

# Invitation to Bid (“ITB”)

<b>Eligible Entity:</b>	Nexus 505 169 Highway N, Suite 500 Plymouth, MN 55441
<b>Project Description:</b>	2020-2021 E-rate Services - 470 Number 200008859
<b>ITB Number:</b>	NEXUS20191114114242
<b>470 Number:</b>	200008859
<b>470 Post Date:</b>	01/28/2020
<b>ITB Due Date:</b>	02/27/2020 at 5:00PM local standard time
<b>Billed Entity Number:</b>	16049107
<b>E-mail Address:</b>	<a href="mailto:NEXUS2020@adsadsi.com">NEXUS2020@adsadsi.com</a>

Nexus (“NEXUS”) seeks proposals in accordance with the terms and conditions posted within. The awarded contract(s) may cover both E-rate eligible and non-eligible items. If eligible and non-eligible items or services are bid, bidders should break out the non-eligible items and list them as such. Contract award(s) shall be made in accordance with Federal Communications Commission (“FCC”) Universal Service Administration Company (“USAC”) E-rate Program Rules.

PREQUALIFICATION:	None Required
MANDATORY JOB WALK:	None Required
BID MARKING:	E-rate 200008859-NEXUS (Solicitation ID)
METHOD OF BID RECEIPT:	Bid offers shall be delivered to <a href="mailto:NEXUS2020@adsadsi.com">NEXUS2020@adsadsi.com</a> or they may be disqualified. Late offers shall not be considered.

To perform the work required by this ITB, the winning Bidder shall provide a valid Service Provider Identification Number (SPIN) and be licensed in accordance with all applicable rules and regulations, including Local and State Law.

**Note: Nexus MUST wait at least 28 days after the posting of the Description of Services Requested and Certification form (Form 470) on USAC's website before executing any contracts, selecting a Service Provider, or signing and submitting the Services Ordered and Certification Form (Form 471).**

The projects and services discussed within this ITB may depend on partial funding from the E-rate Program. The applicant expects each Service Provider to make themselves thoroughly familiar with all rules and regulations regarding the E-Rate Program.

It is the intent to award all of the services sought within this ITB to either one or multiple Service Providers. By issuing this ITB, the Applicant is not required to award all services for which pricing is sought. An award may or may not be given for services requested. NEXUS retains the right to award contracts based on their evaluation of the responses received in accordance with this ITB.

Responses to the ITB shall not require demonstrations. Responses requiring demonstrations for evaluation may not be considered.

## **SUSPENSION OR DEBARMENT:**

If, within the past five (5) years, any firm, business, person, or service provider submitting a bid has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any federal, state or local government, including the School and Libraries Division of the Universal Services Administrative Company (“SLD”), the Service provider must include a letter with its response or bid 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. 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 bid section, the Service provider certifies that no current suspension or debarment exists.

## **RED LIGHT RULE:**

Any service provider, or the sub-contractor of any service provider, who is currently under, or has reason to believe that they may have a red-light status under, the “Red Light Rule” by the FCC must disclose that information in this proposal. If any service provider, or the sub-contractor of any service provider, is found to have a red-light status under the FCC “Red Light Rule” during the term of this contract, this contract may be immediately terminated.

**LOWEST CORRESPONDING PRICE (LCP):**

Service provider warrants they have reviewed all FCC, USAC and SLD information on Lowest Corresponding Price. Service provider warrants they are offering and will continue to offer for the term of this contract, the Lowest Corresponding Price on all goods and services included.

**BILLING:**

With respect to service, the Applicant prefers to pay their share and it is requested that the service provider “carry the reimbursed share” until the FRN is funded. The Applicant agrees to promptly pay its share and respond to all USAC inquiries and file the 486 upon receipt of the Funding Commitment Decision Letter. All responses are strongly encouraged to contain terms and conditions required to meet and address this request within their proposal.

**QUESTIONS:**

To assure everyone has the same information **ALL QUESTIONS SHALL** be posted to [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml). Please visit the website and click on the 470 Q/A link associated with the Applicant’s Form 470 Application to submit a question. In addition, please click on the 470 Q/A link associated with this application to review all questions asked and answered. Please remember that questions submitted within 2 business days of bid due date may not be answered.

If you do not have a question but would like to stay current with questions asked and answered, please visit the website and click on the 470 Q/A link associated with the Applicant’s Form 470 Application and submit a request, in the form of a question, to be added to the question and answer distribution list. If you submit a question you are automatically added to the distribution list for updates.

No other method of asking questions is acceptable. Questions asked in any other method than the acceptable method as described above may not be answered. To reiterate, questions submitted via text, E-mail, or asked via a telephone, or left on a voicemail may not be answered.

**REFERENCES:**

Service provider shall provide references that demonstrate successfully Funded E-rate Projects from recent Funding Years. In addition, please indicate the number of positive Funding Commitment Decision Letters that E-rate Applicants have received for your company’s services. Applicant Name, Entity Number, and Individual Contact Information are requested for all references provided.

In addition, please provide the date and time of the Service provider’s last reimbursement from the SLD.

**ADS Advanced Data Services, Inc. role is to assist with the E-rate Application Process:**

ADS Advanced Data Services, Inc. does not evaluate Service Provider Service Offerings – The Applicant is responsible for selecting all Service Providers (see evaluation criteria). ADS shall not recommend Service Providers.

All information is provided on the 470, to include applicant type, service locations, addresses, and service NPA/NXXs.

If you have a proposal, or optional packages, please provide details and the eligible Applicant shall evaluate options to select a winner. Non-SPAM style pricing specific to the Applicant’s requirements must be included for an evaluation to be completed. Generic pricing or “laundry” lists of pricing and services may be considered SPAM and not evaluated. Please make sure any and all required Contracts or Statements of Work are authorized AND included in your response. If the Applicant has a question on your service offering, terms, and/or pricing, clarification may be sought.

**If you intend to respond to the ITB and have not done so, please register to ask and receive the answers to questions at [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml). Simply visit the website and click on the 470 Q/A link associated with the Applicant’s Form 470 Application to submit a question and indicate you intend to respond to this request. In addition, you may click on the 470 Q/A link associated with this application to review all posts, questions, and their answers.**

**In order to be considered for award any and all terms, conditions and, or contracts required by the Service Provider should be signed, dated and submitted with the ITB Response. Failure to provide signed documents may disqualify your Offer for services sought.**

## **Terms and Conditions**

**"Attachments"** means any item the Solicitation requires a Service Provider to submit as part of the Offer.

**"Contract"** means the combination of the Solicitation, including the Uniform and any Special Instructions to Service providers, Service Provider Instructions, the Terms and Conditions, and the Specifications and Statement of Scope of Work; and any other document included with the ITB; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments; and terms applied by law.

**"Contract Amendment"** means a signed document that is issued for the purpose of making changes in the Contract.

**"Contractor"** means any person who has a contract with NEXUS.

**"Days"** means calendar days unless otherwise specified.

**"Exhibits"** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the solicitation.

**"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.

**"Offer"** means bid, ITB, proposal or quotation.

**"Service Provider"** means a Service Provider who responds to a Solicitation.

**"Solicitation"** means an Invitation to Bids (ITB).

**"Solicitation Amendment"** means a written document that is authorized by the NEXUS and issued for the purpose of making changes to the Solicitation.

**"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.

### **Inquiries**

**Duty to Examine.** It is the responsibility of each Service Provider 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.

**Solicitation Contact Person.** Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be posted to [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml). The Service Provider shall not contact or direct inquiries concerning this Solicitation to any other employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.

**Submission of Inquires.** The Procurement Officer or the person identified in the Solicitation as the contact for inquires requires that all inquiries to be posted to [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml). Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page, and paragraph.

**Timeliness.** Any inquiry shall be submitted as soon as possible and at least five (5) days before the Offer due date and time. Failure to do so may result in the inquiry not being answered.

**No Right to Rely on Verbal Responses.** Any inquiry that results in changes to the Solicitation shall be answered solely through a written statement posted to [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml). A Service Provider may not rely on verbal responses.

**Solicitation Amendments.** The Solicitation shall only be modified by a post to [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml).

**Job Walk or Pre-Offer Conference.** If a Job Walk or Pre-Offer conference has been scheduled under this Solicitation, the date, time, and location appear on the Solicitation cover sheet or elsewhere in the Solicitation. A Service Provider should raise any questions it may have about the Solicitation or the procurement at that time. A Service Provider 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.

**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.

## Offer Preparation

Forms/Response. Submit bids as instructed

Evidence of Intent to be Bound. The Service Provider Authorized Response contained within shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Service Provider'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 may result in rejection of the Offer.

Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified.

Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, may be rejected.

Request for Proposals. All exceptions that are contained in the Offer may negatively affect the proposal evaluation based on the evaluation criteria as stated in the Solicitation or result in rejection of the Offer.

Subcontracts. Service Provider shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.

Cost of Offer Preparation. NEXUS shall not reimburse any Service Provider the cost of responding to a Solicitation.

Solicitation Amendments. Each Solicitation Amendment shall be signed by the person signing the Offer and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment may result in rejection of the Offer.

Provision of Tax Identification Numbers. Service Providers are required to provide their State Tax Number and/or Federal Tax Identification Number, if applicable, in the space provided on the Service Provider ITB Response and provide the tax rate and amount, if applicable, on the price sheet(s).

Identification of Taxes in Offer. If Service Providers do not indicate taxes on a separate item in the Offer, NEXUS shall conclude that the price(s) offered includes all applicable taxes.

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 Service Provider must fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Service Provider 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.

## Submission of Offer

E-mail. Each Offer shall be submitted to the submittal E-mail address identified in this Solicitation and per the instructions given. The appropriate Solicitation ID, or "E-rate 200008859 - NEXUS " shall be identified in the Subject Line of the E-mail. Failure to include the proper Solicitation ID may cause a response to be misfiled. Responses not properly labeled may not be evaluated and as a result rejected and/or disqualified.

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.

Public Record. Under E-rate Program Rules, all Offers submitted and opened must be retained by NEXUS to maintain E-Rate compliance. Offers shall be open to inspection by the FCC or its authorized agent(s) after Contract award, except for such Offers deemed to be confidential by NEXUS. If a Service Provider 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. NEXUS shall make a determination on whether the stamped information is confidential pursuant to NEXUS's Procurement Policy.

Non-collusion, Employment, and Services. By signing the Service Provider Authorized Response, the Service Provider certifies that: it did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its offer; and 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.

## Evaluation

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.

Taxes. All applicable taxes in the Offer shall be considered by NEXUS when determining the lowest bid or evaluating proposals. Failure to include taxes may result in disqualification and rejection of Offer.

Late Offers. An offer submitted after the exact Offer due date and exact time shall be rejected.

Disqualification. Most common reasons for disqualification or rejection of an Offer include (other reasons may cause disqualification or the rejection of an Offer):

- Debarred, suspended or otherwise lawfully prohibited from public procurement activity;
- SPAM style Offer is submitted;
- Failure to submit Signed Service Provider Authorized Response ("SPAR");
- Failure to submit Signed Contracts;
- Failure to submit Taxes;
- Failure to properly Mark Offer;
- Service Provider does not have a valid Service Provider Identification Number (SPIN);
- Failure to cost allocate ineligible components; and
- Offer does not contain information necessary to complete an Item 21 Attachment for Form 471.

NEXUS is not required to notify a Service Providers if their Offer was disqualified or rejected. Disqualified or rejected Offers may not be protested for consideration.

Disqualified or rejected Offers shall not be evaluated.

Offer Acceptance Period. A Service Provider submitting an Offer under this Solicitation shall hold its Offer open for processing during the E-rate Funding Year for which an application is processed.

Payment. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment within ninety (90) days.

Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, NEXUS reserves the right to:

- Waive any minor informality;
- Reject any and all offers or portions thereof; or
- Cancel a solicitation.

## Award

Number or Types of Awards. Where applicable, NEXUS reserves the right to make multiple awards or to award a Contract by individual line items, by a group of line items, or to make an aggregate award, whichever is deemed most advantageous to NEXUS. If the NEXUS determines that an aggregate award to one Service Provider is not in NEXUS's interest, "all or none" Offers shall be rejected.

Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Service Provider to the award of a Contract. A Contract is not created until the Offer is accepted in writing by NEXUS's signature of the Service Provider Authorized Response. A letter or other notice of award or of the intent to award shall not constitute acceptance of the Offer. Contracts shall only be enforceable after the products/services have been approved for funding through E Rate and Form 486 has been submitted certifying use of the products/services being purchased.

Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Service Provider Authorized Response or other official contract form, unless another date is specifically stated in the Contract. Under no circumstances shall the equipment or services being sought be installed and put into use at its respective location prior to July 1, 2020 unless specifically requested in writing by the Applicant.

Final Acceptance. Final contract acceptance shall be contingent upon the approval of NEXUS, which shall be demonstrated by the execution and submission of FCC Form 486.

## **Contract Interpretation**

Local and State Law. All local and state law of Eligible Entity issuing this ITB applies to this Offer and any resulting Contract(s).

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.

Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee agent of the other party to the Contract.

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.

No Parole 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.

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.

## **Contract Administration and Operation**

Records. 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 at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

Nondiscrimination. The Contractor shall comply with all applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

Audit. At any time during the term of this Contract and ten (10) years thereafter, the Contractor's and applicable Subcontractor's books and records shall be subject to audit by NEXUS and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

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. NEXUS shall also have the right to test at its own cost the materials to be supplies under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If NEXUS determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by NEXUS for testing and inspection.

Notices. Notices to the Contractor required by this Contract shall be made by NEXUS to the person indicated on the Service Provider Authorized Response submitted by the Contractor unless otherwise stated in the Contract. Notices to NEXUS 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.

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 NEXUS.

Property of NEXUS. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of NEXUS. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of NEXUS.

## **Costs and Payments**

Payments. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from NEXUS within ninety (90) days. The ITB number should be referenced on the invoice.

Delivery. Unless stated otherwise in the Contract, all prices shall include delivery and unloading at the destinations.

### Applicable Taxes.

Payment of Taxes by NEXUS. NEXUS shall pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract.

State and Local Taxes. NEXUS is subject to all applicable state and taxes. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.

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 require all Subcontractors to hold NEXUS 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.

IRS W-9. In order to receive payment under any resulting Contract, Contractor may be required to have a current I.R.S. W-9 Form on file with NEXUS.

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 NEXUS for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of the Contract. NEXUS shall make reasonable efforts to secure such funds.

### **Contract Changes**

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 signed by the Procurement Officer. 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. 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.

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.

Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without prior written approval.

### **Risk and Liability**

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.

General Indemnification. NEXUS 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.

Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless NEXUS against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by NEXUS of materials furnished or work performed under this Contract. NEXUS shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

Force Majeure. 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.

Force Majeure shall not include the following occurrences:

- Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 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
- Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

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 requested, 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.

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.

Third Party Antitrust Violations. The Contractor assigns to NEXUS 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.

## **Warranties**

Liens. The Contractor warrants that the materials supplies under this Contract are free of liens.

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

- Of a quality to pass without objection in the trade under the Contract description;
- Fit for the intended purposes for which the materials or services are used;
- Within the variations permitted by the Contract and are of even kind, quality, and quality within each unit and among all units;
- Adequately contained, packaged and marked as the Contract may require; and
- Conform to the written promises or affirmations of fact made by the Contractor.

Fitness. The Contractor warrants that any material or service supplied to NEXUS shall fully conform to all requirements of the Solicitation and all representations of the Contractor and shall be fit for all purposes and uses required by the Contract.

Inspection/Testing. The warranties set forth in the above subparagraphs as to Liens, Quality and Fitness are not affected by inspection testing of or payment for the materials or services by NEXUS.

Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties or merchant ability fitness.

Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Service Provider shall maintain all applicable licenses and permits.

Survival of Rights and Obligations after Contract Expiration or Termination.

Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration of termination hereof.

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

## **NEXUS's Contractual Remedies**

Right to Assurance. If NEXUS in good faith has reason to believe that the Contractor does not intend to or is unable to perform or continue performing the Contract, NEXUS may demand in writing that the Contractor give a written assurance of intent or ability to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at NEXUS's option, be the basis for terminating the Contract under the Terms and Conditions of this Contract.

Stop Work Order. NEXUS 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 by the order during the period of work stoppage.



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. NEXUS shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

Nonexclusive Remedies. The rights and the remedies of NEXUS under this Contract are not exclusive.

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, NEXUS 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.

Right to Offset. NEXUS shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by NEXUS or damages assessed by NEXUS concerning the Contractor's nonconforming performance or failure to perform the Contract, including expenses, costs and damages described in the Terms and Conditions of this contract.

## **Contract Termination**

Cancellation for Conflict of Interest. NEXUS may cancel this Contract within three (3) days after Contract execution without penalty or further obligation if any person involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of NEXUS 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.

Gratuities. NEXUS may, by written notice, terminate this Contract, in whole or in part, if NEXUS determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of NEXUS 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. NEXUS, 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.

Suspension or Debarment. NEXUS may, by written notice to the Contractor, immediately terminate this Contract if NEXUS 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.

Termination for Convenience. NEXUS reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the NEXUS 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 NEXUS. 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 NEXUS. 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. Project completion is contingent upon E-rate reimbursement.

Termination for Default. In addition to the rights reserved in the Terms and Conditions of this contract, NEXUS 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. NEXUS may provide written notice of the termination and the reasons for it to the Contractor.

Upon 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 NEXUS.

NEXUS 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 NEXUS for any excess costs incurred by NEXUS reproducing the materials or services.

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.

## **Contract Claims**

All Contract claims and controversies under this Contract shall be resolved according to the Eligible Entities applicable state law(s).

## **Protests**

A protest shall comply with state law(s) and be filed with the ADS Advanced Data Services, Inc. on the 470 question and answer link located at [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml). A protest of a Solicitation shall be posted before the Offer due date. A protest of a proposed award or of an award shall be filed in the same manner within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- The name, addresses, and telephone number of the protester;
- The signature of the protester or its representative;
- Identification of the Solicitation ID or Contract number;
- A detailed statement of the legal and factual grounds of the protest; and
- The form of relief requested.

## **Contractor's Employment Eligibility**

By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations.

NEXUS may request verification of compliance from any contractor or subcontractor performing work under this contract.

NEXUS reserves the right to confirm compliance in accordance with applicable laws.

Should NEXUS suspect or find that the contractor or any of its subcontractors are not in compliance, NEXUS 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.

## **Registered Sex Offender Notification Restriction**

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 NEXUS's premises at any time without written approval of an authorized representative of NEXUS.

Any breach of Contractor's or any subcontractor's warranty shall be deemed to be a material breach of this Contract, subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of NEXUS's rights and the subcontractor's obligations hereunder. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor.

## **Insurance**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements include:

- Commercial General Liability;
- Automobile Liability Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract;
- Worker's Compensation and Employers' Liability; and
- Property Insurance.

The Contractor's insurance coverage shall be primary insurance and noncontributory with respect to all other available sources. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

## **Eligible Locations to which Service May be Required**

**See Attachment 1: Eligible Locations**

## **GENERAL REQUIREMENT**

All proposals must identify the cost for all reoccurring and non-reoccurring expenses that may include but are not limited to campus assessment, engineering, project management, documentation, contingency, installation, configuration and travel fees. All surcharges and taxes shall be included as well. The services proposed must be eligible for E-Rate under the Category One provision compliant with the Schools and Libraries Division Eligible Services List for the current funding year. The costs for services not eligible for E-Rate must be clearly itemized separate from eligible services.

## **INTENT to RESPOND and QUESTIONS**

**If you intend to respond to the ITB and have not done so, please register to ask and receive the answers to questions at [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml). Simply visit the website and click on the 470 Q/A link associated with the Applicant's Form 470 Application to submit a question and indicate you intend to respond to this request. In addition, you may click on the 470 Q/A link associated with this application to review all posts, questions, and their answers.**

## **Disqualification of SPAM Responses**

It is the intent to disqualify SPAM based responses. If your response is classified as one or more of the following it shall be disqualified.

- 1) If the response is general in nature, meaning specific data concerning the request is arbitrary or not well defined within the response. The applicant is not seeking a laundry list or price list of services. Quantities should be listed and calculated, along with taxes, fees and surcharges. If taxes, fees, and surcharges are not presented, the applicant may estimate for the purpose of cost comparison.
- 1) If multiple options exist or may be provided (but are not requested), and the applicant is left trying to discern between the various options. For instance, if POTS lines are requested, do not respond with a SIP solution. If you have questions, please ask them as outlined within the ITB.
- 2) The proposal sent must be binding and include signatures for acceptance by all parties.
- 3) Proposals may not include endless loop terminology. In other words, proposals offering to beat the lowest current or final proposed presented shall not be accepted. Firm fixed pricing must be presented.

## **Scope of Work**

Please include all fees, including Monthly Re-occurring Costs, Non Re-occurring Costs, including Installation, and applicable taxes. FCC rules require that an Applicant sign a contract with the service provider before signing and submitting a completed Services Ordered and Certification Form (Form 471). **Consequently, all Contracts, Statements, of Work, and/or Service Agreements should be submitted with this response with a handwritten signature and date. Failure to provide signed documents may disqualify your response for services sought.**

Countersigned documents may be provided after the Funding Commitment Decision Letters are issued by the Schools and Libraries Division of the Universal Services Administrative Company.

**Responses shall include the Service Provider Authorized Response (“SPAR”). The SPAR serves as a contract and proof of timely response. Additional agreements may be included and executed for service delivery. For E-rate filing purposes the SPAR may be used. All additional agreement(s) should be authorized prior to submission for Applicant review.**

Service providers should propose an implementation plan with a seamless transition for the delivery of service. The service delivery plan should be designed to mitigate the risk of downtime and assure continued uptime. Work that requires the interruption of the current service shall be performed after hours and/or at a time that is agreeable to NEXUS. All proposed solutions shall be fully tested to assure the service expectations defined within this document. If a new service provider is selected and their services deployed, it is expected to run alongside the current solution and in conjunction with NEXUS expectations prior to replacing the existing service. Service Level Agreements are expected.

## **Eligible services that are associated with Category One and Two:**

**Installation, activation, and initial configuration of eligible components are eligible. These services may include:**

- Design and engineering costs if these services are provided as an integral component of the installation of the relevant services
- Project management costs if these services are provided as an integral component of the installation of the relevant services
- On-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and is part of the contract or agreement for the equipment. Training, if provided, must occur coincidentally or within a reasonable time after installation.

**Category One: Please note Attachment 2 for the Category 1 Products and Services Requested**

Category One includes the services needed to support broadband connectivity to schools and libraries. Eligible Category One services are listed in the entries for data transmission services and Internet access. This category consists of the services that provide broadband to eligible locations including data links that connect multiple points, services used to connect eligible locations to the Internet, and services that provide basic conduit access to the Internet. With the exception of leased dark fiber and self-provisioned broadband networks, maintenance and technical support appropriate to maintain reliable operation are only eligible for support when provided as a component of these services.

Data transmission and/or Internet access services eligible in Category One include:

- Asynchronous Transfer Mode (ATM)
- Broadband over Power Lines
- Cable Modem and Digital Subscriber Line (DSL)
- DS-1 (T-1), DS-3 (T-3), and Fractional T-1 or T-3
- Ethernet
- Integrated Services Digital Network (ISDN)
- Leased Lit Fiber and Leased Dark Fiber (including dark fiber indefeasible rights of use (IRUs) for a set term)
- Self-Provisioned Broadband Networks (applicant owned and operated networks)
- Frame Relay
- Multi-Protocol Label Switching (MPLS)
- OC-1, OC-3, OC-12, OC-n
- Satellite
- Switched Multimegabit Data Service

Eligible costs include monthly charges, special construction, installation and activation charges, modulating electronics and other equipment necessary to make a Category One broadband service functional (“Network Equipment”), and maintenance and operation charges. Network Equipment and maintenance and operation costs for existing networks are eligible. All equipment and services, including maintenance and operation, must be competitively bid.

Applicants that seek bids for leased dark fiber must also seek bids for leased lit fiber service and fully consider all responsive bids. Similarly, applicants that seek bids for self-provisioned broadband networks must also seek bids for the needed connectivity via services provided over third-party networks, and fully consider all responsive bids.

Applicants may seek special construction funding for the upfront, non-recurring costs for the deployment of new or upgraded facilities. The eligible components of special construction are construction of network facilities, design and engineering, and project management.

Staff salaries and labor costs for personnel of the applicant or underlying beneficiary are not E-rate eligible.

### Internet Access Note

Eligible Internet access may include features such as basic firewall protection, domain name service, and dynamic host configuration when these features are provided as a standard component of a vendor's Internet access service. Firewall protection that is provided by a vendor other than the Internet access provider or priced out separately will be considered a Category Two internal connections component. Examples of items that are ineligible components of Internet access include applications, content, E-mail, and end-user devices and equipment such as computers.

### Wireless Services and Wireless Internet Access Services Note

As clarified in the *Second E-rate Modernization Order*, data plans and air cards for mobile devices are eligible only in instances when the school or library seeking support demonstrates that the individual data plans are the most cost-effective option for providing internal broadband access for mobile devices at schools and libraries. Applicants should compare the cost of data plans or air cards for mobile devices to the total cost of all components necessary to deliver connectivity to the end user device, including the cost of Internet access and data transmission service to the school or library. Seeking support for data plans or air cards for mobile devices for use in a school or library with an existing broadband connection and wireless local area network implicates the E-rate program's prohibition on requests for duplicative services. Off-campus use, even if used for an educational purpose, is ineligible for support and must be cost allocated out of any funding request. Managed internal broadband services, such as managed Wi-Fi, are eligible only for Category Two support.

### Connections Between Buildings of a Single School

The classification of connections between multiple buildings of a single school is determined by whether the buildings are located on the same campus. A "campus" is defined as the geographically contiguous grounds where the instructional buildings of a single eligible school are located. A single school may have multiple campuses if it has instructional buildings located on grounds that are not geographically contiguous. Different schools located on the same grounds do not comprise a single campus. The portion of the grounds occupied by the instructional buildings for each school is a campus for that school.

Please note, connections between:

- Connections between buildings on different campuses of a single school are considered to be Category One digital transmission services.
- Connections between different schools with campuses located on the same property (e.g., an elementary school and middle school located on the same property) are considered to be Category One digital transmission services, unless they share the same building.
- Connections between buildings of a single school on the same campus are considered to be Category Two internal connections.

## **Service Provider Instructions**

### **Service Provider ITB Response Cover Sheet:**

Service Provider shall complete the Service Provider Authorized Response on the following page and include it as the first page of the Service Provider response. Bids submitted without a Service Provider Authorized Response Cover Sheet may not be evaluated.

In addition to the Service Provider Quote Cover Sheet, please include all relevant documentation to include, but not limited to: Scope of Work, Authorized Master Service Agreement, Detail Line Item Pricing, Taxes, Surcharges, and/or Maintenance Service Agreement, etc.

A proposed agreement or contract **shall** specifically identify the eligible components covered, including product name, model number, and location.

### **Service Provider Evaluation:**

<b>Factor</b>	<b>Value</b>	<b>Weight</b>	<b>Score</b>
<b>Price of the ELIGIBLE Goods and Services</b>		<b>30%</b>	<b>0</b>
<b>Prior Experience</b>		<b>20%</b>	<b>0</b>
<b>Other cost factors (including price of ineligible goods and services, price of changing providers, price for breaking contract, etc)</b>		<b>20%</b>	<b>0</b>
<b>Personnel/Management Qualifications and Capability</b>		<b>20%</b>	<b>0</b>
<b>Local Vendor</b>		<b>10%</b>	<b>0</b>
<b>Total</b>		<b>100%</b>	<b>0</b>

Note: The above worksheet is available for download – please visit: [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml).

### **Service Provider ITB Response:**

Item 21 information is expected for all proposed services. With respect to Category One Services, invoices, or proposed and/or existing accounts make great Item 21 attachments and may be included. For Category Two Responses, Item 21s by location or entity number should be included with the Service Provider's Response. This makes managing the Category Two Budget and creating the associated FRNs by location much easier. All Service Provider Responses for Category Two Requests without Item 21 attachments organized by location may be considered incomplete and NOT considered. A sample worksheet is available online (visit: [http://adsadsi.com/itb\\_year\\_23.shtml](http://adsadsi.com/itb_year_23.shtml)). Make and Model Numbers should be included on the Item 21 Attachments for Eligible Products and Services. Eligible Products and Services should be clearly separated from any and all Ineligible Products and Services. To be clear, responses may be disqualified if the Item 21s are incomplete. Item 21s for Category Two Products and Services not organized by location may be disqualified.

Successful Bidder shall provide a complete inventory upon project completion. All Invoices shall cross reference the Inventory Documentation provided.

By submitting a response, Service Provider Agrees to all Terms and Conditions contained within. If Service Provider's response is selected, Nexus shall award NEXUS20191114114242 to Service Provider and authorize this cover page - creating a contract. If required, an authorized and dated Service Provider Contract is encouraged to be submitted with the Service Provider's response. Original signatures are preferred.

### **Service Provider Terms, Conditions and/or additional Contracts:**

In order to be considered for award any and all terms, conditions and, or contracts required by the Service Provider shall be signed, dated and submitted with the ITB Response. Failure to provide signed documents do so may disqualify your response for services sought.

### **Invoicing the Universal Services Administrative Company (USAC):**

Unless otherwise agreed upon, the Service Provider shall be responsible for invoicing USAC by using the Service Provider Invoice (SPI) methodology. The Applicant shall be responsible for their share.

### **Contracts:**

FCC rules require that an Applicant sign a contract with the service provider before signing and submitting a completed *Services Ordered and Certification Form* (Form 471). Consequently, all Contracts, Statements, of Work, and/or Service Agreements should be submitted with this response with a handwritten signature and date. Countersigned documents may be provided after the Funding Commitment Decision Letters are issued by the SLD.

**Service Provider Authorized Response - Return this form with ITB Response**

<b>Eligible Entity:</b>	Nexus, 505 169 Highway N, Suite 500, Plymouth, MN 55441
<b>Project Description:</b>	2020-2021 E-rate Services See 470 Number 200008859 for Project Details
<b>ITB Number:</b>	NEXUS20191114114242
<b>470 Number:</b>	200008859
<b>ITB Due Date:</b>	02/27/2020 at 5:00PM local standard time
<b>Billed Entity Number:</b>	16049107
<b>Term:</b>	July 1, 2020 - June 30, 2021 unless specified, with up to 4 automatic one-year extensions. Additional term may be allowed as needed an in writing.

Service Provider Name:	
Service Provider Address:	
Service Provider City, State and Zip:	
Service Provider Contact Name:	
Service Provider Contact Phone Number:	
Service Provider Contact FAX Number:	
Service Provider Contact E-mail Address:	
State Tax Number(s):	
Federal Tax Identification Number:	
Service Provider SPIN:	

**If service provider's response is selected, Nexus shall award NEXUS20191114114242 to service provider and authorize this cover page - creating a contract. If required, an authorized and dated service provider Contract is encouraged to be submitted with the service provider's response.**

**Pricing shall be included with the service provider's response in the form of Item 21s – by location or service. All service provider responses without Item 21 attachments may be considered incomplete and may NOT be considered. Service descriptions to include Make and Model Numbers (if appropriate) should be included on the Item 21 Attachments. Eligible products and services shall be clearly separated from any and all ineligible products and services.**

All invoices shall cross reference the Bidder provided Inventory Documentation.

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. Signature also certifies understanding and compliance with understanding and compliance to the terms and conditions outlined within the Invitation to Bid.

By submitting an offer, I confirm that the proposal is genuine and not sham or collusive, nor made in the interest or behalf of any person not herein named, and that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure for itself an advantage over any other Bidder.

\_\_\_\_\_  
Service Provider Authorized Signature

\_\_\_\_\_  
Date of Service Provider Signature

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

\_\_\_\_\_  
Date of NEXUS Signature



## **Attachment 1: Locations**

<b>Eligible Entity:</b>	Nexus 505 169 Highway N, Suite 500 Plymouth, MN 55441
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## **Attachment 2: Category One Products and Services**

<b>Category 1 - Internet</b>		
<b>Location(s):</b> Nexus (16049107)		
<b>Quantity</b>	<b>Item</b>	<b>Description/Comments</b>
1	Leased Lit Fiber with or without Internet Access	Internet Access with Transport of at least 100MB with options for growth up to 1GB where the service provider owns and manages the network. Please include the cost for 500MB. Eligible costs include monthly charges, special construction, installation / activation charges, modulating electronics and other equipment necessary to make a Category One broadband service functional. Service Providers shall provide Customer Premise Equipment (CPE) that passes the Tennessee Test.