherwise recoverable from other sources by Offeror as approved by PCA 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:** PCA 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. PCA 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 PCA 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; or
6. Any other conditions that, in the opinion of PCA, warrants such action.

Upon receipt of a written notice, the Contractor will have ten (10) days to provide a satisfactory response in writing to PCA. Failure on the part of the Contractor to satisfactorily respond can result in PCA terminating the contract upon 90 day notice.

**Termination for Gratuity:** PCA shall, by written notice, cancel this contract immediately 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 PCA 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 PCA for demonstration, evaluation, or loan purposes are not considered gratuities.

**Termination for Non-Performance or Contractor Deficiency:** PCA can terminate any contract if it has not used the contract in any 12-month period, or if purchase orders total less than \$1,000,000 per year. PCA 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. PCA 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 PCA 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 PCA for such work;
6. Fails to observe any or all of the terms and conditions of the contract; or
7. Any other conditions that, in the opinion of PCA, warrants such action.

Upon receipt of a written notice, Contractor will have ten (10) days to provide a satisfactory response to PCA. 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 PCA on demand.

**Termination due to Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance of a multi-term contract in a subsequent fiscal period, the contract shall be cancelled.

**Termination of Charter School.** This Agreement is contingent upon the continuation of the School Charter. If the charter is revoked during the term of this Agreement, the Agreement shall terminate immediately upon written notice of such by PCA.

**Termination of RFP:** PCA reserves the right to cancel this RFP at any time and for any reason and to reject any or all proposals when it is in the best interest of PCA (13-1-131 NMSA 1978).

**Title and Risk of Loss:** The title and risk of loss of material or service will not pass to PCA until it actually receives the material or service at the point of delivery, unless otherwise specified within this document.

**Trade-In Equipment:** Equipment for trade-in shall be dismantled by the Contractor and removed at the Contractor's expense. The conditions of the trade-in equipment at the time it is turned over to the Contractor will be the same as when the original agreement was made, except as affected by normal wear and tear from use between the times of the offer and the trade-in. PCA and the Contractor negotiate values placed on trade-in products.

**Training:** The Contractor will provide comprehensive training on the day to day operations, use, and testing of the installed equipment, systems, and platform to be used by charter school personnel.

**Warranty:** Contractor warrants that all equipment, software, and services delivered under this contract will conform to the specifications of this contract. Offeror must agree to assist the purchaser in reaching a solution regarding a dispute with the manufacturer over a warranty's terms and comply with the following:

1. Contractor warrants that any services, equipment, or material supplied to PCA will conform to all requirements of the contract and all representations of Contractor and will be fit for all purposes and uses required and defined in each individual project. All work performed, equipment and materials must carry a minimum 12-month warranty that includes parts, labor, and reimbursable expenses.
2. Unless modified elsewhere in this solicitation, Contractor warrants that for one (1) year after acceptance of the individual project, the work performed, equipment and/or materials provided to the PCA will be:
  - a. Of a quality to pass without objection in the industry or trade normally associated with them;
  - b. Fit for the intended purpose(s) for which they are being purchased and/or being used;
  - c. Of even kind, quantity, and quality within each unit and among all units, in the variations permitted by the contract;
  - d. Adequately contained, packaged, and marked as the contract may require; and
  - e. Conform to the written promises or affirmations of fact made by Contractor.
3. Any extended manufacturer's warranty that is obtained to meet the 12-month requirement will be passed to PCA without exception. PCA reserves the right to cancel the contract if Contractor charges the agency for any product and/or service received at no cost under a warranty.

### **3. RESPONSE FORMAT AND ORGANIZATION**

#### **A. Preparation of the Proposal**

By submitting a proposal under this solicitation, the Offeror acknowledges that all documents requiring a signature have been reviewed and signed by a director, officer, or manager of the submitting firm who has sufficient authority, knowledge, background and understanding to fully address all matters, respond to all inquiries, and complete all documents required by the solicitation. The signature warrants information and documents provided are truthful, accurate and complete; and that the firm and the individual responsible for the submittal shall be fully responsible and bound by all information, data, certifications, disclosures, and attachments included in the RFP document and the Offeror's response.

Proposals will be submitted on either unaltered proposal forms furnished by PCA or a reasonable facsimile thereof. Telegraphic offers, electronic mailgrams or facsimile machine offers will not be considered. The Offer, Acceptance of Offer and Contract Award (Form A) document must be submitted with an original ink signature by the person authorized to sign the same. If a company or corporation submits the proposal, an official or duly authorized agent shall sign the proposal. Powers of Attorney, which authorize agents or others to sign proposals, must be properly certified by resolution of the board of directors, attested to by the secretary of the corporation, and attached to the proposal. Mistakes can be corrected prior to Proposal opening but must be initialed by the person signing the proposal. Corrections and modifications received after the opening time will not be accepted. In case of an error in extension of prices in the offer, unit prices will govern. Periods of time stated as a number of days will be in calendar days, not business days. It is the responsibility of all Offerors to examine the entire RFP package and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting an offer.

Negligence in preparing an offer confers no right of withdrawal after due time and date.

The Offeror's ability to follow the proposal preparation instructions set forth in this solicitation is considered to be an indicator of the Offeror's ability to follow instructions, should they receive an award as a result of this solicitation. Any contract between PCA and a Contractor requires the delivery of information and data. The quality of organization and writing reflected in the proposal is considered to be an indication of the quality of organization and writing which would be prevalent if a contract is awarded. As a result, the proposal will be evaluated as a sample of data submission. Subjective judgment on the part of PCA evaluators is implicit in this process.

Vendor staff should be well versed in their products and systems and able to answer requests in a professional manner, within an appropriate timeframe and completely without missing items. Additionally, vendor staff should be professional and avoid business tactics such as evasion, deflection, and diversion when pressed to meet contract scope of work.

#### **B. Format and Delivery of the Proposal**

In preparing a proposal, the Offeror must present a point-by-point response and address each relevant request for information regarding Offeror's qualifications, product descriptions, service descriptions, specifications, pricing, staffing, delivery, installation, setup, maintenance, and repair.

The Offeror shall review the Terms, Conditions, Specifications, and Requirements and note any exceptions that may apply to your firm. Should the Offeror take any "exception(s)," the item must be clearly identified, and a written explanation and justification provided. Offeror's inability or failure to meet and/or comply with items may be sufficient to render their proposal non-responsive.

1. Technical proposals shall contain one (1) hard copy, labeled ORIGINAL, six (6) bookmarked COPIES on individual USB flash drives as a single PDF containing ONLY the Technical Proposal and the scanned images of the signed forms. **The electronic copy may NOT be emailed and must be unprotected documents.**

Proposals containing confidential information must be submitted in two different forms.

- Un-redacted on the flash drives for evaluation purposes
- Redacted in the original version for the public file. All confidential information shall be blacked out and not omitted or removed. Please note: Cost proposals are not confidential and shall not be redacted.

2. Cost Proposals shall contain one (1) hard copy, labeled ORIGINAL, six (6) bookmarked COPIES on individual USB flash drives as a single, unprotected PDF containing ONLY the Cost Proposal. ORIGINAL and each COPY of the Cost Proposal shall be in a separate, labeled binder or flash drive and shall not be included with the TECHNICAL PROPOSAL **UNDER NO CIRCUMSTANCES ARE ANY COSTS TO BE INCLUDED IN THE TECHNICAL PROPOSAL.** **The electronic copy may NOT be emailed and must be unprotected documents.**

The electronic version/copy of the proposal **must** mirror the physical binders submitted (i.e., one (1) **un-redacted USB**, one (1) **redacted USB**). **The electronic version may NOT be emailed and must be unprotected documents.**

The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

**Any proposal that does not adhere to the requirements of this Section may be deemed nonresponsive and rejected on that basis.**

The proposal must be received by Thursday, March 31, 2022 at 1:30 pm MST at Pecos Cyber Academy, 1503 West Pierce, Carlsbad, NM 88220.

### C. Contents of the Proposal

To ensure that every proposal receives a fair evaluation, it is required that each Offeror organize their proposal in the following manner and in the format as listed below:

#### Forms

Form A – Signed Offer and Contract Award

Form B – Signed Affidavit

Form C – Signed Offeror’s Indefinite Quantity Unit Price Declaration (to be include in Cost Proposal only)

Form D – Signed Acceptance of Terms and Conditions

Form E – Signed PCA Preference Certification Form Price

Form F – Signed Campaign Contribution Disclosure

Form G – Suspension and Disbarment Certification

Form H – Reference (to be submitted referring party)

Form J – Signed Submission Check-off

#### Narrative Responses

Letter of Transmittal

Executive Summary

Written Response

Attachments

Financial reports, PROFIT & LOSS and Balance Sheets

Copies of resumes, letters, certificates, licenses, insurance, and other support documentation required to demonstrate and justify responses.

## 4. PCA OVERVIEW

### A. PCA History and Background Information

The school was chartered in 2016 by Carlsbad School District. PCA is referred to as a district charter school. Carlsbad School District is the authorizer of PCA. In short the school district provides oversight on budget and student academic progress. Yet PCA does operate independently of its authorizer. In June of 2021 Pecos Connections Academy formally changed its name to Pecos Cyber Academy, and beginning July 1, 2022 PCA will enter into a contract with New Mexico Public Education Commission as a state charter school.

PCA was started as another choice for students and parents in NM. PCA has a highly challenging curriculum with an excellent delivery system that is purchased from a curriculum vendor. All teachers, counselors, and other staff are credentialed under the regulations and licenses set forth by the NMPED and reside in New Mexico. All employees of PCA are on boarded with excellent training to help gain (refresh) the skills necessary to teach (operate) in the virtual setting. Mentoring is provided throughout the employees’ term of employment at PCA.

At the start PCA began with seven employees and 250 students, grades K through 8. After 5 years PCA has grown to just under 2,000 students in grades K to 12 with approximately 550 middle school students. A normal week at PCA Middle School is as follows:

Monday through Thursday students meet in a virtual environment for lessons with their content teacher. These lessons include, but are not limited to: large group instruction, whole group instruction, small group re-teaching times, small group interventions, one on one tutoring, and meetings with families. Students have the opportunity to work both synchronously and asynchronously on lessons and in class sessions from 8:00AM to 3:00PM. Students will work both online and offline throughout the day



completing their coursework and meeting with their teachers. On Fridays students work independently with their Learning Coaches and Caretakers or schedule one on one sessions with their content teachers for extra help.

Special Education Student services are provided in the inclusion setting with the Special Education Teachers collaboratively with the General Education Teacher; in the student's virtual classroom Monday through Friday. Then in the afternoons the Special Education Teacher provides support/interventions with the special education student in a virtual classroom either in a one to one or small group for re-teaching of a skill or enrichment. Special Education teachers also create and maintain Individualized Education Plans (IEPs).

The social emotional well-being of a student is of utmost importance to PCA. Homeroom teachers make contact with each student a minimum of twice a month. The contact is tracked in the student's personal log. If there is a concern the student's name is emailed to the counselor. The counselor then reaches out to the student and family to assess the need.

Virtual learning events are also set up that students and parents are invited to attend monthly or bi-monthly. As an example, a virtual trip to the zoo in Albuquerque. Students/Parents are sent a link to the learning event to join on a certain day and time. This is in lieu of face to face learning events due to the public health order and guidance of the Governor of New Mexico currently in place. When face-to-face learning events are able to resume the event may be monthly or bi-monthly held throughout the state, such as a trip to White Sands; parents bring their student and attend the learning event as well. Sign in sheets are done either for virtual or face-to-face events to track student attendance.

Every Friday all teachers meet in Professional Learning Communities (PLCs), work with students in small groups, one-on-one or just do check-ins with students. Whatever is done in the ground setting can be done in the virtual setting with just a bit of an adjustment.

## **B. Goal of PCA**

PCA will move to the traditional model of a charter school in New Mexico. The Governing Board has the responsibility over Board Relations, the development of charter school policy, monitoring and approving finances, employing the Executive Director, evaluating the Executive Director, and shall approve any educational program provided to the school through a nongovernmental entity. The Head Administrator shall oversee the school facilities, including Human Resources, STARS Coordinator, staff, staff evaluations, and its educational program. PCA will contract with a vendor(s) to provide the curriculum, platform, and the related IT. Financial accounting, human resources, STARS, school website, the management of the school and the school program are the responsibility of the Executive Director. Communication between the school and the vendor will be between the vendor contact and the Executive Director. PCA rebranded itself as Pecos Cyber Academy when the Charter renewed October 2021.

## **5. Technical Specifications**

### **A. Qualifications**

PCA has established six minimum qualifications for Offerors to submit a proposal.

1. Having a proven business record of at least eight years working with charter schools and traditional schools in synchronous and asynchronous education. Provide a list of 15 school names, location, start date, and end date receiving at least six years of service.
2. Provide a plan for transferring all PCA- owned data and other items to the school at the end of the contract, as well as a plan for transferring all current students into the system prior to July 1, 2022.
3. Having a curriculum that is proven to increase student growth model on short-cycle and state-mandated assessments greater at a vendor location than achieved by the average scores of students in traditional schools in the state is important. Provide school data and state data that indicate school(s) with vendor curriculum that compare to the state average on state-mandated

assessments.

4. Having provided continuity of service is paramount. Students always having immediate platform access and the platform being continually operational is our goal. Indicate how many days between August 1, 2021 and February 1, 2022 your system has been partially down and what percent of the students needed to log in more than one time to access the system. Also describe what actions you are taking to improve the system if improvements are warranted.
5. Having provided an assessment tracking system for accountability that assists the school in meeting the state and federal accountability requirements for testing is essential. Explain this system and how this is applied in a virtual setting to meet all accountability requirements for New Mexico.
6. Having provided an academic tracking system for accountability that assists the school in meeting the state and federal accountability requirements is essential. Explain this system and how this is applied in a virtual setting to meet all accountability requirements for New Mexico to include but not limited to: daily attendance, virtual classroom attendance, minutes/hours logged into the system, minutes/hours working on lessons/activities, pass/fail rates, and to include demographics.

## **B. Detailed Scope of Work -**

1. The Scope of work will include:

- A. Courses - to include but is not limited to providing core courses and elective options for grades 6-8<sup>th</sup> that align with NMCCSS, NM STEM READY! Standards, and/or NMSS. The vendor will offer Course Descriptions for each course offered and available to Middle School students to include standard, enriched, and remedial courses offered. The vendor will offer 80-90 lessons per semester per each core course: Math, Science, ELA, and Social Studies/History and provide a Scope and Sequence for each of the courses offered to include a minimum of: Day, Unit Number and Name, Lesson Number and Name, with corresponding NMCCSS/NMSS/NMSTEM Ready! Standards for each proposed grade level to confirm alignment with NM Standards. The vendor will also offer electives with a minimum of 60-70 lessons per course per semester or describe how project based units would be completed over the course of one semester. The vendor will also provide course descriptions for each of the elective courses offered and provide a Scope and Sequence for each of the courses to include a minimum of: Day, Unit Number and Name, Lesson Number and Name, with corresponding NMCCSS/NMSS/NMSTEM Ready! Standards. The vendor will also provide content kits or materials to all students. The availability of printed materials is also warranted for some students with special needs. Describe how the company will be able to provide these materials/resources.

All courses will have the ability to be modified in real time at the school level, to include reordering the sequence of units and lessons, ability to skip or remove a lesson or portions of the lesson or assignment, ability to modify the assignment, and the ability to modify for individuals or groups of students based on need, as well as the ability to add lessons as needed. Describe the curriculum and instruction resources that are intended to be utilized and how the vendor's curriculum is aligned to the New Mexico Common Core Standards in all subject areas.

1. Math courses should align with the NMCCSS and include interactive lessons and activities, discussion questions, practice questions, assessments to include multiple choice, short answer, and interactive manipulatives to include a calculator, as well as teacher graded assignments. The lessons should include step by step instructions, video tutorials, and practice. Courses that have the ability to provide support and enrichment skills within the course are preferred. Each course should be separated by Semester 1 and Semester 2.
2. ELA courses should align with NMCCSS and include interactive lessons and activities, discussion questions, practice questions, assessments to include multiple choice, short answer, and interactive manipulatives, as well as teacher graded assignments. The course should incorporate both fiction and non-fiction selections within a unit, incorporate Vocabulary, Grammar, and writing as part of a unit or theme, and offer complete novels

both semesters in all grade level ELA courses in both digital and print options as part of the coursework. Courses that have the ability to provide support and enrichment skills within the course are preferred. Each course should be separated by Semester 1 and Semester 2. Writing assignments should also be incorporated into the courses with the ability to modify the assignments and the Rubrics.

3. Science courses should align with NM STEM Ready! Standards and include labs with each of the courses for 6-8 grades. Lab kits should be provided to each student and available to staff teaching the courses. Courses should incorporate STEM/STEAM activities, laboratory assignments, interactive lessons and activities, discussions, short answer opportunities and teacher graded assignments. Courses that have the ability to provide support and enrichment skills within the course are preferred. Each course should be separated by Semester 1 and Semester 2.
  4. Social Studies/History should align with NMSS. As New Mexico moves to adopt new standards for SS, describe how the curriculum will align to the new standards that will be implemented for SY23. NM requires NM History offered to 7<sup>th</sup> grade students. Describe how this course is developed and updated to align with NMSS.
  5. Electives should align with NMSS/NM STEM Ready! Standards and NMCCSS when applicable. PCA MS wishes to offer computer science to all middle school students for SY22, prior to the state required implementation. PCA is particularly interested in STE/STEAM elective options and CTE options in addition to Art, Music, and Foreign Languages. Indicate length of each course as semester or yearlong course. Describe any CTE pathways Middle School students could begin that would lead into high school opportunities. Describe project based units.
  6. Physical Education courses to align with NMSS, to incorporate physical activity logs, physical activity lessons, and lessons in health and physical fitness.
  7. Describe how the vendor will provide adequate initial and ongoing training and support for students to enable them to successfully participate in online learning. Include any orientation course for students new to online learning, how their ability to learn will be assessed, and what remedial help is available to ensure students are going to be successful learners.
  8. Other courses the vendor can offer for remedial, enrichment, and advanced courses: Bilingual Education courses, High School courses, Special Education courses, and Intervention(MLSS) options that would be available for any Middle School students.
  9. Special courses may be needed within the school year. Describe the process the school administrator would need to take to have a course built within the semester. Include the process as well as the estimated time it would take to build a course without lessons as well as a course with lessons provided by PCA.
  10. Describe any coursework or courses incorporating Social Emotional Learning into the coursework.
  11. Describe how coursework incorporates New Mexican cultures into the courses.
  12. Describe Summer School courses or programs available, include how these courses are different from the standard courses and provide statistics of success rates, as well as include a sample cost analysis for these courses.
  13. Alternate Curriculum/Life Skills courses - that would be tailored to students that need these courses and should align with the NMCC Essential Elements
  14. High School courses such as Algebra 1, Geometry, and Health available to MS students will be offered SY22-23. Describe how these courses differ from Middle School courses and confirm they are available to middle school students. Provide a Scope and Sequence for these courses as well.
- B. Assessment Support for state/federal accountability for state required assessments – Describe the program/system used to track state testing participation data, completion status, and organization

for how this system operates at the local level.

1. Include an Assessment Tracking System that will track real time data from PCA staff.
  2. Describe in detail the State Accountability functions of the system.
  3. Describe in detail the Reporting Options of the system.
  4. Ensure full compliance with NM Assessment directives established by the NM Public Education Department and the PEC
  5. Provide training to the Assessment Team/Admin on the system.
  6. Provide designated technical support to PCA staff as required during all state testing periods.
- C. Course platform or Learning Management System: Describe and provide example(s) of the following:
1. Automatic, real-time attendance tracking;
  2. Automatic, real-time assignment grading and illustration of same in course and section gradebooks;
  3. Assignment grading process and procedures required for teachers;
  4. Lesson completion tracking;
  5. Student course progress tracking;
  6. Privacy and security of the platform system;
  7. User friendly ease of access to the virtual classroom
  8. Ability to co-teach
  9. Access for Administrators to track data
  10. User friendly ease of access to the courses
  11. Access for administrators to review/observe virtual classrooms/gradebooks
  12. Ability to modify the courses in the system
- D. Describe and explain the vendor's platform for synchronous and asynchronous instruction - to include, but not limited to:
1. Attendance tracked
  2. Co-teaching abilities
  3. Include interactive tools to include but not limited to: chatbox, writing tools, screen share capabilities, ease of use with these tools, and breakout rooms
  4. Interactive Tools for both students and teachers and the ability to turn tools off/on for specific students, allow different groups a variety of different tool options.
  5. Platform security
  6. Recording capabilities, editing opportunities
  7. Program to support digital signatures and ability to request those signatures through a secure method.
  8. Ability to schedule virtual lessons to specific groups, ability to lock the virtual room
  9. Ability for the Administrator to enter the virtual classroom
- E. Student Calendar-Planner
1. ability to tailor calendar/planner to the needs of the student
  2. ability to tailor calendar/planner to the needs of the teacher/school
  3. ability to create a to-do list that will auto populate with additional information added to the calendar by a teacher or staff member
  4. Ability to move lessons in teacher planner which reflects in student planners.
2. Materials and Supplies: Describe how the vendor will ensure that all students have access to necessary technology and materials.
- A. Braille books and equipment access
  - B. Enlarged print books and worksheets
  - C. Novels for all ELA courses, grades 6-8, print and digital books available
  - D. Other course material kits available

- E. Provide all computers and headset for teachers/staff/administrators grades 6-8
- F. Provide all computers and headsets for all enrolled students grades 6-8
- G. Provide all students access to all instructional materials needed for course instruction
- H. Provide all teachers/staff with access to all instructional materials
- I. School site server and server maintenance for curriculum and platform
- J. Textbooks available/sent to students or digital book versions available describe
- K. Teacher Edition/Teacher Resources for the courses

### 3. Special Education

- A. Access to classes by PCA Special Education Ancillary contractors
- B. Tech Support to aid in Text to Speech(TTS) and Speech to Text (STT) program installation
- C. Training of SPED Teachers
- D. Curriculum that aligns with NMCCSS Essential Elements - DLM measures proficiency on the Essential Elements (EEs) for English Language Arts, Math, and Science. EEs are alternate standards linked with the Common Core State Standards and Next Generation Science Standards, although at less-complex skill levels.
- E. Describe how the vendor will track student progress in order to identify areas of difficulty and assist students who need additional support.
- F. Consulting support

### 4. Students: Provide lists and describe availability and processes

- A. Access for national clubs for students
- B. Describe how course requests for/by students are handled, including but not limited to: Student request a particular course; Guidance/Scheduler can use that information to build schedules; Automatic systems can build/load based on this information.
- C. Enrollment not to exceed charter capacity
- D. School will enroll all students in collaboration with vendor
- E. Describe how the vendor will establish personalized learning plans that are standards based for every student. Describe how the learning plan will be developed for new students and available to receiving districts for students who transfer out of the virtual school
- F. Describe how virtual school's strategies for supporting all students at different ages and grade levels so that they complete courses and achieve their academic and career goals. Include a description of the settings in which these support services will be provided and qualifications of individuals who will provide the support services.
- G. Describe how the vendor will track student progress in order to identify areas of difficulty and assist students who need additional support.

### 5. Finances and administration- Describe how the vendor will and provide examples of each of the following:

- A. Provide Invoicing Model/Sample/Example - should be a monthly itemized invoice
- B. Provide a monthly data report
- C. Provide a repository for all school records and data, which school will retain after end of contract
- D. Provide a single liaison person to represent the vendor with the school Head Administrator who will reside in New Mexico

### 6. Technology Services: The equipment provided is to support the latest technology including but not limited to: operating system, web browsers. Provide samples/templates and describe each of the following services Academic Tracking System - up to date reports (real-time data preferred)

- A. Academic Tracking System/Reports – available within in 24 hours/real-time data preferred
  - 1. Lesson Completion
  - 2. Progress/Course Completion
  - 3. Student academic performance/grade
  - 4. Student attendance - Time in system/lessons and in-person instruction
  - 5. All must include demographics

- B. Availability to rent computers from vendor for state testing
  - C. Automated Systems to call/text/email students/parents/staff with ease of selecting groups of students and their learning coaches. Automated mailing system that sends webmails to both learning coach and student simultaneously
  - D. Describe the technical support available to students and staff with vendor issued computers. including but not limited to
    - a. Number of IT staff dedicated to New Mexico
    - b. Hours of operation (in local times)
    - c. Describe queue and wait time for callers
  - E. Ensure and monitor security of school's computers, both vendor and school owned, and network systems
  - F. Inventory Management Systems
  - G. Monitor and analyze system data to oversee system upgrades and changes, manage applications, and allow for downloading of required programs, such as the state assessment kiosks with ease.
  - H. Capability Online enrollment systems to work concurrent with PCA enrollment
  - I. Describe how communication takes place with students and parents (or guardians), how it is monitored, and how do you address any concerns if they arise.
  - J. Other Available Reports offered - examples
  - K. Program to support digital signatures and request through a secure method with cost that accompanies this requirement
  - L. Quarterly Metrics - Example of Quarterly Metrics
  - M. Reports/Metrics - all reports should have the ability to provide demographics, socioeconomic status, and grade level/bands, New/Returning/Late Start
    - 1. Attendance Metrics
    - 2. Attendance – New/Returning
    - 3. Attendance – New/Late Start Students
  - N. Synchronous/Asynchronous training sessions for all school staff on technology systems/platforms/programs
    - 1. Onboarding of New Teachers, Returning Teachers, Administrators, Students and Parents
    - 2. Provide training to Governing Board at their written request
    - 3. Support/Training for STARS Coordinator
  - O. Track Student Contacts, Parent contacts
  - P. Capture and share monthly Withdrawal Rates and well as yearly withdraw rates
  - Q. Laptop/laptop bag and headset for all students and staff
  - R. Printers for Staff
  - S. Single Sign On for all applications
7. Presentation: A Date, time and virtual location will be scheduled on April 8, 2022. The vendor will receive an invite on Thursday, March 31. Vendor staff should be well versed in their products and systems and able to answer requests in a professional manner, within an appropriate timeframe and completely without missing items. Additionally, vendor staff should be professional and avoid business tactics such as evasion, deflection, and diversion when pressed to meet contract scope of work. The presentation should include proposed timelines/scheduling of implementation of the project to include, but not limited to: lead time for delivery of equipment and materials to students and staff, solutions to enroll students, and the transfer of data from PCA systems to the vendor system(s). Offerors are encouraged to thoroughly describe any other value-added services they feel may contribute to the success of the school. These should be identified and listed separate.

### C. Written Response Content

Proposals must be concise and in outline format. To be considered, each Offeror must submit a complete

response to this solicitation using the forms provided. No other documents submitted with the proposal will affect the contract provisions, and there may be no modifications to the RFP/contract language. Pertinent supplemental information should be referenced and included as attachments. Return this Request for Proposal (RFP) document with all attachments filled out as requested and signed, along with the following items.

1. **LETTER OF TRANSMITTAL.** The Letter of Transmittal is to include:
  - a. Introduction of the Offeror and the services provided.
  - b. Name, address, and telephone number of the person to be contacted, along with others authorized to represent the company in dealing with the RFP.
  
2. **EXECUTIVE SUMMARY.** Provide an Executive Summary which:
  - a. Summarize the company history including the type of organization and list the principles of the firm, the number of total employees of the company and those currently and projected to be employed in New Mexico,
  - b. Promotes your company stating in 200 words or less what makes your firm uniquely qualified to perform the services listed,
  - c. Describes the Contractor's approach to the proposal including proposed staffing and timelines.

In short, the reader should be able to determine the essence of the proposal and generally how well it meets the RFP requirements by reading the Executive Summary.

3. **DETAILED DISCUSSION.** This section should constitute the major portion of the proposal and must contain at least the following information:
  - a. Discuss your company staffing and management structure.
    - i. Include a company organizational chart with resumes for management. Include a verification of your company Insurance as required.
    - ii. Provide a listing of the current staff, indicating their name, year of employment by your company, profession, and professional certifications and licenses.
  - b. PCA has established six minimum qualifications for Offerors to submit a proposal. Describe how you have met each of these six qualifications and specifications listed in Section 4.C.
  - c. **Scope of Work**  
PCA has a Scope of Work that specifies seven specific areas in Section 4.D. In detail list how you will meet each item in the seven areas in the Scope of Work.
  
4. **FINANCIAL DISCUSSION** Financial success is imperative for both the Contractor and PCA.
  - a. Briefly discuss the financial condition of the company.
  - b. Attach audited financial statements for the last two years.
  - c. Attach and discuss the Balance Sheet and Profit & Loss ending the last day of the previous month and for the last two years.

## **5. EVALUATION and CONTRACT AWARD**

### **A. Contract Form**

The form of the contract between PCA and the Contractor will be as per Form A in Section 6. PCA reserves the right to negotiate provisions in addition to those contained in this RFP with any Offeror. The contents of this RFP, as revised and/or supplemented, and the Contractor's proposal will be incorporated into and become part of any resultant contract.

PCA discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of PCA (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is

deemed to be a deficiency, or an unacceptable exception is proposed that would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (Appendix A) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. PCA may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to PCA and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as Contractor), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as Contractor) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

#### **B. Proposal Submission**

Sealed proposals will be received until 1:30 p.m. local time, on Thursday, March 31, 2022, at Pecos Cyber Academy, 1503 West Pierce, Carlsbad, NM 88220. All required and requested documentation shall be included. (see Section 3.B)

#### **C. Late Proposals**

Any offer received after the exact time specified for receipt will not be considered. Proposals received after the deadline will be late and ineligible for consideration. PCA is not responsible for delays in the delivery of mail by the U. S. Postal Service, private couriers, or any other means of delivery. It is the sole responsibility of the Contractor to ensure that its proposal reaches PCA by the designated date and hour. See also "Late Offers."

#### **D. Proposal Review**

Commencing on Thursday, April 7, 2022, an Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors. Part of the review process may include a presentation to the evaluation committee. Responsive Offerors will be informed of the specific date and time by the RFP Procurement Manager.

#### **E. Evaluation Factors**

To qualify for evaluation, a proposal must be responsive, must have been submitted on time, and materially satisfy all mandatory requirements identified throughout the RFP. To be considered responsive, a proposal must reasonably and substantially conform to all of the specified requirements in the RFP in the judgment of the evaluation committee. Any deviation from requirements indicated herein must be stated on an attached sheet(s). Otherwise, it will be considered that proposals are in strict compliance with all requirements, and any successful Offeror will be held responsible. Deviations or exceptions stipulated in the Offeror response, while possibly necessary in the view of a particular Offeror, can result in a penalty assessment being assigned during the evaluation process. Language to the effect that the Offeror does not consider this proposal to be part of a contractual obligation will result in that Offeror's proposal being disqualified. Due to the unpredictable nature of what any particular Offeror may wish to stipulate with regard to exceptions, exclusions or limitations of liabilities, Offerors are forewarned that PCA reserves the right to assign any penalties it considers warranted. Terms of the RFP that any Offeror considers particularly unwarranted, and to which that Offeror would have to take significant exception in its response, should be stated in the proposal clearly and concisely as exceptions and/or deviations.



When assigning points given to the proposal in Part 2 and Part 3, points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response. Specifically, the Offeror will be evaluated on the capacity to perform the work described in the RFP including but not limited to demonstrated experience providing services for like programs and overall success in their implementation, the commitment of the organization as a whole to the successful delivery and implementation of the program, and the ability to meet evolving needs of PCA.

The evaluation of each Offeror's cost proposal in Part 4 will be conducted using the following formula, rounding to the nearest tenth, for each individual cost requested:

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{This Offeror's Bid}} \times \text{Available Award Points}$$

The contract shall be awarded to the Offeror whose proposal is most advantageous to the PCA, taking into consideration the evaluation factors set forth in this RFP. PCA will generally award the contract based upon the best value, most responsive, responsible offer with price and other factors considered. It is not the practice of PCA to award upon the basis of price alone.

Part 1: Forms- (14)points

- Form A – The signed Offer and Contract Award
- Form B – The signed Affidavit
- Form C – The signed Offerors Indefinite Quantity Unit Price Declaration (included in Cost Proposal only)
- Form D – The signed Acceptance of Terms and Conditions
- Form E – The signed Preference Certification
- Form F – The signed Campaign Contribution Disclosure
- Form G – The signed Suspension and Debarment Certification
- Form J – The signed Submission Check-off

Part 2: Evaluation Criteria (230 points)

- References (Form H)
- Letter of Transmittal
- Executive Summary
- Detailed Discussion
- Staffing and Management
- Minimum Qualifications
- Scope of work
  1. Curriculum & Assessment
  2. Materials and Supplies
  3. Special Education
  4. Students
  5. Finances and Administration
  6. Technology Services
  7. Access to Review Online System

Part 3: Finances of Company (6) points)

- Discussion of Finances
- Discuss and attach Last two years Audits
- Discuss and attach last two years Balance Sheet and Profit & Loss

Part 4: Financial Evaluation – Cost Proposal (75) points)

Unit Cost per Quote:  
Annual Cost

Evaluation Point summary

325 Total Points possible (not including applicable preference and deductions for forms and qualifications)

**F. Preferences**

1. Residential Businesses are to receive a 5% preference.
2. Resident Veterans Businesses/Contractors with annual revenues of \$1M or less to receive a 10% preference.
3. Resident Veterans Businesses/Contractors with annual revenues of more than \$1M but less than \$5M are to receive an 8% preference.
4. Resident Veterans Businesses/Contractors with annual revenues of more than \$5M are to receive a 7% preference.

Preference is not cumulative. A veteran business/Contractor will still receive the 5% in-state preference once the veteran's preference is exceeded. Points will be awarded based on Offerors enclosing a copy of a current Resident Business, Contractor or Veterans Certificate.

In addition to the total points in an RFP, preference must be added to the award. For example; an RFP has a total value of 1,000 points. Five proposals are received; one from a resident business, one from a resident veterans business with an 8% preference and three non-resident businesses. The resident business would receive 50 points and the veterans business with an 8% preference would receive 80 points to their already evaluated score, making it possible for the highest score total 1080.

**G. Negotiations**

In order to obtain the most favorable price and support for member charter schools, PCA reserves the right to enter negotiations with responsible Offerors (see also Best and Final Offer).

**H. Cost Considerations**

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

**6. PROPOSAL FORMS AND ATTACHMENTS**

**Form A Acceptance of Offer and Contract Award**

OFFER TO BE COMPLETED BY VENDOR

PCA RFP 21-0016-8 Curriculum

The Offeror certifies that the Contractor shall operate in accordance with all applicable state and federal regulations. The Offeror certifies that all Forms, and the terms and conditions within the proposal shall be considered a part of the contract as if incorporated therein, unless otherwise noted in the proposal as required by Section 5.A. This Agreement shall be in effect until June 30, 2023 and may be renewed by mutual agreement for four additional one-year periods, however, no contract extension exists unless and until Contractor is so notified by PCA.

Signature also certifies understanding and compliance with the requirements as included in the RFP.

Company Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone number \_\_\_\_\_ Web Address \_\_\_\_\_

SS or FEIN# \_\_\_\_\_ State of NM Tax & Revenue # \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Printed Name \_\_\_\_\_

**ACCEPTANCE OF OFFER AND CONTRACT AWARD TO BE COMPLETED ONLY BY PCA**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
PCA Authorized Signature

\_\_\_\_\_  
Title

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2022



**Form C Offerors Indefinite Quantity Unit Price Declaration**

I, the undersigned, propose to provide the services necessary for the scope of work and specifications defined in the RFP and so identified on Form A. By my signature at the end of this Form C, I acknowledge that I have read and reviewed the solicitation document sections and exhibits as they relate to preparing and submitting the pricing information below.

Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.

Submit a Proposal Price Sheet. It may either be created using the requirements below, using the sheet of the following page, or by may submit your existing Price Sheet that contains at least the following information. All services and products used in completing this scope of work should be included.

1. Unit cost per quote

Item	Regular cost	PCA Reduced Cost
Start of cost per student		
Departing cost per student		
Monthly Maintenance cost per student		
Cost per student that is on IEP		
Monthly cost per staff (teacher/admin)		
Monthly cost for short-term substitute		

2. Total Start-up Cost for 600 students of which 150 are new, 100 have an IEP, and there are 20 teachers of which 2 are new and 1 is a substitute.

\$ \_\_\_\_\_

Offeror may request a potential price increases during the second through fourth year of the contract of \_\_\_\_\_% not to exceed the CPI.

Note that the actual increase is subject to negotiation and approval by Contractor and PCA.

Authorized Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

**Form D Acceptance of Terms and Conditions**

Rather than duplicate each general term and condition and indicate acceptance, Offeror may sign the statement below. Any exceptions must be listed on this page (additional pages may be attached, if necessary).

Any exceptions not included in this section shall be without force and effect in any resulting contract unless such exception is specifically referenced here, in a written statement.

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

Authorized Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

List exceptions taken below:

**Form E Preference Certification**

New Mexico companies or Contractors who wish to obtain a bidding advantage on all PCA contracts are required to attach a valid resident business certificate or resident Contractor certificate issued by the New Mexico Taxation and Revenue Department starting January 1, 2012. This in-state preference does not apply to contracts that use federal funding.

Under the law, in-state companies and Contractors submitting a valid certificate will receive:

- Five percent of the total weight of all the factors used in evaluating the proposals; and
- The equivalent of five percent of total points if the contract is awarded on a point-based system.

Beginning July 1, 2012, but not after June 30, 2022, New Mexico veteran-owned businesses who wish to obtain either a resident veteran business preference or a resident veteran Contractor preference must first apply for and obtain certification from the New Mexico Taxation and Revenue Department (TRD). As long as a business initially meets and continues to meet the necessary requirements, a certification issued by TRD is valid for three years from the date of issuance.

Under the new law, registered veteran in-state companies and Contractors will receive:

- Resident Veterans Businesses with annual revenues of \$1M or less to receive a 10% preference.
- Resident Veterans Businesses with annual revenues of more than \$1M but less than \$5M are to receive an 8% preference.
- Resident Veterans Businesses with annual revenues of more than \$5M are to receive a 7% preference.

To receive preference the Offeror will need to attach a copy of a valid resident business, resident Contractor or resident veteran’s certificate issued by New Mexico Tax and Revenue Department with this proposal.

\_\_\_\_\_  
(Name of Offeror requesting Preference)

Check the Type of Preference Requested:

- Residential Businesses are to receive a 5% preference.
- Residential Contractors are to receive a 5% preference
- Resident Veterans Businesses/Contractors with annual revenues of \$1M or less to receive a 10% preference.
- Resident Veterans Businesses/Contractors with annual revenues of more than \$1M but less than \$5M are to receive an 8% preference.
- Resident Veterans Businesses/Contractors with annual revenues of more than \$5M are to receive a 7% preference.

Preference is not cumulative. A veteran business/Contractor will still receive the 5% in-state preference once the veteran’s preference is exceeded. Points will be awarded based on Offeror’s attaching a copy of a current Resident Business, Contractor or Veterans Certificate. RFP’s are to be evaluated on preference as follows: In addition to the total points in an RFP, preference must be added to the award. For example, an RFP has a total value of 1000 points. Five proposals are received; one from a resident business, one from a resident veterans business with an 8% preference and three non-resident businesses. The resident business would receive 50 points and the veterans business with an 8% preference would receive 80 points to their already evaluated score, making it possible for the highest score total 1080.

Preference Certification Form (continued)

Offerors Requesting Veterans Preference will agree to the following:

\_\_\_\_\_  
(Name of Offeror) hereby certifies the following in regard to application of the resident veterans’ preference to this procurement:

Please check one box only

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Offeror Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Offeror.

The representations made in checking the boxes constitutes a material representation by the Offeror that is subject to protest and may result in denial of an award or rescinding of the procurement involved if the statements are proven to be incorrect.



## Form F Campaign Contribution Disclosure

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

**"Applicable public official"** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**"Campaign Contribution"** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

## Form G Suspension and Debarment Certification

By signing and submitting this Form G, the offeror is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The offeror shall provide immediate written notice to the person to whom this proposal is submitted if at any time the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances in any state where services are provided.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The regulations are found in 13CFR Part 145.

The offeror agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by PCA and the Charter School to which it provides services or products.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The offeror certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the offeror is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Authorized Signature

---

Printed Name

**Form H Reference Questionnaire**

**REFERENCE QUESTIONNAIRE FOR:**

---

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to Pecos Cyber Academy, via the Procurement Manager at:

Name: Gloria Lopez  
Address: 1503 W Pierce St.  
Carlsbad, NM 88220  
Phone: (575) 236-4005  
Email: [glopez@pecosca.us](mailto:glopez@pecosca.us)

**This form is to be submitted no later than March 16, 2022. This form must not be returned to the company requesting the reference.**

For questions or concerns regarding this form, please contact Pecos Cyber Academy’s Procurement Manager listed above.

**CONFIDENTIAL INFORMATION WHEN COMPLETED**

<b>Company Providing Reference:</b>	
<b>Contact Name/Title/Position:</b>	
<b>Contact Telephone Number:</b>	
<b>Contact Email Address:</b>	



6. Who were the vendor's principal representatives involved in your project and how would you rate Them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?  
 (3 = Excellent, 2 = Satisfactory, 1 = Unsatisfactory, 0 = Unacceptable)\_\_\_\_\_

Name	Rating	Comments

7. How satisfied are you with the services provided by the vendor?  
 (3 = Excellent, 2 = Satisfactory, 1 = Unsatisfactory, 0 = Unacceptable)

8. With which aspect(s) of the vendor's services are you **most** satisfied?

9. With which aspect(s) of this vendor's services are you **least** satisfied?

10. Would you recommend this vendor's services to your organization again?

## REQUEST FOR PROPOSAL

Pecos Cyber Academy

To operate and manage the 6-8 school curriculum, platform, and instructional technology

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with Form J.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **March 16, 2022, by 1:30pm**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM:

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Proposal. Firm does/does not (circle one) intend to respond to this Request for Proposal.

Gloria Lopez, Procurement Manager  
Pecos Cyber Academy  
1503 W. Pierce St.  
Carlsbad, NM 88220  
E-mail: [glopez@pecosca.us](mailto:glopez@pecosca.us)

**Form J Submission Check-Off**

- \_\_\_\_\_ **Form A** – Signed Offer and Contract Award
- \_\_\_\_\_ **Form B** – Signed Affidavit
- \_\_\_\_\_ **Form C** – Offeror’s Indefinite Quantity Unit Price Declaration Form
- \_\_\_\_\_ **Form D** – Signed Acceptance of Terms and Conditions
- \_\_\_\_\_ **Form E** – PCA Preference Certification Form
- \_\_\_\_\_ **Form F** – Signed Campaign Contribution Disclosure Form
- \_\_\_\_\_ **Form G** –Suspension and Disbarment Certification
- \_\_\_\_\_ **Form H** –Reference Questionnaire
- \_\_\_\_\_ **Form I** –Signed Submission Check-Off Form

Narrative Responses

- \_\_\_\_\_ Transmittal Letter
- \_\_\_\_\_ Executive Summary
- \_\_\_\_\_ Describe in detail the staffing and management (response 3.a)
- \_\_\_\_\_ Describe in detail the references (response 3.b)
- \_\_\_\_\_ Describe in detail the employee managed services (response 3.c)
- \_\_\_\_\_ Describe Finances (pricing, budget, and financial statements)
- \_\_\_\_\_ Attachments including at least copies of resumes, letters, certificates, licenses, insurance, and other support documentation required to demonstrate and justify responses, and Attachments including at least last two years audit reports, PROFIT & LOSS and Balance Sheets.

Authorized Signature \_\_\_\_\_ Printed Name \_\_\_\_\_



## Appendix A

### Sample Contract

THIS Curriculum, Platform, and Information Technology Agreement (“Agreement” or “Contract”) is made by and between the **Pecos Cyber Academy**, hereinafter referred to as the “School” and **[Insert Contractor Name]**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties.”

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 et. Seq; and Procurement Code Regulations, NMAC 1.4.1 et.seq; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the School has selected the Contractor as the Offeror most advantageous; and

WHEREAS, all terms and conditions of the Request for Proposal (RFP) #2021-2022-1, Operate and Manage the 6-8 School Curriculum, Platform, and Instructional Technology and the Contractor’s response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

#### ARTICLE 1 – DEFINITIONS

- A. “Acceptance” or “Accepted” shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the School.
- B. “Application Deployment Package” shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. “Business Days” shall mean Monday through Friday, 8:00 a.m. (MST or MDT) to 4:00 p.m. except for federal or state holidays.
- D. “Change Request” shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. “Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the School or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the School or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the School, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.
- F. “Contract Manager” shall mean a Qualified person from the School responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be **[insert name]** or his/her Designated Representative.
- G. “Default” or “Breach” shall mean a violation of this Agreement by either failing to perform one’s own contractual obligations or by interfering with another Party’s performance of its obligations.
- H. “Deliverable” shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of

Work.

- I. “Designated Representative” shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- J. “Escrow” shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the School receives the legal document, in this case, Source Code.
- K. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- L. “Executive Level Representative” shall mean the individual empowered with the authority to represent and make decisions on behalf of the School’s executives or his/her Designated Representative. The Executive Level Representative is **insert name**.
- M. “GRT” shall mean New Mexico gross receipts tax.
- N. “Intellectual Property” shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- O. “Independent Verification and Validation (“IV&V”)” shall mean the process of evaluating a Project and the Project’s product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the School.
- P. “Know How” shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- Q. “Payment Invoice” shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the School. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.
- R. “Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- S. “Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given and verified by the Executive Level Representative.
- T. “Project Manager” shall mean a Qualified person from the School responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be **insert name** or his/her Designated Representative.
- U. “Qualified” means demonstrated experience performing activities and tasks with Projects.
- V. “Quality Assurance” shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- W. “Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- X. “Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- Y. “Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- Z. “Source Code” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text

and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly usable by a computer.

- AA. “Turnover Plan” means the written plan developed by the Contractor and approved by the School in the event that the work described in this Agreement transfers to another vendor or the School.

## ARTICLE 2 – SCOPE OF WORK

- A. Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- B. Performance Measures. The Contractor shall substantially perform to the satisfaction of the School the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the School may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the School of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the School from exercising its rights pursuant to Article 6 or Article 16.
- C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the School without prior written approval, through the Amendment process, as defined in Article 25.
- D. License. **[CHOICE #1 – If a software license is required, use the following language.]** Contractor hereby grants the School a **[CHOICE #2 – If a perpetual license is required, use the following language]** non-exclusive, irrevocable, perpetual license to use, modify, and copy the following Software: **[Insert name of software and the patent number if applicable]** **[CHOICE #3- If the license is required for the term of the Agreement, use the following language]** non-exclusive, irrevocable, license to use, modify, and copy the **[Insert name of Software and patent number if applicable]** Software and any and all updates, corrections, and revisions as defined in Article 2 and Exhibit A, for the term of this Agreement.

The right to copy the Software is limited to the following purposes: archival, backup and training. All archival and backup copies of the Software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1. Contractor agrees to maintain, at Contractor’s own expense, a copy of the Software Source Code to be kept by an escrow agent and to list the School as an authorized recipient of this Source Code. The Source Code shall be in magnetic form on media specified by the School. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the Software at the current revision level. Included with the media shall be all associated documentation which will allow the School to top load, compile and maintain the software in the event of a Breach.
2. If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the Software it provided the School; or, if this Agreement is terminated, or if the Contractor Breaches this Agreement, the Contractor shall make available to the School: 1) the latest available Software program Source Code and related documentation meant for the Software provided or developed under this Agreement by the Contractor and listed as

part of the Services; 2) the Source Code and compiler/utilities necessary to maintain the system; and, 3) related documentation for Software developed by third parties to the extent that the Contractor is authorized to disclose such Software. In such circumstances, School shall have an unlimited right to use, modify and copy the Source Code and documentation.

**[CHOICE #4 - Not Applicable. The Parties agree there is no License.]**

E. Source Code. **[CHOICE #1- If for a maintenance and operations contact, use the following language.]** The Contractor shall deliver any and all software developed as a result of maintenance releases by the Contractor. The Application Deployment Package must be able to reproduce a fully operational application that includes all base application functionality, all cumulative release functionality and including the functionality, as documented, verified and supported by the Contractor, which comprises the new application release.

**[CHOICE #2 – If Contractor will hold software in escrow, use the following language.]** For each maintenance release, the Application Deployment Package shall be updated and shall be kept by an identified escrow agent at the Contractor’s expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the School. The escrow agent shall be responsible for storage and safekeeping of the storage media. The School shall be listed with said escrow agent as an authorized recipient of the storage media which shall contain the most recent application maintenance release deployment package.

**[CHOICE #3 – If Contractor will not hold software in escrow, use the following language.]** For each maintenance release, the Application Deployment Package shall be updated and shall be delivered to the School’s at the Contractor’s expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the School and shall be updated with each new application release deployment package at the Contractor’s expense.

**[CHOICE #4 – Not Applicable. The Parties agree there is no Source Code.]**

E. The School’s Rights.

1. Rights to Software. **[CHOICE #1 – If the School has right to the Software, use the following language. -** The School will own all right, title, and interest in and to the School’s Confidential Information, and the Deliverables, provided by the Contractor, including without limitation the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and the associated documentation for purposes of this Section. The Contractor will take all actions necessary and transfer ownership of the Deliverables to the School, without limitation, the Custom Software and associated Documentation on Final Acceptance or as otherwise provided in this Agreement.] **[CHOICE #2 – Not Applicable. The Parties agree the School does not have rights to the Software.]**
2. The Parties agree the School does not have rights to the software.
3. Proprietary Rights. The Contractor will reproduce and include the School’s copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
4. Right to Data. Any and all data stored on the Contractor’s servers or within the Contractor’s custody, in order to execute this Agreement, is the sole property of the School. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy, or reproduce the School’s data in any manner, or provide to any entity or person outside of the School without express written authorization of the School.

### ARTICLE 3 – COMPENSATION

- A. Compensation Schedule. The School shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D.
- B. Payment. The total compensation under this Agreement shall not exceed **[insert Dollar Amount]** including New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the School when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the School no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

- C. Taxes. The Contractor shall not be reimbursed by the School for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the School harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- D. Retainage. The Parties agree there is no retainage.
- E. Performance Bond. The Parties agree there is no Performance Bond.

### ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the School. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).
- B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has

been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
2. Complies with the terms and conditions of the RFP #2021-2022-1;
3. Meets the performance measures for the Deliverable(s) and this Agreement;
4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

- C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The School may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the School may terminate this Agreement.

#### ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT.

This Agreement shall terminate on **June 30, 2023**, unless terminated pursuant to Article 6. By mutual written agreement, the contract may be extended for up to four (4), additional 12-month periods. The School reserves the right to offer month-to-month extensions. However, no contract extension exists unless the Contractor is notified by the School. The contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

## ARTICLE 6 – TERMINATION

- A. Grounds. The School may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the School's uncured, material breach of this Agreement.
- B. Appropriations. By the School, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the New Mexico State Legislature for the performance of this Agreement. The School's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the School terminates this Agreement pursuant to this subsection, the School shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.
- C. Notice; School Opportunity to Cure.
1. Except as otherwise provided in Paragraph (3), the School shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
  2. Contractor shall give School written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the School's material breaches of this Agreement upon which the termination is based and (ii) state what the School must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the School does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the School does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
  3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the School; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.
- D. Liability. Except as otherwise expressly allowed or provided under this Agreement, the School's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE SCHOOL'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

## ARTICLE 7 – TERMINATION MANAGEMENT

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
1. Transfer, deliver, and/or make readily available to the School property in which the School has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the School;
  2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the School;
  3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the School may direct, for orderly completion and transition;



4. Take such action as the School may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
5. Agree that the School is not liable for any costs arising out of termination and that the School is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of School's programs;
7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the School's receipt of program funds from any governmental agency, the Contractor shall remit to the School the full amount of the reduction;
8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the School for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the School for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the School and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the School or created by the Contractor under this Agreement, to the School, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the School, the Contractor shall provide to the School a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the School or created by the Contractor under this Agreement.

- B. School. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the School shall:
1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
  2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

#### ARTICLE 8 - INDEMNIFICATION

- A. General. [Delete if the Agreement is between to public entities] The Contractor shall defend, indemnify and hold harmless the School and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, during the time when the Contractor, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement. In the event that any action, suit or proceeding related to the Services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of the School.]



[Use if the Agreement is between two public entities – Neither party shall be responsible for liability incurred as a result of the other Party’s acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.]

- B. [Delete if the Agreement is between to public entities - The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the School, as necessary, to satisfy any outstanding claim that the School may have against the Contractor.]

#### ARTICLE 9 – INTELLECTUAL PROPERTY

- A. Contractor Intellectual Property. Contractor shall retain all rights to all Software and systems, whenever created, conceived, or developed, used by Contractor in providing the Services under this Agreement. Except as provided in subsection B below relating to rights in the Deliverables and notwithstanding anything to the contrary contained herein, Contractor shall retain, and shall not be required to assign, transfer, or deliver, ownership of all Intellectual Property, whether the Intellectual Property is pre-existing or created or conceived by Contractor during its provision of the Services under this Agreement (collectively, “Contractor Intellectual Property”).
- B. School Intellectual Property. Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the School shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the School shall be considered the creator and owner of such Know How. The School shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of the School without the express written authorization of the School. Contractor shall notify the School, within fifteen (15) Business Days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the School and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the School. If, by judgment of a court of competent jurisdiction, Intellectual Property or Know How are not deemed to be created or owned by the School, Contractor hereby acknowledges and agrees to grant to the School and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Deliverables Intellectual Property. Except as provided in this subsection B relating to the Deliverables and as noted in subsection A above, the School will not receive any rights to any Contractor Intellectual Property other than access rights necessary to enable the School to receive Services from Contractor under this Agreement.

#### ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

- A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the School, the State of New Mexico and/or any other State of New Mexico body 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 maybe awarded as a result of such claim. In addition, if any third party obtains a judgment against the School based upon Contractor's trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the School for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the School shall:

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

B. School 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 the School the right to continue using the product or service and fully indemnify the School against all claims that may arise out of the School's 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 the School to the extent such modification is the cause of the claim.

#### ARTICLE 11 – WARRANTIES

A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post- implementation phases.

B. Software. **[CHOICE #1 – Use only if purchasing or developing software]** The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for **[INSERT # of years – recommend 6 months – 2 years]** years after Acceptance by the Executive Level Representative and implementation by the School. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the School, so that the software meets the applicable specifications. **[CHOICE #2 – Not Applicable. The Parties agree there is no Software.]**

#### ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the School. Key personnel are those individuals considered by the School to be mandatory to the work to be performed under this Agreement. Key personnel shall be: **[Insert Contractor Staff Name(s)]**

- B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the School. For all personnel, the School reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to School approval. The School, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The School reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the School, meeting the School's expectations.

#### ARTICLE 13 – STATUS OF CONTRACTOR

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the School and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
- B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the School.

#### ARTICLE 14 – CHANGE MANAGEMENT

- A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A.
- A. Under no circumstance shall such change affect the:
1. Deliverable requirements, as outlined in Exhibit A;
  2. Due date of any Deliverable, as outlined in Exhibit A;
  3. Compensation of any Deliverable, as outlined in Exhibit A;
  4. Agreement compensation, as outlined in Article 3; or
  5. Agreement termination, as outlined in Article 5.
- B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
  - (a) the name of the person requesting the change;
  - (b) a summary of the required change;
  - (c) the start date for the change;
  - (d) the reason and necessity for change;
  - (e) the elements to be altered; and
  - (f) the impact of the change.
  
2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

#### ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

- A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
  1. Providing the Project documentation;
  2. Allowing the IV&V vendor to sit in on the Project meetings; and
  3. Supplying the IV&V vendor with any other material as directed by the Project Manager.

#### ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the School and the may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the School may also seek all other remedies under the terms of this Agreement and under law or equity.

#### ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the School irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the School, and the Contractor consents to the School's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. School's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that School may have under applicable law, including, but not limited to, monetary damages.

#### ARTICLE 18 – LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed,

provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the School to any equipment or its installation or for losses caused by the School's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and/or employees of the School, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

#### ARTICLE 19 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

#### ARTICLE 20 – SUBCONTRACTING

- A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the School. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the School.
- B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the School to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

#### ARTICLE 21 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the School and its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

#### ARTICLE 22 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the School or, developed by the Contractor based on information provided by the School 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 the School. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the School within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the School will result in direct, special and incidental damages.

#### ARTICLE 23 – CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or Services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

## ARTICLE 24 – RECORDS AND AUDIT

- A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the School, and any appointed Auditor. The School shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the School to recover excessive or illegal payments.

## ARTICLE 25 – AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

## ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed healthcare coverage programs by providing each employee with, as a minimum, the following website link to additional information: <http://insurenemexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

## ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING

- A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal

for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement.

That submittal date shall serve as the basis for submittals required thereafter.

- B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.
- C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

#### ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE

- A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

#### ARTICLE 29 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard

copy from the sender. Notices shall be addressed as follows:

**For SCHOOL**

Gloria, Procurement Manager  
Pecos Cyber Academy  
[glopez@pecosca.us](mailto:glopez@pecosca.us)  
1503 W. Pierce St.  
Carlsbad, NM 88220

**For CONTRACTOR**

[Insert Name of Individual, Position,  
Company Name  
E-mail Address,  
Telephone Number,  
Mailing Address.]

Any change to the Notice individual or the address, shall be effective only in writing.

**ARTICLE 30 – GENERAL PROVISIONS**

- A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 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.
  2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
  3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the School.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be



effective to waive any other rights.

- D. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

#### ARTICLE 31 – SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement. Other unexpired agreements, promises, or warranties that will survive the termination of this Agreement are: [\[list here\]](#)

#### ARTICLE 32 – TIME

Calculation of Time. Any time period herein calculated by reference to “days” means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

#### ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: \_\_\_\_\_  
Kyla Anderson, Board President  
Pecos Cyber Academy

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Insert Contractor Name]  
[Insert Title and Company Name]

Date: \_\_\_\_\_

Approved for legal sufficiency:

By: \_\_\_\_\_  
Dan Hill  
Attorney for  
Pecos Cyber Academy

Date: \_\_\_\_\_

## EXHIBIT A – SCOPE OF WORK

I. Purpose of the Agreement including goals and objectives:

[If applicable – Certified Project Name: name]

II. Performance Measures:

III. Activities.

IV. Deliverables:

The following sections describe the required tasks and subtasks to be performed by the Contractor for each Deliverable under the terms of this Agreement. The Contractor must perform each task and/or subtask but is not limited to performing only the identified task or subtasks in a given project area. The Parties hereby agree that the Deliverable(s) are the controlling items and that the Contractor's obligation is to perform and deliver the Deliverable as described in the following sections.

**Notes: Deliverables will mirror the requirements set forth in RFP #2021-2022-1.**

**Deliverable Number 1 Courses**

Task Item	Description
1.A	<p>The Contractor shall provide courses, to include but is not limited to, core courses and elective options for grades 6-8<sup>th</sup> that align with NMCCSS, NM STEM READY! Standards, and/or NMSS. The Contractor will offer Course Descriptions for each course offered and available to Middle School students to include standard, enriched, and remedial courses offered. The Contractor will offer 80-90 lessons per semester per each core course: Math, Science, ELA, and Social Studies/History and provide a Scope and Sequence for each of the courses offered to include a minimum of: Day, Unit Number and Name, Lesson Number and Name, with corresponding NMCCSS/NMSS/NMSTEM Ready! Standards for each proposed grade level to confirm alignment with NM Standards. The Contractor will also offer electives with a minimum of 60-70 lessons per course per semester or describe how project based units would be completed over the course of one semester. The Contractor will also provide course descriptions for each of the elective courses offered and provide a Scope and Sequence for each of the courses to include a minimum of: Day, Unit Number and Name, Lesson Number and Name, with corresponding NMCCSS/NMSS/NMSTEM Ready! Standards. The Contractor will also provide content kits or materials to all students. The availability of printed materials is also warranted for some students with special needs</p>
1.A.1	<p>The Contractor shall provide Math courses that should align with the NMCCSS and include interactive lessons and activities, discussion questions, practice questions, assessments to include multiple choice, short answer, and interactive manipulatives to include a calculator, as well as teacher graded assignments. The lessons should include step by step instructions, video tutorials, and practice. Courses that have the ability to provide support and enrichment skills within the course are preferred. Each course should be separated by Semester 1 and Semester 2.</p>
1.A.2	<p>The Contractor shall provide ELA courses that should align with NMCCSS and include interactive lessons and activities, discussion questions, practice questions, assessments to include multiple choice, short answer, and interactive manipulatives, as well as teacher graded assignments. The course should incorporate both fiction and non-fiction selections within a unit, incorporate Vocabulary, Grammar, and writing as part of a unit or theme, and offer complete novels both semesters in all grade level ELA courses in both digital and print options as part of the coursework. Courses that have the ability to provide support and enrichment skills within the course are preferred. Each course should be separated by Semester 1 and Semester 2. Writing assignments should also be incorporated into the courses with the ability to modify the assignments and the Rubrics.</p>
1.A.3	<p>The Contractor shall provide Science courses that should align with NM STEM Ready! Standards and include labs with each of the courses for 6-8 grades. Lab kits should be provided to each student and available to staff teaching the courses. Courses should incorporate STEM/STEAM activities, laboratory assignments, interactive lessons and activities, discussions, short answer opportunities and teacher graded assignments. Courses that have the ability to provide support and enrichment skills within the course are preferred. Each course should be separated by Semester 1 and Semester 2.</p>

1.A.4	The Contractor shall provide Social Studies/History that should align with NMSS. As New Mexico moves to adopt new standards for SS, please describe how the curriculum will align to the new standards that will be implemented for SY23. NM requires NM History offered to 7 <sup>th</sup> grade students.
1.A.5	The Contractor shall provide Electives that should align with NMSS/NM STEM Ready! Standards and NMCCSS when applicable. PCA MS wishes to offer computer science to all middle school students for SY22, prior to the state required implementation. PCA is particularly interested in STE/STEAM elective options and CTE options in addition to Art, Music, and Foreign Languages. Indicate length of each course as semester or yearlong course. Please describe any CTE pathways Middle School students could begin that would lead into high school opportunities.
1.A.6	The Contractor shall provide Physical Education courses to align with NMSS, to incorporate physical activity logs, physical activity lessons, and lessons in health and physical fitness.
1.A.7	The Contractor shall provide adequate initial and ongoing training and support for students to enable them to successfully participate in online learning.
1.A.8	The Contractor shall provide other courses for remedial, enrichment, and advanced courses: Bilingual Education courses, High School courses, Special Education courses, and Intervention(MLSS) options that would be available for any Middle School students.
1.A.10	The Contractor shall provide coursework or courses incorporating Social Emotional Learning into the coursework.
1.A.11	The Contractor shall provide coursework that incorporates New Mexican cultures into the courses.
1.A.12	The Contractor shall provide Summer School courses or programs
1.A.13	The Contractor shall provide Alternate Curriculum/Life Skills courses that will be tailored to students that need these courses and should align with the NMCC Essential Elements.
1.A.14	The Contractor shall provide high school courses to middle school students, as agreed upon. A Scope and Sequence will be provided for these courses.

### **Deliverable Number 2 Assessment Support**

Task Item	Description
1.B.1	The Contractor shall provide an Assessment Tracking System that will track real time data from PCA staff.
1.B.2	The Contractor shall provide State Accountability functions as described in the proposal.
1.B.3	The Contractor shall provide Reporting Options as described in the proposal.

1.B.4	The Contractor shall provide full compliance with NM Assessment directives as established by NM PED and the PEC.
1.B.5	The Contractor shall provide training to the Assessment Team/Admin on the system.
1.B.6	The Contractor shall provide technical support to PCA staff as required during all state testing periods.

### **Deliverable Number 3 Platform or Learning Management System**

Task Item	Description
1.C.1	The Contractor shall provide automatic, real-time attendance tracking.
1.C.2	The Contractor shall provide automatic, real-time assignment grading and illustration of same in course and section gradebooks.
1.C.3	The Contractor shall provide assignment grade process and procedures for teachers.
1.C.4	The Contractor shall provide lesson completion tracking.
1.C.5	The Contractor shall provide student course progress tracking.
1.C.6	The Contractor shall provide privacy and security of the platform system.
1.C.7	The Contractor shall provide user friendly ease of access to a virtual classroom.
1.C.8	The Contractor shall provide the ability to co-teach.
1.C.9	The Contractor shall provide access for administrators to track data.
1.C.10	The Contractor shall provide user friendly ease of access to the courses.
1.C.11	The Contractor shall provide access for administrators to review/observe virtual classrooms/gradebooks
1.C.12	The Contractor shall provide the ability to modify courses in the system.

### **Deliverable Number 4 Platform for Synchronous & Asynchronous Instruction**

Task Item	Description
1.D.3	The Contractor shall provide interactive tools to include but not limited to: chat, writing tools, screen share capabilities, ease of use with these tools, and breakout rooms.
1.D.4	The Contractor shall provide interactive Tools for both students and teachers and the ability to turn tools off/on for specific students, allow different groups a variety of different tool options.
1.D.5	The Contractor shall provide platform security.

1.D.6	The Contractor shall provide recording capabilities and editing opportunities.
1.D.7	The Contractor shall provide a program to support digital signatures and the ability to request those signatures through a secure method.
1.D.8	The Contractor shall provide the ability to schedule virtual lessons to specific groups and the ability to lock the virtual room.
1.D.9	The Contractor shall provide for the Administrator to enter the virtual classroom.

**Deliverable Number 5 Student Calendar-Planner**

Task Item	Description
1.E.1	The Contractor shall provide the ability to tailor the calendar/planner to the needs of the student.
1.E.2	The Contractor shall provide the ability to tailor the calendar/planner to the needs of the teacher/school.
1.E.3	The Contractor shall provide the ability to create a to-do list that will auto populate with additional information added to the calendar by a teacher or staff member.
1.E.4	The Contractor shall provide the ability to move lessons in teacher planner which reflects in student planners.

**Deliverable Number 6 Materials and Supplies**

Task Item	Description
2.A	The Contractor shall provide Braille books and equipment access.
2.B	The Contractor shall provide enlarged print books and worksheets.
2.C	The Contractor will provide novels for ELA courses, grades 6-8, print and digital books
2.D	The Contractor will provide other course material kits as described
2.E	The Contractor will provide all computers and headsets for teachers/staff/administrators grades 6-8.
2.F	The Contractor will provide all computers and headsets for enrolled students grades 6-8.

2.G	The Contractor will provide all students access to all instructional materials needed for course instruction.
2.H	The Contractor will provide all teachers/staff with access to all instructional materials.
2.I	The Contractor will provide a school site server and server maintenance for curriculum and platform.
2.J	The Contractor will provide textbooks available and send to students OR digital book versions available.
2.K	The Contractor will provide teacher edition/teacher resources for the courses.

**Deliverable Number 7 Special Education**

Task Item	Description
3.A	The Contractor will provide access to classes by PCA Special Education Ancillary contractors.
3.B	The Contractor will provide tech support to aid in Text to Speech (TTS) and Speech to Text (STT) program installation.
3.C	The Contractor will provide training of special education teachers.
3.D	The Contractor will provide curriculum that aligns with NMCCSS Essential Elements.
3.E	The Contractor will provide tracking of student progress in order to identify areas of difficulty and assist students who need additional support.
3.F	The Contractor will provide consulting support.

**Deliverable Number 8 Student Support**

Task Item	Description
4.A	The Contractor shall provide access for national club for students.
4.D	The Contractor shall enroll all students in collaboration with School.
4.E	The Contractor shall provide personalized learning plans that are standards based for every student.
4.G	The Contractor shall provide tracking of student progress in order to identify areas of difficulty and assist students who need additional support.



## Deliverable Number 9 Technology Services

Task Item	Description
6.A	<p>The Contractor shall provide an academic tracking system with reports available within 24 hours, though real-time data is preferred, of:</p> <ol style="list-style-type: none"> <li>1. Lesson completion</li> <li>2. Progress/course completion</li> <li>3. Student academic performance/grade</li> <li>4. Student attendance – to include time in system/lessons and in-person instruction</li> <li>5. Reports that include demographics</li> </ol>
6.B	<p>The Contractor shall provide the ability to rent computers for state testing.</p>
6.C	<p>The Contractor shall provide an automated system to call/text/email students/parents/staff with ease of selecting groups of students and their learning coaches. The Contractor shall provide an automated mailing system that sends webmails to both learning coach and student simultaneously.</p>
6.D	<p>The Contractor shall provide technical support to students and staff with vendor-issued computers including but not limited to</p> <ol style="list-style-type: none"> <li>a. IT staff dedicated to New Mexico</li> <li>b. Hours of operations in local times</li> <li>c. A queue and wait time as described in proposal for callers<sup>6</sup>.</li> </ol>
6.E	<p>The Contractor shall ensure and monitor security of the school’s computers, both vendor and school owned, and network systems.</p>
6.F	<p>The Contractor shall provide inventory management systems.</p>
6.G	<p>The Contractor shall monitor and analyze system data to oversee system upgrades and changes, manage applications, and allow for downloading of required programs, such as the state assessment kiosks with ease.</p>
6.H	<p>The Contractor shall provide capability online enrollment systems to work concurrent with PCA enrollment.</p>
6.I	<p>The Contractor shall provide assistance with monitoring student communication and assist with any concerns.</p>
6.J	<p>The Contractor shall provide reports as described in the proposal.</p>
6.K	<p>The Contractor shall provide a program to support digital signatures and request through a secure method with cost that accompanies the requirement.</p>
6.L	<p>The Contractor shall provide Quarterly Metrics.</p>
6.M	<p>The Contractor shall provide reports with the ability to provide demographics, socioeconomic status, grade level/bands, new/returning/late start</p> <ol style="list-style-type: none"> <li>1. Attendance metrics</li> <li>2. Attendance: new/returning</li> <li>3. Attendance: new/late start</li> </ol>
6.N	<p>The Contractor shall provide synchronous/asynchronous training sessions for all school staff on technology systems/platforms/programs</p> <ol style="list-style-type: none"> <li>1. Onboarding of New Teachers, Returning Teachers, Administrators, Students and</li> </ol>

	Parents 2. Provide training to Governing Board at their written request 3. Support/Training for STARS Coordinator
6.O	The Contractor shall provide tracking of student contacts and parent contacts.
6.P	The Contractor shall provide the capture and share of monthly withdrawal rates as well as yearly withdraw rates.
6.Q	The Contractor shall provide laptop/laptop bags and headsets for all students and staff.
6.R	The Contractor shall provide printers for staff.
6.S	The Contractor shall provide single sign on for all applications.

PCA CURRICULUM SERVICES RFP EVALUATION SUMMARY SHEET

**Appendix B**

**PCA CURRICULUM SERVICES RFP EVALUATION SUMMARY SHEET**

PCA CURRICULUM SERVICES RFP EVALUATION SUMMARY SHEET

Evaluation Form

	OFFEROR:		EVALUATOR:
	<b>Forms (Pass/Fail)</b>	Value	
	<b>PART I Forms</b>	<b>14</b>	(Comments Below)
	Form A – Signed Offer and Contract Award	2	
	Form B – Signed and Notarized Affidavit	2	
	Form D – Signed Acceptance of Terms and Conditions	2	
	Form E – Preference Certification	2	
	Form F – Signed Campaign Disclosure	2	
	Form G – Signed Suspension and Debarment Certification	2	
	Form J – Signed Submission Check-off	2	
<b>Introduction</b>			
0	<b>References Form H</b>	<b>6</b>	(Comments Below)
	Reference #1	2	
	Reference #2	2	
	Reference #3	2	
0	<b>Letter of Transmittal</b>	<b>4</b>	(Comments Below)
	Introduction	2	
	Contact names and information	2	
0	<b>Executive Summary</b>	<b>6</b>	(Comments Below)
	Summarize history	2	
	Promote the firm (200 words max)	2	
	Contractors Approach	2	
<b>Notes</b>			

PCA CURRICULUM SERVICES RFP EVALUATION SUMMARY SHEET

OFFEROR:	EVALUATOR:
<b>Detailed Discussion:</b>	(Comments Below)
<b>0 a. Staffing/Management</b>	<b>4</b>
Org chart with resumes, insurance	2
Listing of current staff working w/ PCA	2
<b>0 b. Six minimum Qualifications</b>	<b>12</b>
Eight years, trad & charters, sync & asc/15 Schools	2
Plan to transfer data	2
Proven curriculum/Growth comparison based on data	2
Allows continual student access	2
Assessment Tracking Tool for State Assessments	2
Academic Tracking System: Progress, Attendance, grades, etc.	2
<b>0 c. Scope of Work</b>	<b>198</b>
<b><u>1. Curriculum &amp; Assessment</u></b>	<b>90</b>
<b>A. Courses</b>	<b>28</b>
• Math / Manipulative	2
• ELA / Writing and Novels	2
• Science / STEM/STEAM	2
• SS/NMHistory	2
• Electives/CTE	2
• Physical Education/Health	2
• Orientation to online learning	2
• Remedial/Enriched courses	2
• Timely Creation of New Courses	2
• Social Emotional Learning (SEL)	2
• Cultural Linguistic Response (CLR) NM Cultures	2
• Alternative Curriculum/Life Skills NMCCSS Essential Elements	2
• Summer School option	2
• High School Courses: Alg 1, GEOM, Health	2
<b>B. Assessment Support</b>	<b>12</b>

• Assessment Tracking System in real time	2	
• State Accountability functions of the system	2	
• System Reporting Options	2	
• Compliance with NMPED/PEC	2	
• Training & Support for Assessment Team	2	
• Designated Tech Support during state testing	2	
<b>C. Learning Management System (LMS) – Course Platform</b>	<b>24</b>	
• Attendance Tracking	2	
• Computer graded assignments/gradebook	2	
• Grading Process	2	
• Lesson Completion	2	
• Student Course Progress	2	
• Privacy/Security of the platform	2	
• User friendly dashboard/Landing page	2	
• Ease of access to the virtual classroom	2	
• Ease of access to the courses	2	
• Access for administrators to track data	2	
• Access for administrators to review/observe virtual classrooms/gradebooks	2	
• Ability to modify the courses	2	
<b>D. Synchronous/Asynchronous</b>	<b>18</b>	
• Attendance tracked	2	
• Co-teaching abilities	2	
• Interactive tools	2	
• Ability to specify tools for a specific group	2	
• Security	2	
• Recording/Editing capabilities	2	
• Schedule/lock virtual classroom events	2	
• Admin access to the virtual classroom	2	
• Digital Signature	2	
<b>E. Student Calendar/Planner</b>	<b>8</b>	
• Ability to modify for a student	2	
• Ability to modify for teacher/school	2	

	• To Do List	2	
	• Teacher Planner reflects to student planner	2	
	OFFEROR:		EVALUATOR:
0	<b><u>2.Materials &amp; Supplies</u></b>	<b>22</b>	(Comments Below)
	Braille books and equipment access	2	
	Enlarged print books and worksheets	2	
	Novels for all ELA courses, grades 6-8/print and digital	2	
	Other course materials/kits available	2	
	Provide computers/headsets for teachers/staff	2	
	Provide all computers/headsets for all enrolled students	2	
	Provide all students w/ access to all instructional materials	2	
	Provide all teachers/staff access to all instructional materials	2	
	Site Server/maintenance for curriculum and platform	2	
	Textbooks available or digital books sent to students	2	
	Teacher Edition/Teacher Resources	2	

PCA CURRICULUM SERVICES RFP EVALUATION SUMMARY SHEET

0	<b><u>3.Special Education</u></b>	<b><u>12</u></b>	(Comments Below)
	SPED Ancillary services access to classes	2	
	Tech Support for TTS and STT installation	2	
	Training for SPED teachers	2	
	Curriculum aligned to NMCCSS Essential Elements	2	
	Data to assist in identifying areas of need	2	
	Consulting Support	2	
	<b><u>4. Students</u></b>	<b><u>14</u></b>	
Access for national clubs for students	2		
Course Requests by students	2		
Enrollment not to exceed charter capacity	2		
School will enroll all students in cooperation with vendor	2		
Personalized Learning Plans	2		
Support Services/Programs (MLSS)	2		
Tracking Student Progress	2		
<b><u>5.Finances and Administration</u></b>	<b><u>8</u></b>		
Invoicing Model/sample - monthly itemized	2		
Monthly data report sample	2		
Provide a SINGLE liaison person (NM based)	2		
School's repository for school records and data	2		
0	<b><u>6.Technology Services:</u></b>	<b><u>38</u></b>	(Comments Below)
	Academic Tracking Reports Model- Attendance/Progress	2	
	Automated Systems t call/text/email students and staff	2	
	Availability to rent computers for state testing	2	
	Security of school computers and network	2	
	Inventory Management System	2	
	Monitor System upgrades	2	
	Online enrollment system	2	
	Email accounts staff & students	2	



	Other reports available - model	2	
	Program to support digital signatures	2	
	Reports/Metrics - demographics	2	
	Synchronous/Asynchronous training on vendor systems	2	
	Track Student Contacts	2	
	Withdrawal rate	2	
	Tech Support Availability	2	
	Laptop/Laptop bag/headset for students	2	
	Quarterly Metrics - sample	2	
	Printers for staff	2	
	Single Sign on	2	
0	<b>2. <u>Presentation by Vendor</u></b>	<b>14</b>	(Comments Below)
	Curriculum & Assessment	2	
	Materials & Supplies	2	
	Special Education	2	
	Students	2	
	Finances & Administration	2	
	Technology Services	2	
	Other items	2	
0	<b><u>PART 3 - FINANCES OF COMPANY</u></b>	<b>6</b>	
	a. Financial Condition	2	
	b. 2 yrs audit reports	2	
	c. Last month P&L and BS	2	
<b>0</b>	<b>SUB-TOTAL (NON FINANCIAL EVALUATION)</b>	<b>250</b>	

	OFFEROR:		EVALUATOR:	
<b><u>FINANCIAL EVALUATION</u></b>				
	<b>FINANCIAL EVALUATION</b>			
0	<b>Unit Cost per Quote</b>	<b>54</b>	(Comments Below)	
	Start of cost per student	6		
	Departing cost per student	6		
	Monthly Maintenance cost per student	6		
	Cost per student that is on IEP	6		
	Monthly cost per staff (teacher/admin)	6		
	Monthly cost for short-term substitute	6		
	Technical Support Fees	6		
	Student Support Programs	6		
	Instructional Materials	6		
0	<b>Annual Costs</b>	<b>51</b>		(Comments Below)
	Total Start-Costs	40		
	Form C – Unit Price Declaration	11		
0	<b>FINANCIAL TOTAL</b>	<b>105</b>		
<b>0</b>	<b>FINAL TOTAL SCORE</b>	<b>355</b>		