



KYRENE SCHOOL DISTRICT NO. 28

NOTICE OF INVITATION FOR BID

INVITATION FOR BID (IFB) NUMBER: K10-10-10

MATERIAL AND/OR SERVICE: COMPUTER STORAGE EQUIPMENT

BID DUE DATE: July 2, 2009 **TIME:** 2:00 PM M.S.T.

IFB OPENING LOCATION: Kyrene School District
Purchasing Department
8700 South Kyrene Road
Tempe, Arizona 85284

In accordance with the School District Procurement Rules in the Arizona Administrative Code (A.C.C.) promulgated by the State Board of Education pursuant to A.R.S. §15-213, competitive sealed bids for the materials or services specified will be received by the Kyrene School District, at the above specified location, until the time and date cited. Bids received by the correct time and date shall be opened and the amount bid shall be publicly read.

Solicitations shall be in the actual possession of the District, at the location indicated, on or prior to the exact time and date indicated above. Late solicitations shall not be considered.

Solicitations must be submitted in a sealed envelope with the Invitation for Bid number and the bidders name and address clearly indicated on the envelope. All solicitations must be completed in ink or typewritten. Additional instructions for preparing a solicitation are provided herein.

BIDDERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE INVITATION FOR BID.

Contact: Jani Fasulo
Title: Purchasing Manager
Email: jfasulo@kyrene.org

Phone Number: (480) 783-4030
Fax Number: (480) 783-4032
Date: June 17, 2009

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DOCUMENTS REFERENCED:

You may access a copy of the documents referenced within this solicitation at the following web addresses:

Arizona Revised Statutes (A.R.S.) is available at
<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

School District Procurement Rules in the Arizona Administrative Code (A.A.C.) is available at
http://www.azsos.gov/public_services/Title_07/7-02.htm

I.R.S. W-9 form (Request for Taxpayer I.D. Number) is available at
<http://ftp.fedworld.gov/pub/irs-pdf/fw9.pdf>



OFFER AND ACCEPTANCE

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications, and amendments in the Solicitation and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this offer, contact:

Name: _____

Federal Employer Identification No. _____

Phone: _____

Fax: _____

Tax Rate: _____ %

E-Mail: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City State Zip

Title

CERTIFICATION

By signature in the Offer section above, the offeror certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The offeror shall not discriminate against any employee or applicant for employment in violation of State Executive Order 99-4, 2000-4 or A.R.S. §§ 41-1461 through 1465.
3. The offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The offeror warrants that it and all proposed subcontractors will maintain compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. §§ 41-4401 and A.R.S., §§ 23-214 and all other Federal immigration laws and regulations related to the immigration status of its employees which requires compliance with federal immigration laws by employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
5. In accordance with A.R.S. §§ 35-392, the District is prohibited from purchasing from a company that is in violation of the Export Administration Act.
6. In accordance with A.R.S. §§ 35-391, the District is prohibited from purchasing from a company with scrutinized business operations in Sudan.
7. In accordance with A.R.S. §§ 35-393, the District is prohibited from purchasing from a company with scrutinized business operations in Iran.
8. In accordance with A.R.S. §§15-512, the offeror shall comply with fingerprinting requirements as identified in uniform instructions.

ACCEPTANCE OF OFFER

The offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the Kyrene School District/public entity.

This contract shall henceforth be referred to as Contract No. K10-10-10 Computer Storage Equipment

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document, or written notice to proceed.

Awarded this _____ day of _____ 20_____

AUTHORIZED SIGNATURE



UNIFORM INSTRUCTIONS TO OFFERORS

1. Definition of Terms

As used in these instructions, the terms listed below are defined as follows:

- A. **“Attachment”** means any item the Solicitation requires an Offeror to submit as part of the Offer.
- B. **“Contract”** means the combination of the Solicitation, including the uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments (Addenda) or Contract Amendments; and any terms applied by law.
- C. **“Contract Amendment”** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- D. **“Contractor”** means any person who has a contract with the School District/public entity.
- E. **“Days”** means calendar days unless otherwise specified.
- F. **“Exhibit”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the solicitation.
- G. **“Gratuity”** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- H. **“Offer”** means bid, solicitation or quotation.
- I. **“Offeror”** means a vendor who responds to a Solicitation.
- J. **“Procurement Officer”** means the person duly authorized to enter into and administer Contracts and make written determinations with respect to the Contract or his or her designee.
- K. **“Solicitation”** means an Invitation for Bids (“IFB”), a Request for Proposal (“RFP”), or a Request for Quotations (“RFQ”).
- L. **“Solicitation Amendment (or Addendum)”** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- M. **“Subcontract”** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishings of any material or any service required for the performance of the Contract.
- N. **“School District/Public Entity”** means the School District/public entity that executes the Contract.

2. Inquiries

- A. **Duty to Examine.** It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing, and check its Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for withdrawing the Offer after the Offer due date and time nor shall it give rise to any Contract claim.
- B. **Solicitation Contact Person.** Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquires concerning this Solicitation to any other employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.

- C. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries may require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page, and paragraph. Do not place the Solicitation number on the outside



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of the envelope containing that inquire since it may then be identified as an Offer and not be opened until after the Offer due date and time.

- D. Timeliness. Any inquiry shall be submitted as soon as possible and at least seven (7) days before the Offer due date and time. Failure to do so may result in the inquiry not being answered.
- E. No Right to Rely on Verbal Responses. Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment or Addendum. An Offeror may not rely on verbal responses to its inquires.
- F. Solicitation Amendments/Addenda. The Solicitation shall only be modified by a Solicitation Amendment or Addendum.
- G. Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time, and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. An Offeror should raise any questions it may have about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment or Addendum.
- H. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

3. Offer Preparation

- A. Forms: No Facsimile or Telegraphic Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation will be legible and contain the same information requested on the form. A facsimile, telegraphic or mailgram offer shall be rejected.
- B. Typed or Ink; Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer must be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
- C. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate, and complete. Failure to submit verifiable evidence of intent to be bound, such as an original signature, shall result in rejection of the Offer.
- D. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically referenced by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered as a part of any resulting Contract.
 - 1. Invitation for Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
 - 2. Request for Proposals: All exceptions that are contained in the Offer may negatively affect the solicitation evaluation based on the evaluation criteria as stated in the Solicitation or result in rejection of the Offer.
- E. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- F. Cost of Offer Preparation. The District will not reimburse any Offeror the cost of responding to a Solicitation.

- G. Solicitation Amendments/Addenda. Unless otherwise stated in the Solicitation, each Solicitation Amendment or Addendum shall be signed with an original signature by the person signing the Offer, and shall be submitted



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no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment or Addendum or to follow the instructions for acknowledgement of the Solicitation Amendment/Addendum shall result in rejection of the Offer.

- H. Federal Excise Tax. School Districts/public entities are exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be prepared upon request.
- I. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form and provide the tax rate and amount, if applicable, on the Price Sheet.
- J. Identification of Taxes in Offer. School Districts/public entities are subject to all applicable taxes. Offerors shall indicate taxes as a separate item in the Offer.
- K. Disclosure. If the firm, business, or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above must be provided.
- L. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
 - 1. Special Terms and Conditions;
 - 2. Uniform General Terms and Conditions;
 - 3. Statement or Scope of Work;
 - 4. Specifications;
 - 5. Attachments;
 - 6. Exhibits;
 - 7. Special Instructions to Offerors; and
 - 8. Uniform Instructions to Offerors
- M. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination(s).

4. **Submission of Offer**

- A. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation, in a sealed envelope or package that identifies its contents as an Offer and the Solicitation number to which it responds. The appropriate Solicitation number shall be plainly marked on the outside of the envelope or package.
- B. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- C. Public Record. Under applicable law, all Offers submitted and opened are public records and must be retained by the School District/public entity. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the School District/public entity. If an Offeror believes that information in its Offer should remain confidential, it shall stamp as confidential that information and submit a statement with its Offer detailing the reasons that information should not be disclosed. The School District/public entity shall make a determination on whether the stamped information is confidential pursuant to the Arizona School District/public entity's Procurement Code.
- D. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:



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1. It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
2. It does not discriminate against any employee, applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state, and local laws and executive orders regarding employment.

5. Evaluation

- A. Unit Price Prevails. 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.
- B. Taxes. All applicable taxes in the Offer will be considered by the School District/public entity when determining the lowest bid or evaluating solicitations; except when a responsive Offeror which is otherwise reasonably susceptible for award is located outside of Arizona and is not subject to a transaction privilege or use tax of a political subdivision of this state. In that event, all applicable taxes which are the obligation of Offerors in state and out of state, Offerors shall be disregarded in the Contract Award. At all times, payment of taxes and the determination of applicable taxes and rates are the sole responsibility of the Contractor. Arizona Transaction privilege and use taxes shall not be considered when evaluating Offers.
- C. Late Offers. An Offer submitted after the exact Offer due date and exact time shall be rejected.
- D. Disqualification. The Offer of an Offeror who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may be rejected.
- E. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for the Offer acceptance, the number of days shall be ninety (90). If a Best and Final Offer is requested pursuant to a Invitation for bids, an Offeror shall hold its Offer open for ninety (90) days from the Best and Final due date.
- F. Payment. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment within thirty (30) days.
- G. Waiver and Rejection Rights. Notwithstanding any other provision of the solicitation, the School District/public entity reserves the right to:
 1. Waive any minor informality;
 2. Reject any and all Offers or portions thereof; or
 3. Cancel a Solicitation.

6. Award

- A. Number or Types of Awards. Where applicable, the School District/public entity reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by a group of line items or alternatives, or to make an aggregate award, whichever is deemed most advantageous to the School District/public entity. If the Procurement Officer determines that an aggregate award to one Offeror is not in the School District/public entity's interest, "all or none" Offers shall be rejected.
- B. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the school district's Governing Board. Offerors will be so notified in writing by the School District.
- C. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance Form or other official contract form, unless another date is specifically stated in the Contract.
- D. Final acceptance for each participating School District will be contingent upon the approval of its Governing Board, if applicable.



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7. **Protests**

A protest shall comply with and be resolved according to Arizona Department of Education School District Procurement Code Rule A.A.C. R7-2-1141 through R7-2-1153. Protests shall be in writing and be filed with the District Representative, whose name appears on the cover of this solicitation. A protest of a Solicitation shall be received by the District Representative, Terry Tatterfield, Assistant Superintendent, before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- A. The name, addresses, and telephone number of the protester;
- B. The signature of the protester or its representative;
- C. Identification of the purchasing agency and the Solicitation or Contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents;
and
- E. The form of relief requested.



UNIFORM TERMS AND CONDITIONS

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- A. **“Attachment”** means any item the Solicitation requires an Offeror to submit as part of the Offer.
- B. **“Contract”** means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments (Addenda) or Contract Amendments; and any terms applied by law.
- C. **“Contract Amendment”** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- D. **“Contractor”** means any person who has a Contract with the School District/public entity.
- E. **“Days”** means calendar days unless otherwise specified.
- F. **“Exhibit”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- G. **“Gratuity”** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- H. **“Offer”** means bid, solicitation or quotation.
- I. **“Offeror”** means a vendor who responds to a Solicitation.
- J. **“Procurement Officer”** means the person duly authorized by the school district/public entity to enter into and administer Contracts and make written determinations with respect to the Contract or their designee.
- K. **“Solicitation”** means an Invitation for Bids (IFB), a Request for Proposal (RFP), or a Request for Quotations (RFQ).
- L. **“Solicitation Amendment (or Addendum)”** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- M. **“Subcontract”** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishings of any material or any service required for the performance of the Contract.
- N. **“School District/Public Entity”** means the School District or public entity that executes the Contract.

2. Contract Interpretation

- A. Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona School District Procurement Code, Arizona Revised Statutes (A.R.S.) 15-213, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 7, Chapter 2, Articles 10 and 11.
- B. Implied Contract Terms. Each Provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- C. Contract Order of Preference. In the event of a conflict in the provisions of the Contract, the following shall prevail in the order set forth below:
 - 1. Special Terms and Conditions;



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2. Uniform Terms and Conditions;
3. Statement or Scope of Work;
4. Specifications;
5. Attachments;
6. Exhibits;
7. Documents referenced or included in the Solicitation;

- D. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- E. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- F. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- G. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. **Contract Administration and Operation**

- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each Subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the District at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- C. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the School District/public entity and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- D. Inspection and Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities and the Contractor's processes for producing the materials, at reasonable time for inspection of the materials and services covered under this Contract. The School District/public entity shall also have the right to test at its own cost the materials to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the School District/public entity determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the School District/public entity for testing and inspection.
- E. Notices. Notices to the Contractor required by this Contract shall be made by the School District/public entity to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the School District/public entity required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notices shall be given by written notice and an Amendment to the Contract shall not be necessary.
- F. Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- G. Property of the School District/Public Entity. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the School District/public entity. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or



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copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the School District/public entity.

4. **Costs and Payments**

- A. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the School District/public entity within thirty (30) days. *The Purchase Order number must be referenced on the invoice.*
- B. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. destination and shall include delivery and unloading at the destinations.
- C. Applicable Taxes.
1. Payment of Taxes by the School District/Public Entity. The School District/public entity will pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract.
 2. State and Local Transaction Privilege Taxes. The School District/public entity is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 3. Tax Indemnification. Contractor and all Subcontractors shall pay all Federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the School District/public entity 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.
 4. IRS W-9. In order to receive payment under any resulting Contract, Contractor shall have a current I.R.S. W-9 Form on file with the School District/public entity.
- D. Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the School District/public entity for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of the Contract. The School District/public entity will make reasonable efforts to secure such funds.

5. **Contract Changes**

- A. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract unless otherwise permitted by the Special Terms and Conditions. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized employee or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments, shall be void and without effect, and the Contractor shall not be entitled to any claim and this Contract based on those changes.
- B. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The school district/public entity shall not unreasonably withhold approval.

6. **Risk and Liability**



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- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the School District/public entity shall be indemnified and held harmless by the Contractor for its vicarious liability as result of entering into this Contract. Each party to this Contract is responsible for its own negligence.
- C. Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless the School District/public entity against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the School District/public entity of materials furnished or work performed under this Contract. The School District/public entity shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.
- D. Force Majeure.
1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
 2. Force Majeure shall not include the following occurrences:
 - a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
 - b. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. ; or
 - c. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
 3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
 4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- E. Third Party Antitrust Violations. The Contractor assigns to the School District/public entity any claim for overcharges resulting from antitrust violation the extent that those violations concern materials of services supplied by third parties to the Contractor toward fulfillment of this Contract.

7. Warranties

- A. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens.

B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the School District/public entity of the materials or services, they shall be:



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1. Of a quality to pass without objection in the trade under the Contract description;
 2. Fit for the intended purposes for which the materials or services are used;
 3. Within the variations permitted by the Contract and are of even kind, quality, and quality within each unit and among all units;
 4. Adequately contained, packaged and marked as the Contract may require; and
 5. Conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material or service supplied to the School District/public entity shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection or testing of or payment for the materials or services by the School District/public entity.
- E. Year 2000.
1. Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
 2. Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including, but not limited to, calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the School District/public entity in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system or that the information technology products being acquired perform as a system in combination with other School District/public entity information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the School District/public entity for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In Addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.
- F. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties or merchant ability or fitness.
- G. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- H. Survival of Rights and Obligations after Contract Expiration or Termination.
1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration of termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the School District/public entity is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.
 2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the



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expiration or termination hereof, unless otherwise directed in writing by the school district/public entity including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. School District/Public Entity's Contractual Remedies

- A. Right to Assurance. If the School District/public entity in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the School District/public entity's option, be the basis for terminating the Contract under the Uniform Terms and Conditions.
- B. Stop Work Order.
1. The School District/public entity 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 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 by the order during the period of work stoppage.
 2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- C. Non-exclusive Remedies. The rights and the remedies of the School District/public entity under this Contract are not exclusive.
- D. Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of Contract. On delivery of nonconforming materials, the School District/public entity may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- E. Right of Offset. The School District/public entity shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the School District/public entity or damages assessed by the School District/public entity concerning the Contractor's nonconforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- A. Cancellation for Conflict of Interest. Per A.R.S. 38-511 the School District/public entity may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the School District/public entity is, or becomes at any time while the Contract or an extension the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- B. Gratuities. The School District/public entity may, by written notice, terminate this Contract, in whole or in part, if the School District/public entity determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the School District/public entity for the purpose of influencing the outcome of the procurement or securing the Contract, an Amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The School District/public entity, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Contractor.



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- C. Suspension or Debarment. The School District/public entity may, by written notice to the Contractor, immediately terminate this Contract if the school District/public entity determines that the Contractor has been disbarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body.
- D. Termination for Convenience. The School District/public entity reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the School District/public entity without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the School District/public entity. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District/public entity. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R7-2-1125 shall apply.
- E. Termination for Default.
1. In addition to the rights reserved in the Uniform Terms and Conditions, the School District/public entity reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
 2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District/public entity on demand.
 3. The School District/public entity may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials and services to replace those under this Contract. The Contractor shall be liable to the School District/public entity for any excess costs incurred by the School District/public entity in procuring materials or services in substitution for those due from the Contractor.
- F. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contractor's Employment Eligibility**

By entering the contract, contractor warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The District may request verification of compliance from any contractor or subcontractor performing work under this contract. The District reserves the right to confirm compliance in accordance with applicable laws. Should the District suspect or find that the contractor or any of its subcontractors are not in compliance, the District may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

11. **Terrorism County Divestments**

Per A.R.S. 35-392, the District is prohibited from purchasing from a company that is in violation of the Export Administration Act.

12. **Scrutinized Business Operations**

Per A.R.S. 35-391, the District is prohibited from purchasing from a company with scrutinized business operations in Sudan.

Per A.R.S. 35-393, the District is prohibited from purchasing from a company with scrutinized business operations in Iran.

13. **Fingerprint Requirements**

Each Contractor, Subcontractor or Vendor, if required to provide services at least five (5) times during a month on school property; except those who are not likely to have direct, unsupervised contact with students, as determined by the District, shall have each employee who will provide such services on school property submit himself/herself to fingerprinting by the District. A fingerprint check of these employees shall be made by the District in compliance with A.R.S. Sections 15-512 H, 41-1750 and Public Law 92-544. District costs for such fingerprint checks will be charged to the contractor, subcontractor, or vendor as part of the contractual arrangement.



SPECIAL TERMS AND CONDITIONS

1. **PURPOSE:** Pursuant to provisions of the School District Procurement Rules, the Kyrene School District intends to establish a contract for the purchase of Computer Storage Equipment.
2. **AUTHORITY:** This solicitation as well as any resultant contract is issued under the authority of the Business Manager. No alteration on any resultant contract may be made without the express written approval of the Business Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the School District Procurement Rules. Any such action is subject to legal and contractual remedies available to the District inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
3. **CONTRACT TYPE:** Fixed Firm Price.
4. **OFFER ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the District requires an offer in response to this solicitation to be valid and irrevocable for sixty (60) days after the opening time and date.
5. **INQUIRIES:** All questions related to this solicitation shall be in writing. Direct inquiries to the contact person listed on the cover of this document via mail, fax or email. Bidders shall not contact or ask question of the school or department for which this requirement is being procured. Any correspondence related to a solicitation shall refer to the appropriate solicitation number, page and paragraph number. However, the Bidder shall not place the solicitation number on the outside of an envelope containing questions, since such an envelope may be identified as a sealed bid and may not be opened until after the official solicitation due time and date. All questions shall be responded to as soon as possible.
6. **BID OPENING:** Bids shall be opened on the date and time, and at the place designated on the cover page of this document, unless amended in writing by the District. The name of each offeror and the prices of the individual line items for each respondent shall be read at this time. Bids, modifications, and all other information received in response to the invitation for bid shall be shown only to authorized District personnel having a legitimate interest in the evaluation. After contract award, the invitations and evaluation documentation shall be open for public inspection.
7. **TERM OF CONTRACT:** The term of any resultant contract shall commence on the date of award and shall continue through June 30, 2010 unless terminated, canceled or extended as otherwise provided herein.
8. **EVALUATION:** In accordance with the School District Procurement Rules, competitive sealed bidding, awards, shall be made to the lowest responsible and responsive offeror whose bid conforms in all materials respects to the requirements and criteria set forth in the invitation for bids.
9. **QUANTITIES:** This solicitation references quantities as a general indication of the needs of the District. However, the quantities shown are estimates only and the District reserves the right to increase or decrease any quantities actually acquired. No commitment of any kind is made concerning quantities.
10. **SHIPPING TERMS:** Prices shall be F.O.B. Destination to Kyrene School District, Warehouse, 8700 South Kyrene Road, Tempe, Arizona 85284-2197. Contractor shall retain title and control of all goods until they are delivered and the contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the contractor. All claims for visible or concealed damage shall be filed by the contractor. The District will notify the contractor promptly of any damaged goods and shall assist the contractor in arranging for inspection.
11. **BRAND NAMES:** Any manufacturer's names, trade names, brand names or catalog numbers used in the specifications are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict an offer by any vendor but is only enumerated in order to advise potential bidders of the requirements of the District. Any offer which proposes like quality, design or performance will be considered.
12. **NEW EQUIPMENT:** All equipment supplied pursuant to this specification shall be new, unused, and the most current model available at time of order.
13. **DESCRIPTIVE LITERATURE:** All offers submitted shall include complete manufacturers' descriptive literature regarding the equipment they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may result in the offer being rejected.
14. **SAFETY STANDARDS:** All items supplied on this contract must comply with the current applicable occupational



SPECIAL TERMS AND CONDITIONS

safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

- 15. BILLINGS:** All billing notices shall identify the specific item(s) being billed. Items are to be identified by name, model/serial number as most applicable. Any purchase/delivery order issued will refer to the contract number resulting from this solicitation.
- 16. CONTRACT CANCELLATION:** This contract is subject to cancellation pursuant to A.R.S. 38-511. This contract is critical to the District and the District reserves the right to immediately cancel the whole or any part of this contract due to failure of the contractor to carry out any materials obligation term or condition of the contract. The District shall issue a written notice of default effective at once and not deferred by any interval of time. Default shall be for acting or failing to act as in any of the following:
- A. The contractor provides material that does not meet the specifications of the contract;
 - B. The contractor fails to adequately perform the services set forth in the specifications of the contract;
 - C. The contractor fails to complete the work required or furnish the materials required within the time stipulated in the contract;
 - D. The contractor fails to make progress in the performance of the contract and/or gives the District reason to believe that the contractor will not or cannot perform to the requirements of the contract.

The District may resort to any single or combination of the following remedies:

- A. Cancel any contract;
- B. Reserve all rights or claims to damage for breach of any covenants of the contract;
- C. Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material non-compliance with the specifications, any reasonable expense of testing shall be borne by the contractor.
- D. In case of default, the District reserves the right to purchase materials, or to complete the required work in accordance with the School District Procurement Rules. The District may recover reasonable excess costs from the contractor by:
 1. Deduction from an unpaid balance.
 2. Collection against the bid and/or performance bond; or
 3. Any combination of the above or any other remedies as provided by law.



SPECIFICATIONS/PRICE SHEET

The Kyrene School District wishes to purchase a Nexsan SATABeast for the purpose of acting as secondary storage for the District's CommVault backup systems. The District selected Nexsan because in our research we found that it provided the most storage in the least amount of space. However the District is willing to entertain acceptable alternate bids of comparable equipment.

ITEM #	DESCRIPTION	QTY	UNIT PRICE	MFG/MODEL #
1.	Nexsan SATABeast configured with (42) ITB SATA Disks, 42 Bay, 4U, with Single Controller configured with 512MB Cache controller Cache, (2) iSCSI and (2) Fibre ports, 42TB RAW (or comparative equal)	1 ea.		
2.	Redundant Second controller for SATABeast, 512MB of Cache with (2) Fibre and (2) iSCSI ports (or comparative equal)	1 ea.		
3.	2Gb Controller Cache RAM module (replacing the 512MB currently installed) SATABeast (or comparative equal)	1 ea.		
	GRAND TOTAL		\$	

If bidding other than Nexsan SATABeast, indicate the manufacturer and model number where indicated and include a complete product description with specification literature with your response.

Warranty:

Bidder/Offeror shall warrant that all equipment and parts furnished in their offer are newly manufactured and free from defects in material and workmanship for no less that three (3) years from the date the equipment is installed. Warranty shall include 24/7 service warranty, which includes parts, materials and phone support. Please indicate compliance or state your company's warranty and any additional cost:

Cost of Warranty_____

Delivery: Delivery can be expected within_____calendar days after receipt of order.

Tax Rate Percent_____%



NO BID RESPONSE

COMPUTER STORAGE EQUIPMENT, IFB K10-10-10

Bidders not responding to this solicitation are asked to complete this form. Please fax this form to (480) 783-4033 or return by mail to:

Kyrene School District No. 28
Purchasing Department
8700 South Kyrene Road
Tempe, AZ 85284

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Reason for NO BID:

- Do not handle product/service
- Unable to respond due to current staff availability and/or business conditions
- Insufficient time
- Unable to meet terms, conditions, specifications or requirements as described within the solicitation due to:

Other: _____

This *NO BID* response is authorized by: _____
Signature

Title

- Please check one:
- Retain our company on the mailing list for future solicitations.
 - Please remove our company from the mailing list.
 - Please remove our company from this commodity or service only.