

Text

I. Introduction and Bid Overview

I.1. Bid Title

PEPPM 2012 Supplemental I Product Line Bid - Pennsylvania

I.2. Program Name & Description

PEPPM (pronounced *PEP-um*) is a technology bidding and purchasing program established in 1982 for education agencies. PEPPM is a nationally affiliated group of agencies coordinated by The Central Susquehanna Intermediate Unit (CSIU), a regional educational service agency incorporated by Pennsylvania Legislative Act of 1971, in Pennsylvania. PEPPM has conducted this program under the authority of the CSIU's agreement with the Commonwealth of Pennsylvania, Department of Education (PDE) for the past 30 years. The CSIU shall be referred to as the "AGENCY" throughout the Terms and Conditions of this document and bid form

PEPPM is seeking bids on technology equipment, software and supplies, etc. as outlined in this bid packet. Awards will be made by the CSIU Board of Directors for Pennsylvania. This Pennsylvania bid is named the PEPPM 2012 Supplemental I Product Line Bid, Pennsylvania.

I.3. Organization of Bid Terms and Conditions

The Terms and Conditions for this bid are organized as follows:

- I. Introduction and Bid Overview
- II. Definitions
- III. PEPPM Fees
- IV. Bidder Qualifications
- V. Bid Specifications
- VI. Ordering Procedures and Requirements
- VII. Bid Pricing Specifications
- VIII. Bid Procedures and Directions
- IX. Bid Evaluation and Award Process
- X. Post Award Requirements
- XI. Other Terms and Conditions
- XII. Exhibit Section

I.4. Bid Scope

This is a Request for Bids (RFB) for lines of branded technology products, including, but not limited to, items such as computer systems, networking, and telecommunications equipment, printers, peripherals, cameras, software, televisions, personal digital assistants, storage products, student management systems, video recorders, computer and library furniture, copiers, and other branded technology products.

The contracts resulting from this RFB is not exclusive and the AGENCY reserves the right to conduct future competitive bids for the same or similar products that may be contained in this bid. The bid list may also include products that PEPPM may have awarded as part of a PEPPM Catalog bid and will be allowed to co-exist with those awards.

Awards for this bid will be sole awards to the lowest responsive, responsible bidder.

I.5. AGENCY Issuing Request for Bids

Central Susquehanna Intermediate Unit (CSIU)

90 Lawton Lane
Milton, Pennsylvania 17847
Phone: (570) 523-1155
Fax: (570) 522-0577

I.6. Advertisement of This Request for Bids

As a policy, AGENCY shall advertise this RFB for three consecutive weeks in Pennsylvania newspapers – THE HARRISBURG PATRIOT, THE PITTSBURGH GAZETTE, THE SUNBURY DAILY ITEM according to Pennsylvania bid statutes. In addition, AGENCY shall advertise this RFB in various newspapers around the country. For a complete list of newspapers go to www.peppm.org. Information about the bid shall also be posted on AGENCY’s website (www.peppm.org), and posted to other third-party websites deemed appropriate by AGENCY.

I.7. Bid Due Date

The deadline for the receipt of bids is 3:00 p.m. Eastern Time, Friday, March 9, 2012. Any bid submitted after 3:00 p.m. will be marked late by the electronic bidding system.

I.8. Bid Opening Date

The opening date will be Monday, March 12, 2012 at 10:00 a.m. Eastern Time. Bid Opening will consist of opening the electronic bid form with a computer and projector in a public setting at 90 Lawton Lane, Milton, Pennsylvania.

I.9. Term of Awarded Contract and Extensions

The term of the awarded contract shall commence on January 1, 2012 and continue until December 31, 2013 unless terminated, canceled or extended.

The AGENCY reserves the right to conduct a review of the Awarded Vendor’s performance of contract responsibilities with the possibility of cancellation of the whole or any part of this contract due to failure by the Awarded Vendor to carry out any obligation, term or condition of the contract. AGENCY will issue written notice and reserves the right to cancel contracts with the Awarded Vendor for acting or failing to act in any of the following:

- The Awarded Vendor fails to adequately perform the services set forth in the contract;
- The Awarded Vendor fails to make progress in the performance of the contract and/or gives AGENCY reason to believe that the Awarded Vendor will not or cannot perform to the requirements of the contract;
- The Awarded Vendor fails to observe any of the terms and conditions of the contract;
- The Awarded Vendor fails to pay transaction fees;
- The Awarded Vendor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the AGENCY and/or LEA. AGENCY shall follow the following procedure if the contract is to be terminated:
 - Step 1 - Issue a warning Letter of Concern outlining the violations and length of time to correct the problem(s).
 - Step 2 - Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.
 - Step 3 - Issue letter to cancel contract.

Upon receipt of the written Letter of Concern, the Awarded Vendor shall have ten (10) business days to provide a satisfactory response to AGENCY. Failure on the part of the Awarded Vendor

to address adequately all issues of concern may result in contract cancellation.

The AGENCY reserves the right to extend the bid award beyond December 31, 2013 for a period of up to one year. The extension of this bid will be optional upon the mutual agreement of the AGENCY and the Awarded Vendor.

AGENCY reserves the right to offer month-by-month extensions until a new contract is awarded. These extensions of this bid will be optional upon the mutual agreement of the AGENCY and the Awarded Vendor.

AGENCY reserves the right to require a bid extension fee on a prorated basis for any extensions offered to the original term of the contract.

I.10. Electronic Bidding Process

Bids from Bidders are being solicited electronically and bids must be returned electronically through the Epylon bidding system. There is no cost for registering or using the Epylon bidding system. Any legitimate company or Bidder may have access to the system for the purpose of bidding. The bidding process involves answering questions, selecting which product lines to bid, adding necessary explanatory attachments in electronic form, filling out an approved template for pricing and quotes, then attaching and identifying the template as being your official prices.

The deadline for the receipt of electronic bids is 3:00 p.m. Eastern Time, Friday, March 9, 2012. Any bid submitted after 3:00 p.m. will be marked late by the electronic bidding system.

As enumerated in these Terms and Conditions, some documents (signed and dated) need to be submitted physically on paper and returned to the PEPPM office before the bid due date, 3:00 p.m. Eastern Time, Friday, March 9, 2012. These include the:

- Non-Collusion Affidavit
- PEPPM Bid Quote Sheet
- CSIU and Awarded Vendor Agreement
- State Selection Form
- PEPPM Ancillary Services Form (Must include if services are offered for consideration of bid protection)
- Checks for bid or award fees (if not using a credit card)

I.11. Extending Contract Awards to Other States

Although PEPPM is specifically bidding for Pennsylvania and California schools and agencies, it is PEPPM's intent to allow for "piggybacking" by entities in other states. It is PEPPM's plan to make these contracts available to any school or agency that meets the following conditions:

- The entity is an eligible PEPPM buyer as defined in Section I.12 of this bid's Terms and Conditions
- The PEPPM contracts meet the buyer's bidding requirements and are judged to be a good value
- The Awarded Vendor is willing to extend its PEPPM bid prices and contract terms to

schools and agencies in the buyer's state

- The order is processed according to PEPPM ordering procedures

Bidders interested in selling to schools and agencies in states with piggybacking provisions or permissible procurement statutes using PEPPM awarded contracts should “check” the appropriate area of the Question Section and list all intended states using the PEPPM State Selection Form. Select Awarded Vendors’ contracts based on best pricing may be made available to schools and agencies in those states. A signed and dated PEPPM 2012 State Selection form must be submitted with the other required paper documents by the bid due date, 3:00 pm Eastern Time, Friday, March 9, 2012.

The states listed by the Awarded Vendor in the bid response may be amended during the term of the contract by mutual agreement between the Awarded Vendor and AGENCY. All PEPPM Terms and Conditions shall apply. If a PEPPM Awarded Vendor lists a specific state on the PEPPM State Selection Form and meets all other contract requirements, that vendor will be the Awarded Vendor whose prices are posted on or within the PEPPM and Epsilon websites for that specific state. Where there is a different award in Pennsylvania and California for the same product line, the vendor with the lowest pricing determined by PEPPM’s market basket procedure will enjoy the benefit of PEPPM web posting for all other states the Bidder has opted to extend their PEPPM contract pricing to.

Each Bidder must adhere to PEPPM’s Terms and Conditions for all transactions through the program regardless of buyer’s state. Please be advised that any of the listed states may have further language or conditions listed with this bid that clarifies the ability of schools and agencies to piggyback other state contracts like PEPPM. Some of these terms and conditions specific to a state are listed in the Exhibit Section and pertain only to the individual states listed. Other state’s terms and conditions may be determined after the bid and added as an addendum to the Agreement. Only contracts held by Awarded Vendors willing to adhere to these additional state’s terms and conditions will be listed as available in that state. The “state specific” terms and conditions must be adhered to in addition to the PEPPM standard bid Terms and Conditions.

When state-specific terms and conditions differ from the PEPPM Terms and Conditions, the “state specific” terms and conditions shall prevail. The absence of any “state specific” terms and conditions should not be construed as tacit approval by the state for purchases through the PEPPM program.

Adherence to other “state specific” terms and conditions listed only applies if a Bidder has agreed to extend its PEPPM contract to schools and agencies in that specific state.

I.12. Legal Authority and Eligible Buying Agencies

This bid conducted as the PEPPM program is primarily solicited for Pennsylvania buyers under Pennsylvania statutes and the authority of the CSIU’s agreement with the Commonwealth of Pennsylvania, Department of Education (PDE). It also is the intent that the awarded contracts under this bid program be made available for use by eligible buyers in all 50 US states, Washington DC and Puerto Rico. Eligible PEPPM purchasers collectively known as LEAs will include:

- public school districts
- area vocational technical schools (AVTS units)
- intermediate units
- BOCES
- state approved private schools
- public libraries
- non-public schools
- state approved charter schools
- community colleges
- any new public school districts, AVTS units, intermediate units, BOCES, approved private schools, public libraries, non-public schools , charter schools and community colleges created during the contract term.
- colleges and universities with the Awarded Vendor's approval and where permissible by statute or regulation
- county governments, local municipalities, related county/municipal authorities, and special districts with the Awarded Vendor's approval and where permissible by statute or regulation
- state agencies not otherwise prohibited with the Awarded Vendor's approval and where permissible by statute or regulation and
- other non-profit organizations

I.13. Sales Volume

The AGENCY does not guarantee any quantity or dollar volume of purchases; however, the issuance of simultaneous invitations for bids with other states is intended to provide the greatest potential volume of sales across the largest number of eligible purchasers.

The AGENCY anticipates considerable activity resulting from this solicitation; however, no commitment of any kind is made concerning quantities actually to be acquired. The AGENCY does not guarantee contract usage; usage depends on the actual needs of the LEAs and marketing by the Awarded Vendor.

I.14. Role of Epylon Corporation

The PEPPM program and AGENCY continue to use Epylon Corporation ("Epylon ") to supply the professional expertise to manage certain facets of the procurement processes of Awarded Vendor contracts. Price lists and ordering instructions based upon the awarded contracts will be posted on the PEPPM website, located at www.peppm.org for offline purchasing through a fax-based clearinghouse at CSIU, supported by Epylon. The awarded contracts will be available for online purchasing on the Epylon website located at www.epylon.com. This method will allow buyers to access the greatest number of vendors and products and reduce the work required of vendors in responding to multiple bids and promote widespread marketing of contracts to buyers. PEPPM may enter LEA purchases into the Epylon system on LEAs' behalf.

I.15. Extension of Contracts to Other Eligible Buyers

Although PEPPM is bidding primarily on behalf of K-14 schools and agencies as described above, it is the program's intent to extend, where feasible, the bid protections and price discounts to four year colleges and universities, state and county governments, and local municipalities, related county/municipal authorities, state agencies and other non-profit

organizations not otherwise prohibited.

PEPPM in no way wants to compromise best pricing offered to school districts and education institutions. However, if state law allows, and if you as a Bidder are willing to sell the awarded items at the same educationally bid discounted prices in accordance with the contractual Terms and Conditions, they may do so.

Please respond “Yes” to the appropriate area in the Question Section of the bid form if you agree to extend your bid pricing to state and county governments, local municipalities, related county/municipal authorities, and other non-profit organizations not otherwise prohibited. Respond “No” if you do not agree.

Similarly, you may Respond “Yes” to the appropriate area in the Question Section of the bid form if you agree to extend your bid pricing to four year colleges and universities. Respond “No” if you do not agree.

Notwithstanding the foregoing, Awarded Vendor shall bear responsibility for all purchase orders entered into pursuant to the awarded contract and is responsible for monitoring whether it is in compliance with the contract Terms and Conditions, state statutes and regulations.

I.16. An Overview of PEPPM Services and the Epylon System

PEPPM.org is an internet-based environment for maintaining PEPPM price lists for each Awarded Vendor’s products so that information can be easily updated, accessed for online look-up and downloadable for local publication and distribution. This environment will be accessed over the Internet at www.peppm.org. This is the only official site of PEPPM, although Epylon is sanctioned by PEPPM to list PEPPM prices.

All PEPPM eligible LEA users with Internet access should be able to access the PEPPM website and use their browser to view the price lists, ordering instructions and Awarded Vendor and/or designated reseller contacts.

Price list information is available to an online search engine that allows the user to search for particular items across Awarded Vendors using key words, product types, manufacturer and publisher names unless price list information is made available by Awarded Vendor through a punchout to their own website.

Awarded Vendor price list information will be forwarded to Epylon for inclusion in its database for eCommerce access by LEAs. LEAs will have the option to become an Epylon eCommerce client, shopping and buying via electronic commerce. Or, LEAs may fax orders to PEPPM, which will process those orders and transmit them to the Awarded Vendor through the Epylon eCommerce system. It is the intent of PEPPM to transmit all purchase orders through the eCommerce system in order to capture line-item data for reports.

A punchout relationship with the PEPPM eCommerce site at www.epylon.com is recommended but not required.

All Awarded Vendors will be required to agree to the Epylon’s standard terms and conditions

for use of the Epylon system. Epylon’s standard terms and conditions for use are posted on the Epylon.com website at www.epylon.com/terms.html. For ease of reference, the Epylon terms and conditions (which shall be referred to as the “Epylon Merchant Agreement”) are also set forth as an attachment to Section VI.34 of this bid document. Additionally, if the Awarded Vendor authorizes dealers, outlets, distributors, value added resellers, etc. (together, “Authorized Resellers”) to take orders on its behalf, it shall require Authorized Resellers to read and to agree to the Epylon Merchant Agreement in this document.

I.17. AGENCY Withdrawal of Request for Bids

CSIU has the right to withdraw the RFB at any time prior to seven (7) days before the Bid Due Date and Time. Furthermore, CSIU has the authority to reject any or all bid proposals.

I.18. AGENCY’s Interest in a Contract Resulting from this Request for Bids

Notwithstanding its own consumption, to the extent AGENCY issues this RFB and any resulting contract for the use of its eligible buyers, AGENCY’s interests and liability for said use shall be limited to the competitive bidding process performed and Terms and Conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the goods and services procured there from.

I.19. Sole Source of Responsibility

AGENCY desires a “Sole Source of Responsibility” vendor meaning the vendor will take sole responsibility for the performance of delivered products and services. AGENCY also desires a sole source of responsibility with regard to:

- A. **Scope of Products and Services:** AGENCY desires a single provider for the broadest possible scope of the goods and services being bid over the largest possible geographic area and to the largest possible cross-section of AGENCY eligible buyers.
- B. **Vendor use of Resellers in Sourcing or Delivering Goods and Services:** AGENCY desires a single source of responsibility for products and services bid. Bidder’s may have reseller relationships with organizations and individuals whom are external to the Bidder and may be involved in providing or delivering the goods and services being bid. Vendor assumes all responsibility for the products and actions of any such reseller.

II. Definitions

Sections II.1 through II.15 deal with descriptions of the program and the definition of terms.

II.1. Electronic Signature

In submitting this bid, the person named as the Bidder’s representative on the electronic bid form declares the understanding that the use of his/her Username and Password constitute his/her electronic signature and that he/she is solely liable for full control and access to the password. Neither the Central Susquehanna Intermediate Unit (CSIU) nor Epylon have access to the User’s password. By submitting this form, he/she declares that he/she has the authority to submit this bid to the AGENCY and to bind his/her company to the Terms and Conditions, final pricing, statements and all commitments submitted to CSIU.

II.2. AGENCY and PEPPM

Central Susquehanna Intermediate Unit is a political sub-division of the Commonwealth of Pennsylvania created as an educational services agency. Intermediate Units (IUs) were created by the Pennsylvania Legislature under Act 102 of 1970, Section 901-A of the Public School Code of 1949 to provide services to school districts. There are 29 IUs with school districts

being assigned to each one. They began operation on July 1, 1971. IUs are governed by a board of directors whose membership comes from representatives from their member school district board of directors. Act 102 suggests that IU services include curriculum development and instructional improvement, research and planning, instructional materials, continuing professional education, pupil personnel, management services and state and federal agency liaison; however, IUs are not restricted from providing any service requested by their local school districts. Intermediate Units have two (2) purposes; to provide quality education services and to save tax money by providing cooperative services that cost each participant less than had they been provided independently. By combining resources, the IU can offer services that each school district, individually, could not conduct as economically or effectively.

IUs, unlike school districts, are not empowered to levy taxes. Revenue is received from a variety of sources; state general operating and capital subsidies, state and federal grants, and fees for services provided to other local education agencies, local governments and individuals.

PEPPM is a national technology bidding and purchasing program administered by the AGENCY.

II.3. AGENCY as Bidding Agent

The AGENCY is acting as bidding agent/contracting officer on behalf of all of the eligible buyers and buying agencies.

II.4. Bidder

“Bidder” is that firm, company, individual, business, partnership, joint venture corporation or other bidding entity which has completed the response to the Request for Bid.

II.5. LEA

All of the eligible buyers and buying agencies under this bid and resulting contracts will be referred to as “LEA” or “LEAs” (local education agencies) throughout this document for the purpose of readability. In an instance where the Bidder has indicated that prices may be extended to other local governments, counties, municipalities, higher education institutions and special districts, the term “LEA” shall also apply to those entities.

II.6. Awarded Vendor

Awarded Vendor is the Bidder whose bid response is considered to be the best value from a responsive and responsible Bidder and has been approved by the AGENCY’s Board of Directors.

II.7. Authorized Reseller

A firm, company, individual, business, partnership, joint venture corporation such as dealers, outlets, distributors, value added resellers, etc. that have been designated by the Awarded Vendor to help fulfill the Terms and Conditions of one or more specific PEPPM product line awards held by the Awarded Vendor. Authorized Resellers responsibilities may include but not be limited to marketing activities, receipt of orders, fulfillment of orders, invoicing, receipt of payment and paying PEPPM Transaction Fees as determined by the Awarded Vendor. All Authorized Resellers must agree and comply with the provisions of the Epylon Merchant Agreement, in addition to all of PEPPM’s Terms and Conditions.

II.8. Entire Agreement

Together, this Request for Bids, its Terms and Conditions, all information incorporated into the bid form by AGENCY or Bidder, the Bidder responses to Questions, the Bidder’s Quote Sheet(s), the Bidder’s pricing spreadsheet, all attachments and all references to statutes and

policies, and the CSIU and Awarded Vendor Agreement referred to as “Agreement” constitutes the Entire Agreement and will govern the AGENCY and Awarded Vendor during the contract term January 1, 2012 to December 31, 2013, and during any authorized extensions.

II.9. Epylon Corporation

The Epylon Corporation, “Epylon,” is a private purchasing services company and has been engaged by AGENCY to help facilitate the bid process and provide a multitude of services including bid development, consulting, eCommerce, marketing, order management, and accounting services. Epylon is an integral service partner in the PEPPM 2012 Supplemental I Product Line Bid and is named numerous times in this bid document.

II.10. Clarification

As used in this solicitation, “clarification” means communication with a Bidder for the sole purpose of eliminating minor irregularities, informalities or apparent clerical mistakes in the bid. It is achieved by explanation or substantiation, either in response to an inquiry by the AGENCY or as initiated by the Bidder. Unlike “Discussion,” clarification does not give the Bidder an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. Clarification does not give the Bidder an opportunity to revise or modify its bid.

II.11. Discussions

“Discussions” occur, when oral or written communications between AGENCY and the Bidder are conducted for the purpose of minor clarifications involving information essential for determining the acceptability of proposal. AGENCY will not help a Bidder bring its proposal up to the level of other proposals through discussions. AGENCY will not disclose technical information pertaining to a competing proposal. AGENCY will not indicate to a Bidder a cost or price that it must meet to obtain further consideration, nor will it provide any information about other Bidders’ proposals or prices. AGENCY is willing to discuss with a Bidder, having a proposal in the competitive range, any weaknesses, excesses, or deficiencies in its proposal. After initial receipt of proposals, AGENCY reserves the right to conduct discussions with the responsible Bidders who submit responsive proposals.

II.12. Responsible Bidder

A responsible Bidder is a firm or person with the capability to perform the contract requirements and the integrity and reliability, which will assure good faith performance. AGENCY must determine a bidder to be responsible before awarding a contract to Bidder.

II.13. Responsive Bid

A responsive bid reasonably and substantially conforms to the mandatory or essential terms, conditions and/or specified requirements for this solicitation. Bids must be responsive to receive award consideration.

II.14. Non-responsive Bid

Any bid that does not reasonably and substantially conform to the mandatory or essential terms, conditions and/or specified requirements for this solicitation shall be considered non-responsive. Bids determined to be non-responsive will not receive award consideration.

II.15. Special Provisions

Bidders are advised that, in the event of receipt of an adequate number of responsive bids, which, in the opinion of the AGENCY, require no clarifications and/or supplementary information, such responsive bids may be evaluated without further discussion or correspondence with bidders that submitted proposals requiring clarifications and/or supplementary information.

Consequently, Bidders should provide complete, thorough proposals with their most favorable terms. Should proposals require additional clarification and/or supplementary information, bidders should submit such additional material in a timely manner.

Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Bids will be classified as responsive. Bids found not to be responsive will be classified as non-responsive and no further discussion concerning same will be conducted.

III. PEPPM Fees

Sections III.1 through III.6 deal with the fees to be paid by the Bidder or Awarded Vendor.

III.1. PEPPM Bid Evaluation Fee

The CSIU as the coordinating AGENCY for the PEPPM 2012 Supplemental I Product Line Bid requires a non-refundable payment in the amount of \$100 from each Bidder FOR EACH PRODUCT LINE BEING BID to cover the cost of receiving and evaluating the bid. This is a total of \$100 regardless of how many states you choose to bid. One \$100 payment covers your submission to one or more states for each product line bid.

III.2. PEPPM Bid Award Fee

If you are the successful Bidder, you will be charged a \$200 PEPPM Bid Award Fee FOR EACH PRODUCT LINE YOU ARE AWARDED. This fee is considered an award fee and will be used by CSIU/PEPPM to do initial load and maintenance activities and to continue its growth in service to PEPPM Awarded Vendors and buyers.

III.3. Payment of Bid and Award Fees

Bid Fees and Award Fees will be collected separately. There are two ways to pay Bid Fees and Award Fees. One is by using a credit card. The other is by mailing a check to PEPPM before the due date of the bid. PEPPM prefers that Bidders use credit cards, but allows Bidders to invoke an option to mail checks. Proper procedures for using either of the options are explained in the Directions Section VIII.15 and VIII.16.

III.4. Transaction Fees

Awarded Vendors shall be required to pay a transaction fee ("Transaction Fee") for all purchases by entities made through the awarded contracts. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.

Epylon will collect the Transaction Fee on behalf of AGENCY.

By submitting a bid, an Awarded Vendor agrees to Epylon's terms and conditions for Awarded Vendors in the Epylon Merchant Agreement, which is found in Section VI.34, and will be bound to the Epylon Merchant Agreement as a part of the terms and conditions of the Agreement between the Awarded Vendor and AGENCY. The Transaction Fee in this Section III.4 is the agreed upon Epylon Marketing Fee contemplated by Section 7 of the Epylon Merchant Agreement.

If the Awarded Vendor wishes to authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within its network, it is responsible for ensuring that these Authorized Resellers agree and comply with the provisions of the Epylon Merchant Agreement, in addition to PEPPM Terms and Conditions.

Authorized Resellers will be responsible for paying the Transaction Fee for Authorized Resellers' transactions, unless the Awarded Vendor notifies Epylon of its intent to pay the Transaction Fee on its Authorized Resellers' behalf. Awarded Vendors shall remain responsible for paying the Transaction Fee on behalf of its Authorized Resellers in the event that the Authorized Reseller defaults.

For the purpose of the Pennsylvania PEPPM 2012 Supplemental I Product Line Bid contracts awarded using this document, the Transaction Fee shall be 1.75 percent of "Net Sales," which means gross sales less returns and cancelled orders within 30 days, shipping and sales and other taxes (excluding taxes based on net income). This PEPPM transaction fee of 1.75% replaces and supersedes any requirement for higher fees in the standard Epylon Merchant Agreement.

Transaction Fees will not be charged to or paid by the buyers themselves. Awarded Vendor or its designated Authorized Reseller(s) shall not include any additional amount corresponding to the Transaction Fees in the bid responses or awarded contract prices.

Note:

Failure to pay bid transaction fees on a timely basis will result in suspension or termination of the Awarded Vendor's contract whether sales were processed directly by the Awarded Vendor or its designated resellers.

III.5. Additional Reseller Fees

Awarded Vendors are eligible to name up to 15 authorized resellers per state, per product line to help implement this contract on behalf of the Awarded Vendor. If the Awarded Vendor requests to add additional Authorized Resellers beyond its 15 Authorized Resellers, the Awarded Vendor shall be required to pay a set-up fee of \$250 per addition. Fees will be collected by Epylon.

III.6. Cost of Bid Preparation

The AGENCY will not reimburse the cost of developing, presenting or providing any response to this solicitation.

IV. Bidder Qualifications

Sections IV.1 through IV.13 deal with the qualifications of Bidders and their designated resellers. Evaluation of Bidder's response to questions related to this section will help determine who is both a responsible and responsive Bidder. An essential part of the bid proposal evaluation process is an evaluation to qualify the vendor being considered as responsible. All bids must contain answers or responses to the information requested in the bid documents. Any Bidder failing to provide the required documentation may be considered non-responsive.

IV.1. Separate Declaration of Non-Collusion

Assuring that prices are arrived at independently and without collusion is so important that this bid requires the Bidder to separately attest under the penalty of perjury that no collusion has taken place.

The Bidder must affirmatively answer Yes to the appropriate area in the Question Section or else the bid may not be submitted to AGENCY.

In addition, the Bidder must also submit an original, notarized Non-Collusion Affidavit signed by the person in the company who was responsible for the final decision on what prices were submitted as part of this bid.

IV.2. Declaration of Non-Collusion

By submitting this bid, the person named on the bid form declares that he or she has authority to submit the prices of this bid and that:

- 1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.
- 2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.
- 3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- 4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- 5) Neither he/she, the company, nor any of the company's affiliates, subsidiaries, officers, directors and employees are currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- 6) All representations are material and important, and will be relied on by the Central Susquehanna Intermediate Unit in awarding the contract(s) for which this bid is submitted.
- 7) Any misstatement is and shall be treated as fraudulent concealment from the Central Susquehanna Intermediate Unit of the true facts relating to the submission of bids for this contract.

IV.3. Suspension or Debarment

The Bidder certifies, for itself and all its designated partners, that neither the Bidder, nor any suppliers are under suspension, debarment or otherwise lawfully precluded from participating in any public procurement activity by the LEA or any governmental entity, instrumentality, or authority within the last five years and, if the Bidder cannot so certify, then it agrees to submit a written explanation as an attachment to this bid form of why such certification cannot be made before proceeding to perform under any Purchase Order issued. Each eligible LEA reserves the right to cancel any Purchase Order without liability if the Bidder cannot so certify and the AGENCY or LEA is not satisfied with the explanation.

IV.4. Overdue Tax Liabilities and Other Agency or LEA Obligations

The Bidder certifies by submission of this bid that it has no overdue tax liabilities or other Agency or LEA obligations including but not limited to unpaid PEPPM transaction fees from previous contracts.

IV.5. Ongoing Responsibility and Notice of Any Change

The Awarded Vendor's obligations pursuant to all paragraphs in Sections IV and VI are ongoing from and after the effective date of the Agreement and any Purchase Order issued

through the termination date thereof. Accordingly, the Awarded Vendor shall have an obligation to inform the AGENCY or LEA if, at any time during the term of the Agreement or any Purchase Order, it, changes its company name, changes its place of business, becomes delinquent in the payment of taxes, or other AGENCY or LEA obligations including but not limited to payment of PEPPM transaction fees, or if it or any of its designated partners are suspended or debarred by the AGENCY or LEA, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension, debarment or delinquency, or change. The Awarded Vendor's status regarding any or all of its PEPPM awarded contracts may be affected by these changes.

IV.6. Cause for Default

The failure of the Awarded Vendor to notify the AGENCY or LEA of its suspension or debarment by any AGENCY or LEA, any other state, or the federal government shall constitute an event of default of the Agreement and/or Purchase Order.

IV.7. Americans With Disabilities Act

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Awarded Vendor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in the Purchase Order or from activities provided for under the Purchase Order on the basis of the disability. As a condition of accepting this contract, the Awarded Vendor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities relevant to the Entire Agreement.

IV.8. Hold Harmless Regarding ADA

The Awarded Vendor shall be responsible for and agrees to indemnify and hold harmless the AGENCY/LEA from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against any participating state as a result of the Awarded Vendor's failure to comply with the provisions of Section IV.7 above.

IV.9. Covenant Against Contingent Fees

The Awarded Vendor warrants that, no person or selling agency has been employed or retained to solicit or secure the Purchase Order upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Awarded Vendor for the purpose of securing business. For breach or violation of this warranty, the LEA shall have the right to terminate the Purchase Order without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

IV.10. Requirement to Define Partnerships

Bidders must define any and all partnerships they are planning to use in support of the sales associated with this bid. All partnership can be defined and explained by attaching a document to the appropriate product line in the bid form. Additional partnerships that may occur after a PEPPM bid award must be approved by PEPPM. Include any partnerships that relate to the use of resellers and/or other third parties providing installation, maintenance and support services.

IV.11. Authorization for Resellers

Vendors who are awarded a contract for a specific product line may establish Authorized Resellers. The Authorized Resellers must agree to sell the product at or below the posted pricing that the Awarded Vendor provides to PEPPM, adhere to all Terms and Conditions of

this bid and pay all Transaction Fees (see Terms and Conditions, Section III.4) unless the Awarded Vendor has agreed to pay all Transaction Fees. If an Authorized Reseller does not pay its Transaction Fees, the Awarded Vendor becomes responsible for the payment of the fees. The Awarded Vendor is responsible for maintaining the Ordering Instructions, which include the list of Authorized Resellers. Additional Authorized Resellers may be added after a PEPPM bid award but must be approved by PEPPM.

IV.12. Bidder Profiling

By answering the questions in the Question Section, Bidders must give satisfactory evidence:

- 1) that they maintain permanent places of business,
- 2) that they have the capability to satisfactorily and expeditiously furnish the items offered,
- 3) that the firm will provide satisfactory customer sales support and service to all LEAs,
- 4) that they have current relationships with LEAs for verification of customer satisfaction and
- 5) that they can demonstrate an active network or other acceptable method of service and support that will serve all LEAs.

IV.13. Historically Under-Utilized Businesses (HUBs)

For the purpose of identifying businesses owned by minorities, women or disabled veterans, the AGENCY requests any minority-owned, women-owned, or disabled-veteran-owned business to identify their status as such so that it can be made known to interested LEAs.

Points will be awarded to Bidders that are identified as a HUB in the bid evaluation process. A HUB may identify itself in its answer to the appropriate area in the Question Section.

V. Bid Specifications

Sections V.1 through V.18 deal with bid specifications for products.

V.1. Product Lines Sought

This bid is for technology products associated with specific types of manufacturer-branded product lines. The product line listed and its associated description is a specification for all products manufactured under that product brand name and type as described. Product lines being bid are listed in the bid announcement attachment and are listed on the electronic bid form.

V.2. New Product Provisions

AGENCY is seeking technology related products manufactured by reliable national manufacturers. The products offered must be considered new by the manufacturer having new serial numbers and be made with new components meeting all manufacturer specifications (realizing that some manufacturers may recycle incidental components.)

When bidding equipment, Bidder must ensure that all units must have all manufacturer standard equipment (e.g. units sold under the XYZ, Inc. label must have all XYZ, Inc. standard equipment and features).

Unless otherwise noted in this bid, it is understood and agreed that any item offered or shipped in response to this bid is the same model indicated by its external label and source of manufacture. All components inside the system must be manufacturer approved unless otherwise noted, and therefore eligible for full manufacturer's warranty.

Products held by an Awarded Vendor that is either the manufacturer or a reseller that never has been sold or leased but was used (e.g. demo equipment) may be sold under the awarded contract according to the following provisions:

1. The buyer has full knowledge of the length and type of use of the product identified by the vendor on a PEPPM quote submitted with the purchase order.
2. The price of the product is below the PEPPM bid price.

V.3. Serial Numbers

Any equipment offered under contract must have new serial numbers. Any equipment product lines bid must be for equipment on which the original manufacturer's serial number has not been altered in any way.

V.4. New Technology and Product Additions

New products that become available after the start of the Agreement and that are branded as and fall within the description of the product line awarded may be added to the existing Agreement. Pricing shall be at or better than the price determined by the bid percent of discount off list or mark up over cost of other similar products.

Awarded Vendors may replace or add products to an existing Agreement if the products are equal to or superior to the original products offered, are discounted or priced the same or to a greater degree and if the products meet the requirements of the original solicitation. No products may be added to avoid competitive procurement procedures. The AGENCY may reject any additions, without cause.

V.5. Replacement Parts

Awarded Vendors must, upon request, provide replacement parts, (either functional equivalent or a newer version of the same part which performs the same function and is replaceable or interchangeable with the part being replaced), directly or through the manufacturer or a manufacturers' representative, to the LEA and/or the LEA's designed maintenance service provider. Replacement parts must be made available for at least two (2) years after the warranty expiration.

V.6. Proof of Supply

PEPPM assumes that a manufacturer of a bid product line will have access to its own products for selling through the PEPPM contract and therefore does not need to provide a Proof of Supply Letter as defined in this section.

Dealers, distributors, aggregators, resellers or remarketers, or other approved agents bidding on behalf of a product line for which they are not the manufacturer are asked to show proof of access to the supply of each product line being bid from the manufacturer. This proof should be in the form of a letter, which should be scanned and attached to the bid form alongside the name of each product line being bid. The letter will be evaluated and scored on whether it contains each of the following components:

- 1) Current and dated within the bidding period
- 2) Addressed specifically to CSIU or PEPPM
- 3) Written on manufacturer's letterhead
- 4) An indication that the Bidder is an authorized dealer (distributor, aggregator, reseller or

- remarketer), or other approved agent for that equipment
- 5) History of the Bidder's and the manufacturer's relationship
 - 6) The manufacturer's opinion that the Bidder can provide satisfactory service to all LEAs in those states bid as noted in these bid materials
 - 7) Indication of what states the Bidder is authorized by the manufacturer to specifically bid to PEPPM
 - 8) Signed by a management employee of the manufacturer who will note in the letter that he/she has the explicit authority to sign this letter on behalf of the manufacturer
 - 9) Identification of the name, title, and phone number of the senior management person in his/her upward reporting path

Sample letters exhibiting the necessary characteristics are attached to this section in the file named "PEPPM 2012 Supplemental I Product Line Bid - Proof of Supply Letter Example.pdf."

V.7. Alternative Evidence of Supply

A Proof of Supply Letter as required in Section V.6 above from the manufacturer is the best evidence of a bidding firm's access to supply and will be scored higher than alternative sources identified. However, in extreme circumstances or where competitive forces prevent access to a manufacturer letter, a Bidder may submit other written evidence and documentation to substantiate the bidding firm's ability to supply and support the bid manufacturer's products as noted above for consideration. Alternative source documentation shall include all of the items listed above regarding the Proof of Supply Letter from the supply source and an explanation of why a letter from the manufacturer was not obtained. The decision of PEPPM or the AGENCY in any participating state in considering a Bidder's alternate submissions and qualifications shall be final.

If not a manufacturer or publisher, a bidding firm must describe its product source and the relationships between the Bidder, its distributor and/or the manufacturer. Any alternative documents showing proof of supply MUST be attached to the bid form alongside the name of the corresponding product line to which it applies and is being bid. Attaching one letter from a distributor/aggregator source of products is not recommended for guarantying access to multiple lines of products. If bidding more than one product line, whose source is the same, attaching the letter from the source to each product line being bid is recommended. It is the Bidder's responsibility to provide enough evidence of access to a product line to warrant a PEPPM bid award. A distributor/aggregator source must be able to verify they have permission from the manufacturer to sell their products to you, the Bidder.

V.8. Liens

All materials and services shall be free of all liens.

V.9. Licenses

Awarded Vendors shall maintain current status of all federal, state and local licenses, bonds, and permits required for the operation of the business conducted by the Awarded Vendor.

V.10. Necessary Supplies

Bidders are encouraged to include bid pricing on all related/necessary branded supplies utilized with the product line being bid. Bidder may use variable discounts or markups to address differences in supply items versus equipment pricing.

V.11. Standard Warranty

The Bidder warrants that all items furnished by the Bidder, its agents and designated partners

shall be free and clear of any defects in material and workmanship and shall conform to the published specifications for such product and Bidder's representations regarding the functions and uses for which each product is marketed. Bidders bidding on personal computers **must** provide standard manufacturer's warranty of **at least one (1) year (on-site for desktop and server systems.)** If the standard manufacturer warranty is longer than one year, no deduction to that standard manufacturer warranty will be allowed. Other items must carry the standard warranty. Warranty policy information, including additional costs for extended parts and labor coverage, must be addressed in the bid response and clearly defined for all submitted price lists. The Awarded Vendor shall repair and/or replace any defective item with an item of equivalent or superior quality without any additional cost to any LEA.

V.12. Onsite Warranty Service

Bidders bidding on personal computers and servers must have the capability, either directly or through the manufacturer or a manufacturer's representative, to perform onsite warranty service (warranty is defined as the standard provided by the manufacturer for the period of time indicated in the contract.) Awarded Vendors must perform warranty services at the LEAs site of the equipment in need of such service when requested by the using LEA. LEAs are responsible for payment of onsite warranty services which do not fall within the scope of the manufacturer's standard warranty. Manufacturer's "depot service only" products are excluded from this requirement.

V.13. Installation

Products and services shall be installed and/or provided in accordance with the manufacturer's instructions and in accordance with the schedule determined by the AGENCY and/or buying LEA.

V.14. Direct Relationships with Service Providers

For Bidders selling personal computers, service locations may be a branch or satellite office of the personal computer Bidder or manufacturer service and support facilities, or facilities of some other third-party whose relationship the Bidder will maintain to provide the services required within the scope of PEPPM. The contract may be terminated for default if, at any point during the term of the contract, the Bidder fails to maintain these relationships. These relationships may, but are not required to infer ownership and/or franchise relationships, only that an ongoing affirmative business relationship exists. PEPPM reserves the right to inquire into the extent of these business relationships maintained, and listed herein, by the Bidder up to the extent that the confidentiality is not compromised. The Bidder is ultimately responsible for the satisfactory and timely completion of all service requirements and activities, and is under a duty to monitor all service performances of the service providers.

V.15. Certifications Related to Personal Computer Lines

It is the AGENCY's intention that at no time will an LEA be "surprised" by a computer's inability to function on a network, run popular software products or in any other way not perform as expected, intended, or is customary to anticipate. Bidders of personal computer lines must maintain the various certifications that the manufacturers have concerning compatibility and compliance with computer and network operating systems and federal safety and communications guidelines. These certifications should include, but not be limited to:

- Novell Certification
- Microsoft Certifications
- Underwriters Laboratories Certification

- Federal Communications Commission Certification

V.16. Services Related to Products

In preparing responses, Bidders should understand that they will not be specifically required to install, demonstrate or train school personnel in the use of purchased equipment, except where a dealer is required to provide such services at no additional cost as part of its contractual arrangement with its supplier or manufacturer.

However, if a Bidder can provide ancillary services related to the product line being bid, that Bidder should respond “Yes” to the appropriate area in the Question Section of the bid form and must complete and attach the PEPPM Ancillary Services Form describing what services are available, how they will be provided and what PEPPM discount(s) will be applied, for each product line being bid with services. In addition, the Bidder must also submit a signed and dated hard copy version of the PEPPM Ancillary Services Form.

Note:

Each Bidder offering services under the contract must complete, sign and date the Ancillary Services Form at the time of the bid for those services to be considered as part of the award.

Submit one PEPPM Ancillary Services Form for each product line being bid with services. Following are examples of ancillary services that may be submitted that apply to the product line being bid:

- Installation
- Image loading
- Training
- Help desk support
- Engineering
- Analysis and design
- Maintenance
- Asset tag service
- Hard drive removal and retention by the buyer
- Travel

If an Awarded Vendor has chosen to offer services in conjunction with the bid awarded contract items it provides to the LEA, the Awarded Vendor and the LEA shall negotiate the specifics of the services to be provided at a PEPPM discounted price.

Any service price lists provided by the Awarded Vendor must allow the AGENCY and LEA to easily identify bid submitted and approved services and costs. Bidders are advised to not lower per unit product purchase prices and offer above-market service prices. AGENCY staff will review the availability and reasonableness of services and prices to help determine an award.

Note:

It is important that the award be made to a Bidder who demonstrates evidence that they can provide reasonable and acceptable service to all agencies within each state bid for products that require installation, ongoing maintenance or other necessary services. In these cases, available

services and the presence of prices for those services will be a factor in the evaluation of bids.

Services that are identified and priced at the time of the bid using the Ancillary Services Form will be considered PEPPM bid protected services during the term of the contract assuming that the prices quoted for services are discounted at or below bid identified discounts.

V.17. E-Rate Program Compliance

Awarded Vendors for product lines covered by the E-Rate program will comply with all requirements of the Universal Service program of the Telecommunications Act of 1996, commonly referred to as the E-Rate Program. These requirements include but are not limited to registering and receiving a Spin Number, providing the Spin Number to PEPPM for publication and receipt and fulfillment of school and library orders according to E-Rate procedures.

V.18. Returned Goods Policy

Bidders must have a policy regarding how they handle the return of goods from LEAs. A document describing the policy must be attached alongside the name of each product line being bid. Please respond to the question in the Question Section that asks whether the Bidder has properly attached the respective Returned Goods Policy for each product line being bid.

VI. Ordering Procedures and Requirements

Sections VI.1 through VI.34 relate to ordering, the process of handling purchase orders, delivery of merchandise, payments, the role of Epylon, etc.

VI.1. Overview of Standard Purchase Order Terms and Conditions

If an award is made to a Bidder, such Awarded Vendor may receive a Purchase Order to furnish the awarded item(s) in accordance with these Standard Purchase Order Terms and Conditions:

- 1) Any LEA (a buyer as defined in the Section II.5) may issue Purchase Orders against the Agreement. These constitute the Awarded Vendor's authority to make delivery. All purchase orders received by the Awarded Vendor up to and including the expiration date of the Agreement are acceptable and must be shipped in accordance with the delivery time specified in the Agreement. If normal delivery time cannot be met, Awarded Vendor must notify LEA. LEA has the option to accept or reject extended delivery time.
- 2) As stated in Section III.4, Awarded Vendors shall be required to pay the Transaction Fee for all purchases by entities made through the awarded contracts. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.
- 3) Purchase Orders may be issued through Epylon Awarded Vendor accounts at www.epylon.com or through fax equipment to the following fax number: 800-636-3779. Purchase orders via Epylon Awarded Vendor accounts will arrive in the Epylon Order inbox, accessed at www.epylon.com through a previously established login with a user name and password. Receipt of the electronic or fax transmission of the purchase order shall constitute receipt of an order. Orders received by the Awarded Vendor after 4:00 p.m. (prevailing local time of the Awarded Vendor) will be considered received the following business day.
- 4) Upon receipt of an order in the Epylon Purchase Order inbox, the Awarded Vendor shall promptly and properly transmit an acknowledgement in return by filling out any additional

order information and clicking “submit.” Failing to acknowledge orders gives LEAs the impression that their order has been received by the Vendor, but that the PO has not been accepted.

- 5) For orders entered into the Epylon eCommerce system specifically by the buyer, the parties agree that no hand-written signature shall be required in order for the purchase order to be legally enforceable. To the maximum extent permitted by law, the parties hereby agree to accept an order submission or acceptance by a properly authorized user of the Epylon system as any necessary “signature” that may be required by law. Any purchase order or acknowledgement, which has been issued by a properly authorized Epylon user shall be deemed for all purposes to have been “signed” and to constitute an “original” when printed from electronic files or records established and maintained in the normal course of business. Neither party shall disclose to any unauthorized person the “signatures” of the other party.
- 6) For orders entered into the Epylon eCommerce system specifically by the buyer, the parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine purchase order or acknowledgement issued through Epylon under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements are in writing and signed by the party bound thereby. Any genuine purchase order or acknowledgment issued through Epylon, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine purchase orders or acknowledgments under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement shall be deemed to be genuine for all purposes if:
(a) it was received from the Epylon Purchase Order inbox and (b) it is transmitted to the location designated for such documents in the procedure agreed to by the parties.
- 7) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include retransmission of any such document if necessary.
- 8) Awarded Vendors who receive a Purchase Order directly from LEAs (e.g. directly by fax, mail, or in person), where the Purchase Order is marked as relating to the PEPPM bid and has not first been submitted to the PEPPM purchase order clearinghouse or through the Epylon system, are required to send such Purchase Order to PEPPM for archiving and entry into AGENCY’s database.

VI.2. Term of Purchase Order

The term of the Purchase Order shall commence on the date that the Awarded Vendor receives a Purchase Order executed by the LEA and all approvals required by LEA contracting procedures have been obtained (the “Effective Date”). The Purchase Order shall, subject to the other provisions of the Purchase Order, end on the later of: a) complete delivery and acceptance of the awarded item(s); b) the expiration of any specified warranty and maintenance period; c) payment by the LEA for the item(s) received; or d) the Expiration Date identified in the

Contract.

The Awarded Vendor shall not start the performance under the Purchase Order prior to the Effective Date and the LEA shall not be liable to pay the Awarded Vendor for any service or work performed or expenses incurred before the Effective Date. No LEA employee has the authority to verbally direct the shipment of any item(s) or the commencement of any work under the Purchase Order.

VI.3. Ordering, Invoicing and Payment

LEAs will order the items, receive the items from the Awarded Vendor and directly pay the Awarded Vendor upon receipt of invoices.

All invoices are to be sent directly to the purchasing LEA. LEAs will normally pay invoices within thirty (30) days of receipt of order, or in compliance with their board policy on bill payment. The AGENCY will encourage LEAs to arrange for prompt payment where possible and for payments of partial shipments.

VI.4. Awarded Vendor/Authorized Reseller as an Independent Vendor

In performing its obligations under the Purchase Order, the Awarded Vendor/Authorized Reseller will act as an independent vendor and not as an employee or agent of the AGENCY or any LEA.

VI.5. Compliance with Law

Vendor shall comply with any and all laws, whether local, state, federal or otherwise, applicable to any of the services and/or products to be provided in relation to this contract. It shall be the vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them. Vendor shall hold Agency harmless for any default or breach of vendor in this regard.

The invalidity of any words, phrases, sentences, sections or subsections contained in the contract shall not affect the enforceability of the remaining portions of the contract or any part thereof, all of which are inserted conditionally on their validity in law. In the event any one or more of the words, phrases, sentences, sections or subsections are found to be invalid or unenforceable, the contract shall be read as if such offending provisions had not been inserted, and if such invalidity shall be caused by the length of any period of time set forth in any part hereof, such period of time shall be considered to be reduced or increased, as necessary, to a period which would cure such invalidity.

All applicable laws shall be deemed to be part of the bid Terms and Conditions, and the contract shall be read and enforced as though they were included. The supplier shall comply with all applicable federal, state, local and industry statutes, regulations, ordinances, codes and standards in each state where a member is located. The failure to specifically reference or include said matters in the contract documents does not excuse the supplier from compliance with same.

Bidder agrees to abide by all applicable STATE and FEDERAL laws and regulations concerning the handling and disclosure of private and confidential information regarding individuals. Bidder agrees to hold the AGENCY harmless from its unlawful disclosure and/or use of private/confidential information.

Pennsylvania Prevailing Wage Rates

Projects where the **total estimated cost is greater than \$25,000**, paid for in whole or in part out of funds of a public body, except for maintenance work or work performed under a rehabilitation program or manpower training program must specify "Prevailing Wages." Further information on implementation of the act, definition of maintenance work and prevailing wage rates may be requested from the Pennsylvania Department of Labor and Industry (800-932-0665 or 717-787-4763). When applicable, use Davis-Bacon wage rates for federally assisted projects. This regulation and the general Pennsylvania prevailing minimum wage rates, (Act 442 of 1961, P.L. 987, amended), as determined by the Secretary of Labor and Industry, which shall be paid for each craft or classification of all workers needed to perform the contract during the anticipated term therefore in the locality in which public work is performed, are made part of this specification.

1. The general prevailing minimum wage rates including contributions for employee benefits as shall have been determined by the Secretary of Labor and Industry (hereinafter "Secretary"), which must be paid to the workmen, employed in the performance of the Contract.
2. The Contractor shall pay no less than the wage rates as determined in the decision of the Secretary and shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442), as amended August 9, 1963 (Act No. 342), and the Regulations issued pursuant thereto, to assure the full and proper payment of said rates.
3. These Contract provisions shall apply to all work performed on the Contract by the Contractor and to all work performed on the contract by all subcontractors.
4. The Contractor shall insert in each of his subcontracts all of the stipulations contained in these required provisions.
5. No workmen may be employed on the Work except in accordance with the classifications set forth in the decision of the Secretary. In the event that additional or different classifications are necessary the procedure set forth in the Regulations shall be followed.
6. All workmen employed or working on the Work shall be paid unconditionally, regardless of whether any contractual relationship exists or the contractual relationship which may be alleged to exist between any contractor, subcontractor and workmen, not less than once a week without deductions or rebate, on any account, either directly or indirectly, except authorized deductions, the full amount due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in this Contract, the Act or the Regulations shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary to the workmen on the Work.
7. The Contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:
 - a. Name of project.
 - b. Name of public body of which it is constructed.

- c. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
 - d. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.
 - e. A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the Contractor and/or subcontractor are not complying with the Act or the Regulations in any manner whatsoever, they may file a protest with the Secretary within three (3) months of the date of the occurrence, objecting to the payment to the Contractor to the extent of the amount or amounts due or to become due to them as wages for work performed on the Project. Any workmen paid less than the rate specified in the Contract shall have a civil right of action for the difference between the wage paid and wages stipulated in the Contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.
8. The Contractor and all subcontractors, shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with the Work and such record must include any deductions from each workman. The record shall be preserved for two (2) years from the date of payment and shall open at all reasonable hours to the inspection of the Owner and to the Secretary or his duly authorized representative.
 9. Apprentices shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the Rules and Regulation issued pursuant thereto shall be employed on the Work. Any workmen using the tools of a craft that does not qualify as an apprentice within the provisions of this submission shall be paid the rate predetermined for journeyman in that particular craft and/or classification.
 10. Wages shall be paid without any deductions except authorized deductions. Employers not party to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workman.
 11. Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act and the Regulations, regardless of the average hourly earnings resulting there from.
 12. Each Contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the Work on the Contract with Owner, under oath, and in form satisfactory to the Secretary, certifying that all workmen have been paid wages in strict conformity with the provisions of the Contract as prescribed by the Regulations, or if any wages remain unpaid, to the amount of wages due and owing to each workman respectively.
 13. The provision of the Act and the Regulations are incorporated by reference in the Contract.

VI.6. Environmental Provisions

In performing its obligations under the Purchase Order, the Awarded Vendor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

VI.7. Compensation/Invoices

The Awarded Vendor shall be required to furnish the awarded item(s) at or below the price(s) quoted in the Contract. The Awarded Vendor shall be compensated only for item(s) which are delivered and accepted by the LEA.

Unless otherwise specified, the Awarded Vendor shall send an itemized invoice to the “Bill To” address on the Purchase Order promptly after the item(s) are delivered. The invoice should include only amounts due under the Agreement. The Purchase Order number shall be prominently noted on all invoices.

VI.8. Payment

The LEA shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Purchase Order; or (b) thirty (30) days after a proper invoice actually is received at the “Bill To” address, and the Purchase Order items invoiced are received and accepted by the LEA. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the purchase order and the items actually received.

Payment should not be construed by the Awarded Vendor as acceptance of the items furnished by the Awarded Vendor. The LEA reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the item(s) if such post payment testing or inspection discloses a defect or a failure to meet specifications.

The Awarded Vendor agrees that the LEA may deduct the amount of any state tax liability not required by law or other unauthorized obligation of the Awarded Vendor or its subsidiaries to the LEA from any payments due the Awarded Vendor under any contract with the LEA.

At the discretion of the Awarded Vendor, the LEA may use a LEA purchasing card to pay for the items purchased under the Purchase Order. The LEA(s) purchasing card is similar to a credit card in that there will be a small fee which the Awarded Vendor will be required to pay and the Awarded Vendor will receive payment directly from the card issuer rather than the LEA. Any and all fees related to this type of payment are the responsibility of the Awarded Vendor. In no case will the LEA(s) allow increases in prices to offset credit card fees paid by the Awarded Vendor or any other charges incurred by the Awarded Vendor, unless specifically stated in the terms of the Purchase Order.

VI.9. Taxes

No charge will be allowed for federal, state, or local taxes from which the LEA is exempt. Prices shall be net and shall not include the amount of any such tax. Exemption certificates, if required, will be furnished on forms provided by the Awarded Vendor.

LEAs are exempt from all excise taxes imposed by the Internal Revenue Service and have accordingly registered with or been recognized by the Internal Revenue Service to make tax free purchases.

VI.10. Delivery

All item(s) shall be delivered F.O.B. Destination. Except as otherwise provided in Section VI.14 all items should be delivered within the time period specified on the Purchase Order. In addition to any other remedies, the Purchase Order is subject to termination for failure to deliver as specified. In situations where delivery cannot be made within the time period specified on the Purchase Order, LEA should be notified in writing or by telephone of the delay and of an estimated delivery date.

Delivery will be required to be made to the receiving platform or place designated on each purchase order. Direct delivery to buildings must be placed at a point in the building as directed at the place of delivery. Weight, color, count, measure, etc., will be determined at the point of delivery. The Awarded Vendor will be required to furnish proof of delivery upon request from any LEA. All materials and supplies must be securely packed in uniform containers, adequately marked as to contents, purchase order number, and delivered without damage or breakage such units, as are specified.

Any system configuration ordered shall be delivered as a complete system. It will be the responsibility of the Awarded Vendor to stage the equipment delivery so that all components are delivered as a single unit at the same time.

Awarded Vendors receiving Purchase Orders with delivery requirements that cannot be met, have the right to refuse the order. The Awarded Vendor must return the Purchase Order with an explanation of why it was refused within (5) business days of receiving the purchase order from the LEA.

VI.11. Title and Risk of Loss

The Bidder agrees to bear the risk of loss, injury, or destruction of the items ordered prior to receipt of the items by the LEA unless otherwise provided in this document. Such loss, injury, or destruction shall not release the Awarded Vendor from any contractual obligations.

VI.12. Shipping Errors

Awarded Vendor agrees that shipping errors will be at the expense of the Awarded Vendor. For example, if an Awarded Vendor ships a product to an LEA that was not ordered, it is the responsibility of the Awarded Vendor to pay for return mail or shipment, at the convenience of the LEA.

VI.13. Inspection and Rejection

No item(s) received by the LEA shall be deemed accepted until the LEA has had a reasonable opportunity to inspect the item(s). The Awarded Vendor and the LEA agree that a reasonable timeframe to inspect the item(s) shall not exceed thirty (30) calendar days from date of delivery. Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. When a defect or nonconforming item(s) is discovered, the LEA will promptly notify the Awarded Vendor of the defect or nonconformance. It shall thereupon become the duty of the Awarded Vendor to remove rejected item(s) from the premises without expense to the LEA within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the LEA shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale, which represents the

LEAs costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Awarded Vendor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Awarded Vendor fails, neglects or refuses to do so, the LEA shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Awarded Vendor, the difference between the price stated in the Contract and the actual cost thereof to the LEA.

VI.14. Default

A. The AGENCY may, subject to the provisions of Section VI.15, Force Majeure, and in addition to its other rights under the Agreement, declare the Awarded Vendor in default by written notice thereof to the Awarded Vendor, and terminate (as provided in Section VI.17, Termination of Contract) the whole or any part of the Agreement for its state's LEAs for any of the following reasons:

- Failure to deliver the awarded item(s) within the time period specified on the Agreement or as otherwise specified;
- Improper delivery;
- Failure to provide an item(s) which is in conformance with the specifications referenced in the invitation for Bids;
- Delivery of a defective item;
- Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
- Insolvency or bankruptcy;
- Assignment made for the benefit of creditors;
- Failure to protect, to repair, or to make good any damage or injury to property;
- Breach of any provision of the Agreement;
- Failure to maintain its baseline catalog online;
- Failure to update prices as per Section X.7;
- Non-performance in sales as per Section X.2;
- Failure to meet E-Rate Program Compliance requirements including suspension or debarment (See Section V.17 E-Rate Program Compliance);
- Suspension or Debarment occurring during the term of the contract (See Section IV.3 Suspension or Debarment)

B. The LEA may, subject to the provisions of Section VI.15, Force Majeure, and in addition to its other rights under the Purchase Order, declare the Awarded Vendor in default by written notice thereof to the Awarded Vendor, and terminate (as provided in Section VI.17, Termination of Purchase Order) the whole or any part of the Purchase Order for any of the following reasons:

- Failure to deliver the awarded item(s) within the time period specified on the Agreement or as otherwise specified;
- Improper delivery;
- Failure to provide an item(s) which is in conformance with the specifications referenced in the invitation for Bids;

- Delivery of a defective item;
- Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
- Insolvency or bankruptcy;
- Assignment made for the benefit of creditors;
- Failure to protect, to repair, or to make good any damage or injury to property;
- Breach of any provision of the Purchase Order;
- Suspension or Debarment occurring during the term of the contract (See Section IV.3 Suspension or Debarment)

C. In the event that the LEA terminates the Purchase Order in whole or in part as provided in Subparagraph B above, the LEA may procure, upon such terms and in such manner as it determines, any items similar or identical to the items so terminated.

D. If the Purchase Order is terminated as provided in Subparagraph B above, the LEA, in addition to any other rights provided in this paragraph, may require the Awarded Vendor to transfer title and deliver immediately to the LEA in the manner and to the extent directed by the Issuing Office, any partially manufactured or delivered items as the Awarded Vendor has specifically produced or specifically acquired for the performance of the Purchase Order as has been terminated. Except as provided below, payment for any partially manufactured or delivered items accepted by the LEA shall be in an amount agreed upon by the Awarded Vendor and LEA. The LEA may withhold from amounts otherwise due the Awarded Vendor for any partially manufactured or delivered items, such sum as the LEA reasonably determines to be necessary to protect the LEA against loss.

E. The rights and remedies of the AGENCY or LEA provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement or Purchase Order.

F. The AGENCY or LEA's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the AGENCY or LEA of its rights and remedies in regard to the event of default or any succeeding event of default.

G. Following exhaustion of the Awarded Vendor's administrative remedies as set forth in Section VI.18 (Assignability and Subcontracting), the Awarded Vendor's exclusive remedy shall be to seek damages in the Board of Claims or other appropriate adjudicating body in AGENCY's respective state.

VI.15. Force Majeure

Neither party will incur any liability to the other if its performance of any obligation pursuant to the Agreement or Purchase Order is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Awarded Vendor shall notify the AGENCY regarding obligations pursuant to the Agreement or LEA obligations pursuant to the Purchase Order orally within five (5) business days and in writing within ten (10) business days of the date on which the Awarded Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Agreement or Purchase Order is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay, if the nature of the force majeure event does not prevent Awarded Vendor from reasonably making such estimation. The Awarded Vendor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce within ten (10) business days of LEAs written request such supporting documentation as the AGENCY or LEA may reasonably request. After receipt of such notification, the LEA may elect either to cancel the Purchase Order or to extend the time for performance as reasonably necessary to compensate for the Awarded Vendor's delay.

In the event of a declared emergency by competent governmental authorities, the LEA by notice to the Awarded Vendor, may suspend all or a portion of the Purchase Order.

VI.16. Termination of Purchase Order

The LEA has the right to terminate the Purchase Order for the following reason. Termination shall be effective upon written notice to the Awarded Vendor.

- A. **Termination for Cause:** The LEA shall have the right to terminate the Purchase Order for Awarded Vendor default under Section VI.14, Default, upon written notice to the Awarded Vendor. Notwithstanding any termination for cause, the Awarded Vendor shall be paid for work satisfactorily completed prior to the effective date of the termination.

- B. **Non-Appropriation:** In the event that the party purchasing from the Awarded Vendor or a designated reseller is a state agency under Pennsylvania law (e.g. Pennsylvania State System of Higher Education (PASSHE) members), agency obligation to make payments during any agency fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the agency shall have the right to terminate the contract. The Awarded Vendor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.

VI.17. Termination of Contract

AGENCY may at any time, upon seven (7) days prior written notice, terminate the contract with just cause. In case of such termination for AGENCY's convenience, the supplier shall be entitled to receive payment from the participating LEAs for services performed and goods received prior to the date of termination.

VI.18. Assignability and Subcontracting

The Agreement shall be binding upon the parties and their respective successors and assigns.

The Awarded Vendor shall not subcontract with any person or entity to perform all or any part of the work to be performed under the Agreement without notifying the LEA.

The Awarded Vendor may not assign, in whole or in part, the Purchase Order or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the LEA.

Notwithstanding the foregoing, the Awarded Vendor may, without the consent of the LEA, assign its rights to payment to be received pursuant to the Purchase Order, provided that the Awarded Vendor provides written notice of such assignment to the LEA together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Purchase Order.

For the purposes of the Purchase Order, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Awarded Vendor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

Any assignment consented to by PEPPM shall be evidenced by a written assignment agreement executed by the Awarded Vendor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations, and responsibilities being assigned.

A change of name by the Awarded Vendor, following which the Awarded Vendor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Awarded Vendor shall give the AGENCY and any LEAs holding outstanding purchase orders written notice of any such change of name.

VI.19. Nondiscrimination/Sexual Harassment Clause

During the term of the Purchase Order, the Awarded Vendor agrees as follows:

- A. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Purchase Order or any subcontract, the Awarded Vendor, designated partner or any person acting on behalf of the Awarded Vendor or designated partner shall not by reason of gender, race, creed, or color discriminate against any citizen of the state within which the award is made who is qualified and available to perform the work to which the employment relates.
- B. Neither the Awarded Vendor nor any designated partner nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Purchase Order on account of gender, race, creed, or color.
- C. The Awarded Vendor and any designated partners shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

- D. The Awarded Vendor shall not discriminate by reason of gender, race, creed, or color against any designated partner or supplier who is qualified to perform the work to which the contract relates.
- E. The Awarded Vendor and each designated partner shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the AGENCY and LEA and appropriate departments of state government for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Awarded Vendor or any designated partner does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the AGENCY or appropriate departments of state government.
- F. The Awarded Vendor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract that specifically is undertaken to support this Agreement so that such provisions will be binding upon each designated partner.
- G. The LEA may cancel or terminate the Purchase Order and all money due or to become due under the Purchase Order may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the AGENCY may proceed with debarment or suspension of that Awarded Vendor from the PEPPM program.

VI.20. Hazardous Substances

The Awarded Vendor shall provide information to the LEA about the identity and hazards of hazardous substances supplied or used by the Awarded Vendor in the performance of the Purchase Order. The Awarded Vendor must comply with Act 159 of October 5, 1984, known as the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

- A. Labeling. The Awarded Vendor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Awarded Vendor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
 - 1) Hazardous substances:
 - a) The chemical name or common name,
 - b) A hazard warning, and
 - c) The name, address, and telephone number of the manufacturer.
 - 2) Hazardous mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
 - d) A hazard warning, and
 - e) The name, address, and telephone number of the manufacturer.
 - 3) Single chemicals:

- a) The chemical name or the common name,
- b) A hazard warning, if appropriate, and
- c) The name, address, and telephone number of the manufacturer.
- 4) Chemical Mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) A hazard warning, if appropriate,
 - c) The name, address, and telephone number of the manufacturer, and
 - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

B. Material Safety Data Sheet. The Awarded Vendor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The LEA must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Awarded Vendor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Awarded Vendor shall also notify the LEA when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the LEA at the time of shipment.

VI.21. Vendor Integrity Provisions

For purposes of the following sections numbered VI.20 through VI.34 only, the following definitions shall apply:

- 1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal

advantage to another desiring to contract with the AGENCY or LEA.

- 2) **Consent** means written permission signed by a duly authorized officer or employee of the AGENCY or LEA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the AGENCY or LEA shall be deemed to have consented by virtue of execution of this Agreement.
- 3) **Vendor** means Awarded Vendor or Authorized Reseller who may be an individual or entity that has entered into a Purchase Order with an LEA, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
- 4) **Financial interest** means: a) Ownership of more than a five percent interest in any business; or b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- 5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

VI.22. Highest Standards of Integrity

The Vendor shall maintain the highest standards of integrity in the performance of the Purchase Order and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the AGENCY or any LEA.

VI.23. Confidential Information

The Vendor shall not disclose to others any confidential information gained by virtue of the Purchase Order.

VI.24. Pecuniary Benefit

The Vendor shall not, in connection with this or any other agreement with the AGENCY or any LEA directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the AGENCY or any LEA.

VI.25. Giving Gratuities

The Vendor shall not, in connection with this or any other agreement with the AGENCY or LEA, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the AGENCY or any LEA.

VI.26. Accepting Gratuities

Except with the consent of the AGENCY or LEA, neither the Vendor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Agreement except as provided therein.

VI.27. Supplemental Financial Interests

Except with the consent of the AGENCY or LEA, the Vendor shall not have a financial interest in any other Vendor, designated partner, or supplier providing services, labor, or material on this project.

VI.28. Notification of Violations

The Vendor, upon being informed that any violation of these provisions has occurred or may

occur, shall immediately notify the AGENCY or LEA in writing.

VI.29. Certification of Non-Violation

The Vendor, by execution of the Purchase Order and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

VI.30. Cooperation with Authorities

The Vendor, upon the inquiry or request of the appropriate state official of any participating state or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant to the Vendor's integrity or responsibility, as those terms are defined by relevant statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Vendor's business or financial records, documents or files of any type or form which refers to or concerns the Purchase Order. Such information shall be retained by the Vendor for a period of three years beyond the termination of the Purchase Order unless otherwise provided by law.

VI.31. Rights and Remedies in the Event of Violation

For violation of any of the above provisions, the AGENCY or LEA may terminate this and any other agreement with the Vendor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another vendor to complete performance hereunder, and debar and suspend the Vendor from doing business with the AGENCY or LEA. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the AGENCY or LEA may have under law, statute, regulation, or otherwise.

VI.32. Right of Vendor Employee Rejection

Participating LEAs that are school districts, non-public schools, charter or public technology schools reserve the right to reject any person they deem unfit to be permitted on school grounds and in proximity to students. Upon written notice from the participating LEA or AGENCY, the vendor shall have such persons who are performing services pursuant to the contract removed from the site immediately. The participating member's right to declare such person unfit shall not be limited to the required exclusion of such persons from the provisions of federal and state laws legislated as child protective services.

VI.33. Separation of Employer Responsibilities

It is understood that the vendor, in performing services and providing products pursuant to the contract, is acting as an independent contractor and is not an agent, servant, partner nor employee of AGENCY or participating LEAs. The vendor has control over the services and products it delivers under the contract, and shall be solely responsible for its own federal, state and local income taxes, salary, social security payments, and any and all other payments incurred by the vendor in the performance of the contract, as well as adhere to all necessary legal requirements governing employment. None of the benefits provided by AGENCY or participating LEAs to their own employees, including but not limited to retirement benefits, workers' compensation insurance, disability insurance, medical insurance and unemployment insurance, are available from them to the vendor and/or any and all of the vendor's agents, servants and employees. The vendor has no authority under the contract to assume or create any such obligation or responsibility, expressed or implied, on the behalf or in the name of AGENCY or participating LEAs, or to bind AGENCY in any way whatsoever.

VI.34. Epylon Merchant Agreement

Awarded Vendors and Authorized Resellers will be bound to the Epylon Merchant Agreement, which is attached to the electronic bid.

VII. Bid Pricing Specifications

Sections VII.1 through VII.19 provide bid pricing specifications for product lines bid.

VII.1. PEPPM Bid Price Submission Template

For each product line you bid, you must attach a corresponding pricing spreadsheet. Only the PEPPM Bid Price Submission Template in Microsoft Excel format may be used. It may be downloaded once from the bid section indicating which product line(s) are being bid. It may be duplicated as many times as needed for each product line(s) you are bidding.

There are two tabs in the spreadsheet to be completed. One is called the Quote Sheet and contains the PEPPM Bid Quote Sheet, and the other is called Bid Response and contains the PEPPM Bid Price Submission Template, which calculates your final effective bid price for every SKU being offered as part of the bid. A third tab called Instructions contains instructions for completing the other two tabs. Fill out a separate Template for every product line you are bidding. You must fill out the white columns in the Response tab with information including Manufacturer's SKU Number, Bidder's SKU Number, Product Name, Product Description, list price or cost price, and percent discount or markup. The spreadsheet will automatically calculate the effective bid price based on the percent of discount or markup you place in column H of the spreadsheet. Additional directions are included in the Excel workbook.

VII.2. PEPPM Bid Price Submission Template for Evaluation Only

Please note that the price list used in the PEPPM Bid Price Submission Template is for bid comparison purposes only. PEPPM will NOT post your markup over cost or discount amounts from this Template. Therefore Awarded Vendors will need to submit a post-award price list using the PEPPM Price List Template containing only final PEPPM prices for website posting.

VII.3. Method Used to Determine Bid Pricing

This bid is seeking specifically PEPPM educationally discounted prices for the entire list of offered products. AGENCY is asking Bidders to place bids as a specified markup percent over the applicable cost or as a discount percent off of a specified published list price (i.e. Manufacturer MSRP, National Educational, Web, Catalog, Retail, etc). The AGENCY and its CPA firm will need access to the cost (if markup is used) or list price (if discount is use) data to ensure bid compliance during the contract period.

VII.4. Identifying List Price or Cost Data

If bidding Discount from List, the name of the published catalog or price list and its effective date used for determining PEPPM bid pricing in the Response tab must be **CLEARLY IDENTIFIED** on the Quote Sheet tab in the PEPPM Bid Price Submission Template. PEPPM, its CPA firm and buyers will use the designated price list as a basis for verifying the published PEPPM pricing meets the bid discount(s) for the bid evaluation and throughout the term of the contract. For example, a copy of a designated price list for each item posted April 20th of a contract year requested in August must be made available upon request.

If bidding Markup over Cost, the Response tab in the PEPPM Bid Price Submission Template must contain the vendor cost for each item listed. In addition, a report of cost for each item posted during the term of the contract must be available upon request from PEPPM during the term of the contract so that correct bid pricing under the contract can be verified. e.g. A report

of cost for each item posted April 20th of a contract year requested in August must be made available upon request.

VII.5. Expressing the Percent of Discount or Markup

In column H on the Bid Response tab of the bid template, you must take care to correctly enter the percent of discount or markup in the proper form because the way you enter your discount affects the final effective calculated bid price.

If bidding Discount from List, the percent should be entered as a NEGATIVE number, because you are subtracting a percentage from your list price.

If bidding Markup over Cost, you should enter the percent as a POSITIVE number because you are adding a percentage to your costs.

If the percent of discount or markup is zero, enter “0” in the cell in column H.

VII.6. Importance of Final Effective Price

It is the Bidder’s responsibility to look at the final effective prices in column I of the Response tab spreadsheet to see that they are calculated correctly. These are your official bid prices. If they are not correct, then the percent you entered is incorrect, because the spreadsheet automatically calculates the correct effective prices based on your entries.

Prices in column I will be a basis for evaluation for bid awards.

Any inconsistencies in expressing your percent of discount or markup may result in your bid being non-responsive or subject to a reduction in score.

VII.7. Importance of Manufacturer’s SKUs

It is important that you provide the correct manufacturer's SKU number without modification for each product you submit as part of the bid. The first phase of the evaluation process uses manufacturer SKU number, after stripping away hyphens, spaces and leading zeros, to compare pricing between competing companies.

Any Bidder created identifiers that changes a manufacturer’s SKU must be removed prior to submission. Bidders must make their best efforts to match their “Manufacturer SKUs” to the manufacturer’s published SKUs including and/or excluding identifier characters for such things as government or education pricing, country of use, color, or other manufacturer product identifiers. Bidder should note that these requirements are for their PEPPM Bid Price Submission Templates submitted at the time of the bid.

Once an award is made for a product line, the Awarded Vendor will use a different Pricelist Submission Template and these conditions for Manufacturer SKUs will not apply.

Irregularities in listing the manufacturer’s SKU numbers in a Bidder’s bid proposal may result in a bid determined as non-responsive or in a reduction of your overall bid evaluation score.

VII.8. Extent of Products Offered

Products and prices listed will be used to establish both the extent of a manufacturer’s line available from a particular Bidder and the educational bid pricing per item. Although it is not

necessary to list all of the products available from a bid product line, the bid evaluation will be affected by the number of items available from a particular Bidder over another.

Bidders must use their best judgment on which and how many items to list for a particular bid product line. When determining which products to submit, it is advised to provide more, not less and target education over other channel specific items.

Bidders of more than one product line must put the price list files of each product line bid on a separate template and upload it as an attachment to the corresponding product line being bid.

VII.9. Sort Order and Clear Delineation

Price lists must be clearly defined and sorted by Manufacturer and the Manufacturer SKU Number in ascending order. If price list is divided into standard subgroups, each subgroup must be well defined, easily identified and be sorted by Manufacturer SKU Number in ascending order within the subgroup.

VII.10. Inclusive Pricing

All prices quoted must be FOB Destination, with freight prepaid and included in the unit price. AGENCY and LEAs will not consider any proposal with escalator clauses, unbalanced or irregular features, or other provisions not in accordance with the specifications or bid sheets.

VII.11. Variable Discounts or Markups Within a Product Line

This bid allows you to define categories within a product line, which have varying degrees of discounts or markups. For example, the product line XYZ, may have a 10 percent discount for computers and a 30 percent discount for printers.

Categories must be clearly defined and fit a logical range of similar products.

Variable discount percents will be allowed at the category level only.

Note:

Varying discounts per SKU will not be allowed.

When developing categories for variable discount or markup levels, a Bidder must make sure that he/she takes into consideration potential new products that the company may want to add throughout the term of the Agreement. New products must clearly fit into one of the established pricing categories at the discount or markup identified for that category or they cannot be added.

If categories for variable discount or markup levels are submitted, the list of categories with associated bid discount or markup **must be listed in the lined section of the Quote Sheet tab** on the PEPPM Bid Submission Template. If there are not enough spaces to list the different discounts or markups for each product line, you must attach a separate Excel bid template with the product line you are bidding. The PEPPM Bid Submission Template must be attached to the corresponding product line being bid.

VII.12. New Product Pricing

The bid pricing structure submitted must also apply to any new products announced and made available through PEPPM during the contract period. New products and associated supplies added must be priced according to the bid discount or markup pricing structure submitted with bid. Pricing for new products offered at lower discounts or higher markups than was originally bid will not be permitted on PEPPM posted price lists or carry PEPPM bid protection. Bidders using variable discounts or markups across defined categories should be aware that if a new product does not fit into one of their bid defined categories with a same or greater discount/same or lower markup, it will not be allowed as a bid protected product under their contract.

New products announced by the manufacturer that cannot be posted at or below the Awarded Vendor's bid price structure or that do not fit any of the bid defined categories may be added to the awarded product line by the Awarded Vendor if approved by the AGENCY. Awarded Vendors are required to submit a request to add such product in writing explaining the circumstances that do not allow these products to be posted according to the bid price structure.

Requests can only be made in the second and subsequent years of an award. No adjustments will be considered during the first year of an award. The AGENCY will only consider requests that involve products specifically used by K-14 schools and agencies and have qualities that warrant an exception to their submitted bid price structure. Requests for adding one or more new products from the awarded product line that do NOT fit the bid price structure must be submitted thirty-days (30) prior to the annual renewal date (January 1 of each contract year). Justification for any adjustment shall be in writing and be accompanied by appropriate documentation. The AGENCY reserves the right to reject any and all requests for additional products to an Awarded Vendor's product list and corresponding price structure. The new product additions shall apply to the contract only upon approval and notification from the AGENCY.

VII.13. Pricing for Bundles

Bidders may submit price lists that provide for bundles that may include the bid items and **third-party** monitors, printers, etc., as long as all items in the bundle are ordered from and invoiced by the Bidder according to a single purchase order in which the third-party products are ordered on a one-for-one basis with the bid awarded item. Third-party items may be priced separately for comparison and as an add-on option for a basic bundle.

The third-party items cannot be offered individually and purchased separately (not on a one-for-one basis) from the vendor with PEPPM bid protection. (e.g. One or more ABC brand monitor(s) cannot be purchased as individual items (not bundled with XYZ computers) by a Buyer from a vendor awarded the bid for XYZ computer equipment).

If orders are received by PEPPM containing third-party products from a vendor that is not the Awarded Vendor or a designated reseller of the products, the Buyer will be notified that the purchase of the items will not be PEPPM bid protected.

Note:

The question of prices on third-party items is a critical one to the integrity of PEPPM. Any items from a Bidder, on either the main product line being proposed, or a third-party item bundled or separately priced, must be offered at the pricing structure of the main product line under consideration, or better. For example, a Bidder bidding XYZ Computers at a markup of five percent (5%) must offer every item on its price list (XYZ and third-party items) at a markup of five percent (or less).

Bid awarded items bundled with third-party items must represent a greater value than the third-party items themselves. e.g. A bid awarded network interface card CANNOT be bundled with third-party computers to create a complete computer bundle. Software Bidders are not permitted to bundle hardware with a software offering without permission from PEPPM.

VII.14. Unacceptable Pricing Method

Use of the MARGIN pricing method IS NOT acceptable. All pricing submitted must be based either on a discount from list or a markup over cost basis.

VII.15. Allowances for Freight

If bidding markup over cost, the allowance for freight is to be built into either the cost of the product or the markup percent.

If bidding discount from list, the allowance for freight is to be built into the list price of the product or the discount percent.

Freight charges should NEVER be identified separately. Bidders must reflect a shipping allowance into the cost, markup, list or discount as noted above. This means that in all cases the markup percent times the cost should equal the markup amount and the discount percent times the list price should equal the discount amount. Adding the markup amount to cost or subtracting the discount amount from list should equal the final PEPPM price.

VII.16. Minimum Order for Free Shipping

The minimum order qualifying for F.O.B. delivered price via Awarded Vendor's standard shipping method shall be \$500.00 to the same shipping address. Orders for less than this

amount to the same address may be accepted by the Awarded Vendor to ship prepaid with actual shipping charges added to invoice as a separate item. Shipping prices added must be actual documented costs of shipping. Awarded Vendor may charge for expedited, other special shipping circumstances or methods, if requested by the LEA. Shipping from or to the continental United States to or from Hawaii, Alaska or Puerto Rico may also be considered as special shipping. Buyer must be notified on quotes if and when a shipping charge will be applied to their cost of purchase.

VII.17. Large Volume Purchase and Voluntary Price Reductions

In lieu of a separate competitive bidding procedure such as a traditional invitation to bid or RFP, the AGENCY reserves the right for LEAs to request Awarded Vendor voluntary price reductions from PEPPM contract pricing. In the event the voluntary volume price reduction procedure is selected by the LEA, the LEA reserves the right to contact PEPPM Awarded Vendors to determine if a voluntary or volume price reduction would be available based upon the specific quantities and configurations required. The LEA shall obtain a written quotation from the PEPPM Awarded Vendor or a designated reseller indicating the volume or voluntary discount pricing and stating that it is an “As per PEPPM YYYY” bid price quote. (YYYY represents the contract year the quote is issued.)

AGENCY reserves the right to research, conduct and execute electronic reverse auctions and/or requests for quotes or proposals for aggregated numbers of specific products under the Agreement with interested and/or selected PEPPM Awarded Vendors in conformance with appropriate statutes.

In the event, one vendor is the sole Bidder on a particular product line, AGENCY and LEA reserve the right to seek a higher discount or lower markup before or after an award is made.

Bidders are urged to stipulate any additional predetermined discounts according to Bidder-designated criteria on product/price lists in such a way that LEAs can easily identify any additional discounts when they are available.

VII.18. Price Adjustments

Awarded Vendors must agree to appropriately adjust prices to correspond with manufacturer changes during the contract period should a change from the manufacturer occur in a specific product line. (Awarded Vendors must supply proof of such pass-through price changes upon request.) Such price changes, along with any new product and/or promotion announcements, will be considered an ongoing part of the contract. However, the quoted percent mark-up over cost or discount off of list must remain the same as originally quoted as part of the bid submission.

Note:

Awarded Vendor not only must comply with the pricing method originally submitted with their bid but also must make sure that posted PEPPM pricing is market competitive. If at any time throughout the term of the contract the AGENCY determines that the pricing posted on PEPPM provided by the Awarded Vendor is not compliant with the bid price structure or is found not competitive with general street pricing, the product line award may be terminated if not corrected.

All product and price updates must be posted for LEAs by the AGENCY through the PEPPM or Epylon systems, unless special arrangements for an Awarded Vendor to maintain a custom PEPPM website have been made. Other than specific PEPPM quotations made in response to AGENCY or LEA requests, the PEPPM website (www.peppm.org) and the Epylon eCommerce website (www.epylon.com) must be the official Awarded Vendor and PEPPM bid product/price sources used for all PEPPM bid protected LEA purchases.

Awarded Vendor or manufacturer pages/price lists are not acceptable alternatives, unless the Awarded Vendor has specific written authority from AGENCY to establish Retriever/Punchout relationships with Epylon's eCommerce system or a PEPPM-specific web page environment.

Specific quotations to LEAs may be provided according to Section VII.17 (Large Volume Purchase Voluntary Price Reductions) of the PEPPM 2012 Supplemental I Product Line Bid Terms and Conditions. All quotes for PEPPM purchases should have "As per PEPPM YYYY" (YYYY represents the contract year the quote is issued) notification to assure that the Awarded Vendor is knowingly pricing at or below the PEPPM bid price structure and in accordance with PEPPM bid Terms and Conditions.

VII.19. Most Favored Nations Clause

Bidder represents that it will use reasonable commercial efforts to ensure that the prices quoted or charged to any LEA under this Agreement do not and will not exceed final prices offered outside this contract to the LEA or other eligible LEAs under this Agreement in each respective state in which LEA is located for the same or substantially similar items or services for comparable quantities under similar terms and conditions.

If upon discovery during the term of the contract, the AGENCY verifies that the Awarded Vendor or its designated resellers are offering PEPPM eligible LEAs lower prices outside this contract, the AGENCY reserves the right to terminate this contract.

VIII. Bid Procedures and Directions

Sections VIII.1 through VIII.16 provide directions necessary for submitting a complete, responsive bid.

VIII.1. Bidder Responsibility to Review

Prospective Bidders are bound, not only by the general Terms and Conditions of this bid, but also the directions, specifications, references, and attachments included on the bid form. It is the responsibility of all Bidders to examine the entire bid package, to seek clarification of any item or requirement that may not be clear, and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after due time and date.

VIII.2. Questions and Clarifications

Technical questions on how to fill out the electronic bid form, upload or download attachments, or maintain your Epylon account can be directed to the Epylon customer service line at (888) 211-7438 or can be e-mailed to customerservice@epylon.com.

All questions about the Request for Bids may be submitted in writing to PEPPM Bid Questions, CSIU, 90 Lawton Lane, Milton, PA 17847, by fax to PEPPM Bid Questions (fax number - (570) 522-0577) or by e-mail to bidquestions@peppm.org. All questions and responses will be available on the PEPPM website (www.peppm.org) as Frequently Asked Questions (FAQs). Questions received less than seven (7) days prior to bid due date may not be answered.

It is the Bidder's responsibility to check the FAQs list on www.peppm.org before submitting their bid to learn of any clarifications or interpretations related to the bid requirements or procedures that may be addressed.

VIII.3. Ability to Follow Directions

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

VIII.4. Receipt and Opening of Bids

Electronically sealed proposals for the furnishing, delivering, and installing, where called for, of the services, materials, implements and supplies, as required by the AGENCY for the PEPPM 2012 Supplemental I Product Line Bid, are due at 3:00 p.m. Eastern Time on Friday, March 9, 2012. Bids will be electronically unsealed at 10:00 a.m. Eastern Time on Monday, March 12, 2012. Opening will consist of PEPPM staff, in a public setting, clicking on the submitted bids.

Any requested paper-based, ancillary materials, documents with original signatures or fees due for any and all bid(s) for product line(s) must be submitted in a sealed package and submitted to:

Ms. Cheryl Robol
Central Susquehanna Intermediate Unit
90 Lawton Lane
Milton, PA 17847-9756
ATTN: PEPPM 2012 Supplemental I Product Line Bid

by 3:00 p.m. Eastern Time on Friday, March 9, 2012.

When bidding multiple product lines, documents for each bid proposal for a product line shall be self-contained in an envelope, notebook or other container and submitted in one or more packages. The product line container shall be endorsed on the face with the name of the firm or corporation making such proposal and the title of the product line(s) for which the proposal(s) is/are being made.

Bids shall be opened at the time and place as designated. The name of each Bidder shall be publicly read and recorded in the presence of witnesses.

The AGENCY reserves the right to reject any or all bids not prepared in accordance with these or the following instructions or to waive any such informalities.

VIII.5. Bidder Withdrawal of Bid Proposal

A bid must be complete and final prior to a Bidder clicking the Submit button and sending it to the AGENCY. In the event a Bidder wishes to withdraw a bid, a Bidder can open their

submitted electronic bid, scroll to the bottom of the page and click the Retract Response Button prior to the bid opening date.

Note:

This procedure should be used if a submitted bid needs to be changed or retracted.

After the bid has been opened, it may not be withdrawn, and the Bidder must supply awarded products at the bid price and in accordance with the Terms and Conditions.

VIII.6. Prudence and Forethought in Submission

Although the deadline for bids is 3:00 p.m. Eastern Time on Friday, March 9, 2012, it is in the best interests of Bidders to submit their bids well enough in advance to avoid any hindrances out of the control of the Bidder, Epsilon or AGENCY. Such hindrances could include delayed mail, delayed delivery trucks, extremely heavy Internet traffic, phone line disruption, busy circuits, unexpected computer outages or weather-related obstacles. AGENCY assumes no responsibility for hindrances out of its control and admonishes Bidders to submit early to avoid any possibility their bids may be late.

VIII.7. Time for Receiving Bids

Electronic bids received prior to the time of opening will be electronically sealed and securely kept unopened. No responsibility will be attached to the AGENCY or its representatives for the premature opening of any paper-based ancillary materials or fees not properly addressed and identified as related to the bid.

VIII.8. Late Bids

Late bids for product lines where other responsive bids have been received shall not be considered. Any paper documents and/or checks will be returned, upon request. If not returned, late bids will be destroyed after thirty-days (30).

VIII.9. Errors in Bids

Bidders, and their authorized representatives, are expected to fully inform themselves as to the conditions, requirements, and specifications for submitting bids. The bidding system helps ensure one last thorough examination of the bid by requiring Bidders to review their bids one final time before clicking the Submit button. Bidders are advised to print/save a copy of all bid Terms and Conditions as well as all bid information submitted as part of the bid.

VIII.10. Public Record

All bids submitted to this PEPPM invitation shall become the property of the AGENCY and will become a matter of public record, available for review, subsequent to the award notification. Bids may be viewed at the AGENCY by appointment.

VIII.11. Protests

Protests shall be filed with the AGENCY, and shall be resolved, in accordance with appropriate state statutes. A protest must be in writing and must be filed with the AGENCY. A protest of solicitation must be received at the AGENCY before the solicitation opening date. A protest of a proposed award or of an award must be filed within ten days after the protester knows or should have known the basis of the protest.

A protest must include:

1. The name, address and telephone number of the protestor;
2. The original signature of the protestor or its representative;
3. Identification of the solicitation;

4. A detailed statement of the legal and factual grounds of protest, including copies of any relevant documents; and the form of relief requested.

VIII.12. Bid Effective Period

AGENCY requires that a bid response to this solicitation be valid and irrevocable for one-hundred twenty (120) days after opening time and date. Bidder warrants that the bid price structure quoted in their response will be firm for acceptance for a period of not less than one hundred twenty (120) days from the bid opening date.

VIII.13. Exceptions to Terms and Conditions

Any Bidder's exception to the Terms and Conditions may disqualify the bid from consideration at the sole discretion of the AGENCY. Compliance with Terms and Conditions is an important factor in the bid evaluation. Conformance to the Terms and Conditions in the solicitation is worth ten points in the bid evaluation process.

Any exception from requirements indicated herein must be stated, in writing, and included with the electronic bid submittal by either entering those exceptions in the Question Section in response to Question 62 of the bid response or by attaching a file containing those exceptions in response to Question 62. Otherwise, it will be considered that bids are in strict compliance with all requirements, and any successful Bidder will be held responsible therefore.

Exceptions stipulated in Bidder's response may result in the bid being classified as non-responsive. Language to the effect that the bidder does not consider this bid to be part of a contractual obligation will result in that Bidder's bid being disqualified. Terms of the RFB that any Bidder considers particularly unwarranted, and to which that Bidder would have to take significant exception in his bid, should be stated clearly and concisely as exceptions and/or deviations.

VIII.14. Clarity in Response

Responses should be direct, concise, complete, and unambiguous.

VIII.15. Payment of Bid Fees

The CSIU as the coordinating AGENCY for the PEPPM Bid requires a non-refundable payment in the amount of \$100 from each Bidder FOR EACH PRODUCT LINE BEING BID to cover the cost of reviewing bids and initial processing of the bid award. One payment of \$100 per product line covers your submission to one or more states for each product line bid.

To pay this fee by credit card, answer the appropriate questions in the Question Section. Your credit card will be debited \$100 for each product line you check-mark as being bid

To pay this fee by check, multiply the number of product lines being bid times \$100 and make the check out for that amount payable to CSIU/PEPPM. Include check in a sealed envelope with any other required paper-based bid materials for any product line(s) being bid. The amount of the check should cover the Bid Fee only. Prospective Award Fees must be on a separate check.

The check(s) must be received prior to the bid due date. Mail each check with paper-based bid documents according to directions provided in Section VIII.4.

If any credit card is declined or any check not honored by the bank, PEPPM reserves the right

to disqualify a bid or to take such action necessary to collect all fees due as a result of the submission of the bid and any subsequent awards.

VIII.16. Payment of Award Fees

For every product line you or your company is awarded, a \$200 award fee is charged to cover the cost of setting up your account, and loading your pricing into the system. This fee may be paid by credit card, and your card will only be charged if you are a successful Bidder and \$200 per product line awarded.

To use a credit card for the payment of these fees, answer the appropriate questions in the Question Section. If you cannot use a credit card, you may send an individual \$200 check per product line being bid made out to CSIU/PEPPM in a sealed envelope with any other required paper-based bid materials for each product line being bid.

If you are not the winning Bidder for every product line you bid, the award fee check for each unsuccessful bid will be returned to you.

The amount of the check you send PEPPM should cover the Award Fee only. The Bid Fee must be on a separate check. Each Award Fee for each product line bid must be a separate check.

The check(s) must be received prior to the bid due date. Mail each check with paper-based bid documents according to directions provided in Section VIII.4.

IX. Bid Evaluation and Award Process

Sections IX.1 through IX.7 relate to the evaluation procedures of the bid and determination of awards.

IX.1. Award or Rejection of Bids.

PEPPM contracts will be awarded to the lowest responsive and responsible Bidders complying with all provisions and limitations, providing the bid prices are reasonable and it is to the interest of the AGENCY and its eligible buyers to accept them (as determined by the results of the scoring process identified in Section IX.4 below). The AGENCY reserves the right to accept or reject any or all bids. It reserves the right to reject the bid of a Bidder who has previously failed to perform properly or to complete contracts of a similar nature on time, or the bid of a Bidder where investigation shows it is not in a position to acceptably perform the contract.

Contracts resulting from this RFB are formed only after the AGENCY Board of Directors approves and the authorized Agency representative signs the applicable AGENCY and Awarded Vendor Agreement document.

IX.2. Bid Negotiations

Where there is not competition that would result in a better contract, negotiation may be conducted until a detailed and competitive agreement is reached.

IX.3. Qualification for Evaluation

In accordance with accepted standards of competitive sealed bid awards as set forth in the Procurement Code of the state of the AGENCY, competitive sealed bid awards will be made to the lowest responsive and responsible Bidder.

To qualify for evaluation, a bid must have been submitted on time, and materially satisfy all mandatory requirements identified in this document. All bids must contain answers or

responses to the information requested in the bid forms. Any Bidder failing to provide the required documentation may be considered non-responsive. To be considered a Responsive Bid, it must reasonably and substantially conform to all the Terms and Conditions in the solicitation. Deviations or exceptions stipulated in Bidder response, while possibly necessary in the view of the Bidder, may result in disqualification. Language to the effect that the Bidder does not consider this solicitation to be part of a contractual obligation will result in that Bidder's bid being disqualified.

An essential part of the bid evaluation process is an evaluation to qualify the Bidder being considered as responsible. Bidders will be deemed responsible through a review and evaluation of the submitted bid materials and research performed by PEPPM and AGENCY representatives.

IX.4. Scoring Basis

The award of all bids will be based on the lowest responsive bid from competing Bidders deemed responsible and most capable of serving the LEAs determined through review and evaluation of the submitted bid materials and research performed by PEPPM and AGENCY representatives concerning Bidder capability.

The evaluation criteria and points for this solicitation are as follows:

- 1) Acceptance of Terms and Conditions in the solicitation – 10 points
- 2) Submission of required payments, information and forms (bid completeness) – 10 points
- 3) Bidder supply source – 5 points
- 4) Bidder service capabilities and pricing – 10 points
- 5) Bid prices – 90 points
- 6) Bidder's qualifications – 5 points
- 7) Past performance – 10 points
- 8) Marketing plan – 5 points
- 9) HUBs – 5 points

(Total points possible – 150)

Bidders should note that price represents 60% of their final score.

IX.5. Past Performance Information (PPI)

PPI is relevant information regarding a Bidder's actions under previously awarded contracts with schools, local, state, or federal agencies. It includes the Bidder's record of conforming to specifications and to standards of good workmanship; the Bidder's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the Bidder's businesslike concern for the interests of the customer. Vendor's score on these items will be affected by buyer reports of poor performance reported to PEPPM during past contracts held.

Particular attention will be given to responsiveness to bid terms and conditions from previous contracts such as submission of price list updates, vendor contact and ordering instructions, citations from PEPPM's price review process and unpaid PEPPM invoices covering the past three years.

In addition and where no past performance information is available, the reports of references will be used to gauge past performance and responsibility of the bidder.

IX.6. Timeline for Awards

It is the intent that awards will be made in a timely fashion to become effective January 1, 2012.

IX.7. Multiple Awards

The AGENCY may opt to make more than one award on a product line if it determines that it is advantageous to and best serves the interests of the LEAs, taking into consideration the evaluation factors as set forth above.

X. Post Award Requirements

Sections X.1 through X.15 relate to requirements of both parties after award decisions are made and through the duration of the contract term.

X.1. Requests for Documents; Audit Provisions

Awarded Vendors shall cooperate with AGENCY's or its designated agent's reasonable requests for information and documentation relating to Purchase Orders under these Terms and Conditions.

The Awarded Vendor agrees to maintain records throughout the term of the contract which will support the prices charged and costs incurred for the Purchase Order in accordance with the bid price structure and provide those records to PEPPM or its representatives upon reasonable request.

Note:

If a Bidder utilized the "Discount from List" price method, the Bidder is responsible for maintaining records of the monthly List Price utilized in calculation of the PEPPM discounted pricing that was provided to PEPPM for posting. If a Bidder utilized the "Markup over Cost" price method, the Bidder is responsible for maintaining records of the monthly cost data utilized in the calculation of their PEPPM pricing that was provided to PEPPM for posting.

The Awarded Vendor shall preserve books, documents, and records that relate to price data for the Purchase Order for a period of three (3) years from date of final payment. Awarded Vendor will cooperate in good faith with reasonable requests for copies of PEPPM related purchase orders and/or invoices, resulting contract documents, delivery/purchase orders, invoices or correspondence directly relating to any resulting agreement.

X.2. Non-Performance

The Awarded Vendor agrees that its presence on PEPPM is not a guarantee of any sales to LEAs and agrees to market its products to LEAs to generate sales. The Awarded Vendor is expected to achieve a minimum of \$5,000 of PEPPM sales per quarter for each awarded product line. Failure to achieve that level may result in the termination of the Awarded Vendor's contract for that product line at the end of any three-month period.

Failure to comply with any requirements of the contract by the Awarded Vendor, which cannot be rectified within 30 days of written notification by PEPPM, may result in the termination of the Awarded Vendor's contract for the awarded product line (s) and removal from the PEPPM program.

X.3. Leasing Information

Awarded Vendors may allow LEAs to enter into rental, lease, or lease purchase agreements,

providing such agreements are in compliance with AGENCY's state statutes and State Department of Education policies, rules and regulations. Bidder agrees that leases will be in compliance with the Uniform Commercial Code.

AGENCY will not collect lease payments or be involved in the terms and conditions of the lease.

Bidder must indicate in its terms and conditions if the shipping costs for the return of leased or rented equipment are the responsibility of the LEA, and what that cost will be. No sale of a contract to a third party will be made without first informing AGENCY and the LEA of the sale. If Bidder sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original vendor.

Awarded Vendors providing lease or rental opportunities must submit a file detailing lease arrangements available to LEAs. PEPPM will post the information on the PEPPM website. (Awarded Vendor shall be required to provide such information electronically such as Microsoft Word or Adobe PDF document.) If the Awarded Vendor makes changes to their terms and conditions during the term of the contract, the new document must be filed with PEPPM for archiving and posting.

Lease or rental proposals to LEAs under the PEPPM contract must clearly demonstrate that the base price of the equipment and services in the lease or rental proposal was derived using the PEPPM bid discounted pricing or better. The LEA shall submit a copy of all leasing documents, any associated PEPPM quotes and any other Awarded Vendor required document(s) with a Purchase Order or letter of intent to lease provided on school or agency letterhead and signed.

Awarded Vendor may utilize a state procurement agency approved lease agreement terms and conditions or may substitute its own leasing terms and conditions with the approval of the buyer.

Financing Arrangements:

Any financing arrangements (including lease purchasing arrangements) will be made directly between the Awarded Vendor and a LEA. Financing arrangements may be subject to additional laws, rules and regulations, terms and conditions not described in this document and are subject to separate negotiation with each LEA that is interested in such an arrangement. Each LEA should seek its own legal advice prior to entering into a financing arrangement. All lease arrangements are between the Awarded Vendor and the LEA only.

X.4. Employee Purchase Plans

In preparing responses, Bidders should understand that after a notice of award, each winning Bidder will be requested to submit a file describing their employee purchase program (if one exists) specifying procedures to be followed and persons to contact for interested employees. PEPPM will post information for such programs on its website. (Awarded Vendor will be required to provide that information electronically in a Microsoft Word or Adobe PDF document).

X.5. Vendor Contacts and Ordering Instructions

Bidders should understand that FOLLOWING the award of bids, all Awarded Vendors must provide specific “Vendor Contacts and Ordering Instructions” which contain information that describes the ordering procedures participating LEAs must follow when submitting purchase orders. That information must contain the ordering address(es), contact person(s), phone number, fax number, e-mail address, etc., return policy, PEPPM’s fax number for receipt of purchase orders and the link to www.epylon.com for eCommerce ordering. The contact information must be provided for Awarded Vendors and/or any Authorized Resellers. . This information needs to be submitted in electronic format (Microsoft Word for Windows or Mac) utilizing the prescribed Vendor Contacts and Ordering Instruction Template by all Awarded Vendors for each product line awarded in each state.

In addition to your unique instructions, ordering instructions to the LEAs must also contain the following language: "All purchase orders must be faxed to (800) 636-3779 or submitted through www.epylon.com to guarantee bid protection."

A template will be provided to assist Awarded Vendors in preparing the Order Instructions document.

Post award, your Vendor Contacts and Ordering Instructions document must be provided in Microsoft Word format using the required Ordering Instruction Template form and must be e-mailed to peppmdocuments@peppm.org. These documents must be completed and submitted to above email address in order for your account to be activated and post pricing and ordering instructions to allow for the receipt of orders. This file must be clearly identified/labeled by including the title, “Vendor Contacts and Ordering Instructions,” Awarded Vendor name, product line bid, and date.

X.6. Submitting Price Lists

In preparing responses, Bidders should understand that following the award of bids, all Awarded Vendors will be required to submit current electronic price lists (for posting) utilizing the PEPPM Price List Template and the Vendor Contacts and Ordering Instruction Template for publication in order to activate your account and to allow for receipt of orders.. The AGENCY will publish these price lists for LEA access via the PEPPM website and the Epylon eCommerce system.

In submitting data, Awarded Vendors must populate cells with the data listed below. Much of the information submitted will constitute the line item entries that buyers will see when they view pricing on either www.peppm.org or www.epylon.com. Awarded Vendors should pay special attention to the way their data reads to ensure best marketing and positioning to buyers. Buyers will not be able to search for items if product names and descriptive terms are abbreviated. The fields required to be populated may change from time to time as determined by the AGENCY and/or its contractors. Currently, the required fields are:

- Sort Number
- Price Method
- Vendor Stock Keeping Unit (SKU)
- Product Name
- Product Description

- Current Price Per Unit of Measure
- Unit of Measure (UOM)
- Manufacturer Name
- Manufacturer Stock Keeping Unit (SKU)
- Awarded Vendor
- Product UNSPSC Commodity Code

Awarded Vendors are reminded to include any associated services and their prices in their price list data as SKUs. All quotes provided by an Awarded Vendor under their PEPPM contract must reflect the posted or better pricing.

Awarded Vendors submitting bundles (Manufacturer system variations) must submit each bundle as a separate tab of the Excel Price List Template.

X.7. Updates Must Be Provided

Awarded Vendors must submit updates (via electronic file transfer) on a **timely** basis (no longer than a five week period) or provide **timely** confirmation (no longer than a five week period) of current prices via electronic mail to designated PEPPM staff. Product/price lists not updated or confirmed may be removed from PEPPM Online and Epylon; therefore, that product line will not be available for LEAs purchasing consideration or PEPPM bid protection. Pricing can change throughout the term of the contract so long as the prices are within the bid structure that was originally submitted on the quote sheet.

Note:

- Ordering Instructions: need to be submitted on the required Template in Microsoft Word format (all in one file)
- Price Lists: need to be submitted on the required Excel Price List Template.
- All submitted files must be named in the following manner:
company name, product line and date (MMDDYY) e.g. ePlus_Cisco_042112.xls

X.8. Specials and Promotions

In preparing responses, Bidders should understand that Awarded Vendors may submit specials & promotions files for PEPPM Online posting:

- Start and stop date of Promotion must be included within the promotion itself
- Format needs to be either Microsoft Word or Adobe PDF
- Information should be submitted as one file per product line

X.9. Advertising

Pre-Award Advertising - Bidder shall not advertise or publish information concerning this contract prior to the award being announced by the AGENCY. Once the award is made, the Awarded Vendor may advertise to the LEAs that products/services are available under a PEPPM contract. Awarded Vendor shall submit all ad copy to the AGENCY for review and approval prior to issuing the advertisement.

Post-Award Advertising - AGENCY requires that a marketing flier, brochure, web page or other similar marketing vehicle be developed and distributed by each Awarded Vendor promoting the available PEPPM contract during the contract term. This requirement should be part of the Bidder's Marketing Plan as described in Section X.10.

AGENCY may assist in the development of the marketing flier and material (if requested by vendor), but in all cases shall have authority to review and approve any marketing materials containing references to the PEPPM program or its awarded contracts. If a web page is used, the link to it will be made available from the PEPPM website.

Banner Advertising - In preparing responses, Bidders should understand that Awarded Vendors may submit banner advertising to be posted on the PEPPM website. Such submissions need to adhere to the following requirements:

- File size not to exceed 12Kb per image
- Image size not to exceed 450 pixels x 70 pixels
- Maximum of five banner images per product line
- Exact specification will be worked out on an individual basis

X.10. Marketing Plan

AGENCY requires that all Awarded Vendors develop a marketing program to include printed materials, web-based information, e-mails, telemarketing and other methods approved by the AGENCY. All promotional marketing materials must have the prior approval by AGENCY before distribution or posting and must include the PEPPM logo and other contract information. PEPPM staff will work with all vendors and their representatives to jointly market the PEPPM contracts.

A report of all marketing activity involving PEPPM specific information shall be submitted on an annual basis. Failure to submit a report may result in suspension or termination of some or all PEPPM contracts held by the Awarded Vendor.

Vendors may be requested to do joint presentations and/or exhibits with PEPPM staff to promote their products and services available through PEPPM contracts. Some group presentations may be done in conjunction with other vendors. Display exhibits at various statewide conferences are encouraged.

X.11. Catalog Function

Awarded Vendors have the option of using a cXML punch-out solution, whereby buyers log on to Epylon and are sent to the Awarded Vendor's own proprietary website, with Epylon's shopping cart functionality ("Retriever/PunchOut").

The Awarded Vendor choosing Retriever/PunchOut must be able to configure its own proprietary website to Epylon Retriever/PunchOut, according to Epylon's format and specifications, as contained in Epylon Retriever cXML specification document. These specifications may be obtained from Epylon upon the signing Epylon's standard Non-Disclosure Agreement.

X.12. Audit and Inspection Rights

The AGENCY and its CPA firm will need access to cost/list price data to ensure bid compliance during the contract period. The AGENCY reserves the right to audit the Awarded Vendor for compliance with the published/quoted bid data. Awarded Vendors will be required to routinely submit data for bid compliance upon request.

X.13. Participation in Training and Responding to eQuotes

Vendors who receive an award for one or more product lines and/or designated resellers will be expected to have representative staff participate in either an in-person or online training session on how to use Epylon's Public View software. Awarded Vendors and/or designated resellers are expected to respond in a timely manner to eQuote requests submitted to them through Public View.

X.14. News Release by Vendors

As a matter of policy, PEPPM does not endorse the products or services of an Awarded Vendor. News releases concerning any resultant contract from this solicitation should not be made by an Awarded Vendor without the prior approval of PEPPM. All proposed news releases should be routed to PEPPM for review and approval.

X.15. Sales Force Training

Awarded Vendor is responsible for the training of its sales force on the use of its PEPPM contract(s) in making sales under PEPPM's bid protection provisions. PEPPM staff may be available depending on scheduling to assist in training regional or district managers and/or sales personnel.

XI. Other Terms and Conditions

Sections XI.1 through XI.17 relate to miscellaneous legal provisions that are part of the bid and resulting Agreement.

XI.1. Ecommerce Partner Contract Termination

In the unlikely event that the contract between AGENCY and its ecommerce partner, Epylon, is terminated by either AGENCY or Epylon, the AGENCY reserves the right to invoke a "Prorated Fee" in lieu of the "Transaction Fee" as originally outlined in Section III.4 above and Item 2 of the Agreement. The intent of this provision is to provide for continuation of the PEPPM program in the event of the termination of the CSIU/PEPPM and Epylon contract for any reason.

This option will become effective at the discretion of PEPPM upon the termination of the CSIU/PEPPM and Epylon contract if deemed necessary to continue PEPPM contracts and services to both Awarded Vendors and LEAs. It may remain in force for the remaining term of this Agreement. Awarded Vendors will have the option of continuing their PEPPM contract under these terms.

In the event that PEPPM establishes a contract with another ecommerce provider or develops its own ecommerce system for publishing contract information, receiving and processing orders and collecting transaction fees, PEPPM reserves the right to reinstate the original Terms and Conditions at the start of the next full year of the contract term.

The following is a detailed listing of amended Terms and Conditions that will be implemented and executed if termination of the CSIU/PEPPM and Epylon contract occurs and the "Prorated Fee" system is invoked. This section also includes a table showing how the "Prorated Fee" will be calculated for each Awarded PEPPM Vendor contract.

The Prorated Fee system is defined as follows:

1. The Transaction Fee for all purchase orders after the termination date WILL NO LONGER BE IN EFFECT.

2. Each Awarded Vendor will be assessed and invoiced a "Prorated Fee" (See table below) per year for each year of the contract and extension year (if extended). Prorated fees will be determined by the spend through the PEPPM contract during the last full year of the contract's term. For new product lines without a full year of spend history, a fixed fee of \$400 will be assessed.

PEPPM Prorated Fee Table		
Minimum Projected Annual Spend Amt.	Maximum Projected Annual Spend Amt.	Prorated Annual Transaction Fee
\$0	\$25,000	\$400
\$25,001	\$50,000	\$438
\$50,001	\$100,000	\$875
\$100,001	\$500,000	\$1,750
\$500,001	\$1,000,000	\$8,750
\$1,000,001	\$5,000,000	\$17,500
\$5,000,001	\$10,000,000	\$87,500
\$10,000,001	\$15,000,000	\$175,000
\$15,000,001	\$20,000,000	\$262,500
\$20,000,001	and greater	\$350,000

3. Arrangements can be made for installment payment of fees in excess of \$1,000 prior to the start of the first full year following the implementation of the Prorated Fee system.
4. Purchase orders will no longer be faxed to PEPPM. All purchase orders will be submitted directly to the Awarded Vendor or the designated Reseller by the LEA.
5. Awarded Vendor will be required to submit a report of all sales twice per year for each of the remaining years of the contract.
6. PEPPM will promptly notify all LEAs of this change in procedure should this provision be activated.

XI.2. Bid Document Ownership Rights

The AGENCY or any LEA shall have the authority to reproduce, distribute (within the AGENCY or LEA only), and use any submitted report, data, or material, provided that the AGENCY or any LEA agrees to reproduce the copyright notice and any other legend of ownership on any copies thereof any software or modifications and any associated documentation that is designed or developed and delivered to the AGENCY or LEA as part of the performance of the bid is subject to any licenses which accompany such items or as agreed to by Awarded Vendor and the AGENCY or any LEA. This bid document and all attachments are copyrighted by PEPPM, Epylon and each respective state AGENCY.

XI.3. Patent, Copyright, and Trademark Indemnity

The Bidder warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of the items or the process provided or used in the performance of the Purchase Order which is covered by a patent, copyright, or trademark

registration or b) any copyrighted matter in any report document or other material provided to the AGENCY or LEA under the Purchase Order. The Awarded Vendor shall defend any suit or proceeding brought against the AGENCY or any LEA on account of any alleged patent, copyright or trademark infringement in the United States of the item(s) provided or used in the performance of the Agreement. This is upon condition that the AGENCY or any LEA shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the AGENCY or any LEA may participate in or choose to conduct and at its own expense, the defense of any such action. If information and assistance are furnished by the AGENCY or any LEA at the Awarded Vendor's written request, it shall be at the Awarded Vendor's expense, but the responsibility for such expense shall be only that within the Awarded Vendor's written authorization.

The Awarded Vendor shall pay all damages, costs, and expenses, including attorney's fees that the Awarded Vendor or the AGENCY or any LEA may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any item(s) provided or used in the performance of the Purchase Order that a court finally awards. If any of the item(s) provided by the Awarded Vendor are held in such suit or proceeding to constitute infringement and the use is enjoined, the Awarded Vendor shall, at its own expense and at its option, either procure the right to continue use of such infringement item(s), replace them with non-infringement equal performance item(s) or modify them so that they are no longer infringing. If the Awarded Vendor is unable to do any of the preceding, the Awarded Vendor agrees to remove all the equipment or software which is obtained contemporaneously with the infringing item(s), or, at the option of the AGENCY or LEA, only those items of equipment or software which are held to be infringing, and to pay the AGENCY/LEA: 1) any amounts paid by the AGENCY or any LEA towards the item(s) of the product, less straight line depreciation; 2) any license fee paid by the AGENCY or any LEA for the use of any software, less a reasonable amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Awarded Vendor under this section continue without time limit. No costs or expenses shall be incurred for the account of the Awarded Vendor without its written consent.

XI.4. Assignment of Antitrust Claims

The Awarded Vendor and the AGENCY or LEA recognize that in actual economic practice, overcharges by the Awarded Vendor's suppliers under this contract and resulting from violations of state or federal antitrust laws are in fact borne by the AGENCY or any LEA. As part of the consideration for the award of the Purchase Order, and intending to be legally bound, the Awarded Vendor assigns to the AGENCY or any LEA all right, title and interest in and to any claims the Awarded Vendor now has, or may acquire, under state or federal antitrust laws relating to the item(s) which are the subject of the Purchase Order, to the extent the AGENCY or LEA was actually harmed.

XI.5. Indemnification

Each party shall hold the other harmless from any liability, including court costs and expenses of litigation, by reason of claims arising out of this Agreement, except to the extent resulting from the acts or failures to act of the indemnified party.

In the event that the party purchasing from the Awarded Vendor is a state agency under Pennsylvania law (e.g. PASSHE (Pennsylvania State System of Higher Education) members), then the provisions of this Indemnification section shall not apply.

XI.6. Applicable Law

The Agreement and all applicable LEA Purchase Orders shall be governed by and interpreted and enforced in accordance with the laws of the respective state (without regard to any conflict of law provisions) and the decisions of the respective state's courts. The Awarded Vendor consents to the jurisdiction of any court of the respective state and any federal courts in those states, waiving any claim or defense that such forum is not convenient or proper. The Awarded Vendor agrees that any such court shall have jurisdiction over it, and consents to service of process in any manner authorized by the respective state's law.

XI.7. Amendments

A bid may be amended by the Bidder up to the Bid Due Date and Time.

AGENCY reserves the right to change, modify, add to or remove portions of these Terms and Conditions at any time prior to seven (7) days before the Bid Due Date and Time. Such changes will be announced specifically to all bidders having accessed the bid documents and generally to all vendors entered in the PEPPM Vendor Database and the Epylon Registered Vendor List. Such changes will also be posted on the PEPPM website, www.peppm.org.

The Agreement will represent the complete agreement between the parties, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Agreement shall be in writing in the form of a supplemental agreement signed by all necessary parties and setting forth therein the proposed change.

XI.8. Severability

Should any term of the Agreement be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the agreement to the extent possible.

XI.9. Limits of Vendor Liability

The Awarded Vendor's liability to AGENCY or any LEA under the Agreement shall be limited to the lesser of three million dollars (\$3,000,000) or the total price for the products, software and/or services as shown on the purchase order. This limitation will apply, except as otherwise stated in this clause, regardless of the form of action, whether in contract or in tort including negligence. This limitation does not, however, apply to damages for bodily injury or damage to real property or tangible personal property for which the Awarded Vendor is legally liable, nor will the limitation apply to the Awarded Vendor's indemnity of the AGENCY or any LEA for patent, copyright or trademark infringement.

XI.10. Procurement Code

The Procurement Code in the state which the LEA resides and to the extent they exist, the Procurement Rules in the state which the LEA and the LEA Procurement Rules are a part of this document as if fully set forth herein.

XI.11. Legal Remedies

All claims and controversies shall be subject to the State Procurement Code in which the LEA resides.

XI.12. Provisions Required by Law

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

XI.13. Rights of LEAs

In preparing responses, Bidders should understand that the rights and remedies of the LEA provided above shall not be exclusive and are in addition to any other rights and remedies provided by law and under the contract.

XI.14. Christian Doctrine

Any clause required by rule or regulation not included in this contract will be read as if in this contract, whether or not physically included.

XI.15. Nonexclusive Contract

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the AGENCY and eligible LEAs. AGENCY and eligible LEAs reserve the right to obtain like goods and services from another source.

XI.16. Novation

If the Awarded Vendor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract and offer awarded products at the same or better pricing determined by the bid discount or markup percent. AGENCY reserves the right to recommend acceptance or rejection of the new party. Confirmation of the acquiring vendor's intent to honor all the obligations under this contract and to offer awarded products at the same or better pricing determined by the bid discount or markup percent will be documented by signing and submitting a PEPPM Contract Assignment Form. A simple change of the Awarded Vendor's name will not change the contractual obligations of the Awarded Vendor.

XI.17. Copyright

These Terms and Conditions are copyrighted by AGENCY and the Epylon Corporation, February 8, 2012.

XII. Exhibit Section

Section XII relates to terms and conditions specific to other states.