

# Kern County Superintendent of Schools Invitation to Bid

## *PEPPM 2012 Product Line Bid – California Electronic Bid # 524982*

***For Technology- & Furniture-Related Products  
Deadline: Tuesday, November 1, 2011 at 3 p.m.***

### **I. Bid Overview** [\[return to top\]](#)

Sections I.1 through I.16 give a general overview of the Invitation to Bid, the deadlines, the key players, and authorities to bid.

#### **I.1. Bid Title**

PEPPM 2012 Product Line Bid – California, #524982

#### **I.2. Organization of Bid Terms**

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

- I. [Bid Overview](#)
- II. [Definitions](#)
- III. [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](#)

#### **I.3. Bid Scope**

This is a Request for Bids 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, furniture, copiers, and other branded technology and furniture products.

This contract 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.

#### **I.4. AGENCY Issuing Request for Bid**

Kern County Superintendent of Schools (KCSOS)  
1300 17th Street  
Bakersfield, CA 93301

KCSOS is working in cooperation with the national PEPPM Technology Bidding Program, administered by the Central Susquehanna Intermediate Unit in Pennsylvania.

For questions related to this bid, contact our agent, the Epylon Corporation, at 888-211-7438

#### **I.5. Bid Due Date**

The deadline for the receipt of bids is 3 p.m. Pacific Time, Tuesday, November 1, 2011. Any bid submitted after 3 p.m. will be marked late by the electronic bidding system.

#### **I.6. Bid Opening Date**

The opening date will be 3 p.m. Pacific Time, Tuesday, November 1, 2011.

#### **I.7. Contract Term**

Awards and agreements resulting from this Request for Bids shall be for a three-year term that will commence on January 1, 2012 and terminate on December 31, 2014.

The AGENCY reserves the right to conduct a review of the Awarded Vendor's performance of contract responsibilities with the possibility of termination due to non-compliance with the Terms and Conditions.

The AGENCY reserves the right to extend the bid award one time beyond December 31, 2014, to December 31, 2015. The one-year extension of this bid will be optional upon the mutual agreement of the AGENCY and the Awarded Vendor.

#### **I.8. 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.

Unlike a sister bid being issued simultaneously in Pennsylvania, NO documents need to be submitted physically on paper to the Kern County Superintendent of Schools. All documents can be returned electronically; there is no requirement for any physical submission.

### **I.9. Selling in Other States**

Although PEPPM is specifically coordinating bidding for Pennsylvania and California schools and agencies, it is PEPPM's and AGENCY'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 buyer as defined in Section I.10. of this bid's Terms and Conditions
- The AGENCY contracts meet the buyer's bidding requirements and are judged to be a good value
- The Awarded Vendor is willing to extend its AGENCY 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.

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 AGENCY Terms and Conditions shall apply. The Awarded Vendor listing a specific state on the PEPPM State Selection Form and that meets all other contract requirements will be the Awarded Vendor whose prices are posted on or within the PEPPM and Epylon 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 may enjoy the benefit of PEPPM web posting for other states, provided the Bidder has opted to sell in those states.

Each Bidder must adhere to PEPPM's and AGENCY'S Terms and Conditions for all transactions through the program regardless of buyer's state. Please be advised that any of the Bidder 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. Any "state specific" Terms and Conditions must be adhered to in addition to the AGENCY standard bid Terms and Conditions.

In regard to use in states outside of California, other state-specific Terms and Conditions differ from the PEPPM Terms and Conditions, the "state specific" Terms and Conditions shall prevail. In California, California law prevails. 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.10. Legal Authority and Eligible Buying Agencies**

This bid is being solicited for California buyers by the Kern County Superintendent of Schools, lead agency under the authority of the California Public Contracts Code and Education Code, as applicable. Eligible California purchasers, collectively known as LEAs, will include, but not limited to:

- public school districts
- charter schools
- county offices of education
- joint powers authorities
- community colleges
- special districts
- municipalities

Eligible agencies include the Kern County Superintendent of Schools, plus all public school districts in California, other county offices of education, joint powers authorities, community colleges, charter schools, schools registered with any county office of education, and non-public schools and, with the vendor's approval and where permissible by statute or regulation, other schools, colleges and universities, county governments, local municipalities, other government agencies, programs supported by education or government grants, and special districts.

### **I.11 PIGGYBACKABLE CLAUSE**

All public agencies are authorized by law to purchase off a contract awarded by an agency that has itself gone to bid, including all K-12 schools districts, community college districts, special districts and JPAs serving education, pursuant to Public Contract Code Sections 20118 and 20652. Using these statutes, the Kern County Superintendent of Schools (AGENCY) hereby declares its intent and authorization to make all contracts awarded under this contract "piggybackable" by other education agencies in the state. The AGENCY waives any right to receive payment from other California agencies making purchases off the awarded contracts and those agencies will make payment directly to the vendors. A partial, but not exclusive, list of eligible education agencies is listed as an attachment to the section and is titled "Partial List of Eligible Agencies.doc."

Any legislative changes to Public Contract Codes 20118 and 20652 during the term of the contract(s) with Award Vendor(s) shall apply to the contract(s) immediately when such changes become law.

## **I.12 STANDARD SCHOOL SUPPLY & EQUIPMENT LIST AND COOPERATIVES**

The Kern County Superintendent of Schools also claims its authority to bid under the Education Code for the creation of a Standard School Supply and Equipment List.

KCSOS declares that items under contract as a result of this Request for Bids will qualify as items to be included within its Standard School Supply and Equipment List. Because many County Offices of Education have banded together to create the cooperative programs for the purpose of collectively creating a Standard School Supply & Equipment List and cooperative contracts, the items solicited and awarded through this bid may also constitute a portion of an official Standard School Supply and Equipment List for other participating County Offices of Education and County Superintendents of Schools. Purchases by other County Offices of Education and school districts may be made, not only in accordance with Public Contracts Code 20118 and 20652, but also in accordance with Education Code 38110 and 38112 dealing with cooperatives and Standard School Supplies & Equipment.

## **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 use the Epylon Corporation ("Epylon ") to supply the professional expertise to manage certain facets of the procurement processes of Awarded Vendor's awarded contracts. Price lists and ordering instructions based upon the awarded contracts will be posted on the PEPPM website, located at [www.peppm.org](http://www.peppm.org) or other sites for offline purchasing through a fax-based clearinghouse, supported by Epylon. The awarded contracts will be available for online purchasing on the Epylon website located at [www.epylon.com](http://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 Non-Education Agencies**

Although AGENCY is bidding primarily on behalf of K-14 educational agencies as described above, it is the program's intent to extend, where feasible, the bid protections and price discounts to the University of California, the California State University, four

year colleges and universities, county governments and local municipalities, related county/municipal authorities and other non-profit organizations.

AGENCY 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 prices and/or discounts as you do for education agencies, and in accordance with the contractual Terms and Conditions to:

- Four-year colleges and universities
- County governments
- Local municipalities
- Related county, municipal authorities, and special districts
- Other public, non-profit organizations
- State agencies, where allowed by law, rule and policy

then please respond “Yes” to the appropriate question in the Question Section of the bid form. Respond “No” if you do not agree. If a vendor responds “Yes,” terms applicable to LEAs will also apply to municipal, county governments, authorities, special districts and other non-profit agencies.

Similarly, regarding sales to four-year colleges and universities, you may respond “Yes” to the appropriate section in the Question Section of the bid form. Respond “No” if you do not agree to sell to four-year colleges and universities. If a Bidder responds “Yes” Awarded Vendor shall bear responsibility for all purchase orders entered into pursuant to the Agreement and is responsible for monitoring whether it is in compliance with this Agreement, state statutes and regulations.

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

- A. PEPPM Online is an internet-based environment for maintaining PEPPM price lists for each Awarded Vendor’s products accurate to within one week so that information can be easily updated, accessed for online look-up and downloadable for local publication and distribution. This environment will be established via a PEPPM Home Page/FTP site accessed over the Internet at [www.peppm.org](http://www.peppm.org) or at other sites.
- B. All qualified LEA PEPPM users with Internet access should be able to access PEPPM Online and use their browser to view the price lists online and/or download some or all Awarded Vendor price lists in a PDF file format. Instructions for downloading and using the required Adobe Acrobat reader and links to sites for downloading the reader will be provided on PEPPM Online.
- C. Price list information is available to an online search engine that allows the user to search for particular items across all 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 web site.

D. Awarded Vendor price list information will be forwarded to Epylon for inclusion in its database for e-commerce access by LEAs. LEAs will have the option to become an Epylon e-commerce 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.

E. A punchout relationship with the PEPPM eCommerce site at [www.epylon.com](http://www.epylon.com) is recommended but not required.

F. 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](http://www.epylon.com/terms.html). For ease of reference, the Epylon Terms and Conditions are also set forth as an attachment to Section VI.30 of this bid form (which shall be referred to as the "Epylon Merchant Agreement"). 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.

## **II. Definitions** [\[return to top\]](#)

Sections II.1. through II.12. deal with descriptions of the program and the definition of terms.

### **II.1. Program Name & Description**

KCSOS as part of a nationally affiliated group of agencies coordinated by The Central Susquehanna Intermediate Unit of Milton, Pennsylvania, aka CSIU, is seeking simultaneous bids on technology equipment, software and supplies, etc. as outlined in this bid packet. The program is called "PEPPM" (pronounced PEP-um), a 30-year-old technology bidding and purchasing program for education agencies. CSIU in Pennsylvania and the Kern County Superintendent of Schools in California are issuing separate but nearly identical bids having the same bidding dates. A Bidder must respond separately to each bid for each respective jurisdiction in which it wants to be considered. The two agencies each seek bids in their respective jurisdictions, and each will individually award bids in its respective state, based on its own applicable statutes. However, the agencies come together nationally for the purpose of aggregating their demand for product, exercising their buying power, marketing the contracts and managing the resulting contracts. In so doing, they are coordinating the bidding process with each other, and will centrally coordinate the evaluation of bid responses. Awards

will be made separately and independently. The California bid is the one you are now reading and is named the PEPPM 2012 Product Line Bid - California. The CSIU bid for Pennsylvania is contained in another bid form named PEPPM 2012 Product Line Bid - Pennsylvania.

## **II.2. Electronic Signature**

In submitting a bid to this invitation for bids, 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 Agency 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 Agency.

As permitted by the federal and state laws, Bidder will submit electronic sealed bids signed with his/her electronic signature, using the Epylon eCommerce system. Bidder's use of his/her User Name and Password, linked to identifying registration information, constitute his/her electronic signature. By logging in, answering questions, completing the bid form and pushing the submit button, Bidder is signing a Contract.

To the best of his/her knowledge, Bidder attests to the following by submitting a bid:

- 1) Upon supplying verifiable registration information and user name, he/she was provided with a computer-generated password, also linked to his/her e-mail.
- 2) Neither Agency, nor Epylon, nor any other third party has any knowledge of or access to the computer-generated password.
- 3) The combination of user name, password, and e-mail address is unique to the Bidder.
- 4) The username-password-e-mail combination is under the sole control of the registered user.
- 5) The linked data – User Name, E-Mail and Password – cannot be changed except by the original registrant using his/her original electronic signature. Any attempt to change a combination of linked data locks out the user.
- 6) If necessary, the authenticity of any document and its accompanying signature can be verified by reviewing a successful log-in, then tracing the path from log-in and any action taken on any electronic form.

A hand-written signature is required on the Vendor Partner Agreement. The document must be hand-signed, scanned and attached to the bid form.

### **II.3. AGENCY and PEPPM**

The Kern County Superintendent of Schools shall be referred to as the “AGENCY” throughout the Terms and Conditions of this document and bid form. PEPPM is a technology bidding and purchasing program administered by the Central Susquehanna Intermediate Unit of Milton, Pennsylvania.

### **II.4. 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.5. 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.6. 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.7. 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 awarded a contract by the Kern County Superintendent of Schools.

### **II. 8. 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 AGENCY 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 AGENCY’s Terms and Conditions.

### **II.9. KCSOS and Awarded Vendor Agreement**

Together, this Request for Bid, 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 whole of California law constitute the KCSOS and Awarded Vendor Agreement and will govern the AGENCY and Awarded Vendor during the contract term January 1, 2012 to December 31, 2014, and during any authorized extensions.

## **II.10. 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, e-commerce, marketing, order management, and accounting services. Epylon is a service partner in the PEPPM 2012 Product Line Bid - California and is named numerous times in this bid document.

## **II.11. 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.12. 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 neither indicate to a Bidder a cost nor 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.

## **III. Fees [\[return to top\]](#)**

Sections III.1. through III.7. deal with the fees to be paid by the Bidder or Awarded Vendor.

### **III.1. PEPPM Bid Evaluation Fee**

There are no bid evaluation fees for a bidder submitting a bid to KCSOS in California.

### **III.2. PEPPM Bid Award Fee**

If you are the successful Bidder, no fees will be charged in connection with your award in California.

### **III.3. Payment of Bid and Award Fees**

No bid or award fees will be collected in connection with any bid submission or award by KCSOS in California.

### **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. 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.30, and will be bound to the Epylon Merchant Agreement as a part of the Terms and Conditions of the KCSOS and Awarded Vendor Agreement between the Awarded Vendor and AGENCY. The Transaction Fee of 1.75 percent in this Section III.4 is the agreed upon Epylon Marketing Fee contemplated by Section 7 of the Epylon Merchant Agreement. This bid's transaction fee language overrides and replaces any language requiring fees in 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 AGENCY 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 PEPPM 2012 Product Line Bid - California, 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 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.

### **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 Epsilon.

### **III.6. Cost of Bid Preparation**

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

### **III.7. Fees in Non-Conforming Jurisdictions**

Notwithstanding Section III.4 no transaction fee is authorized to be charged to vendors for sales within any jurisdiction where prohibited by law or local-government policy. Instead, the cost of products, services, licenses and goods sold under this contract in such jurisdictions shall be the same as all for school districts in all other counties of California. However, any agency using this contract where Section III.4 fees are not permitted shall be required to pay an additional 1.75 percent fee for use of the contract, imposed by KCSOS on the authority of Public Contract Code 20118, which allows KCSOS to charge reasonable costs to the public corporation or agency for furnishing the services incidental to the purchase of items under contract.

## **IV. Bidder Qualifications** [\[return to top\]](#)

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.

### **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 non-collusion question in the Question Section or else the bid may not be submitted to AGENCY.

### **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 Kern County Superintendent of Schools in awarding the contract(s) for which this bid is submitted.
- 7) Any misstatement is and shall be treated as fraudulent concealment from the Kern County Superintendent of Schools 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 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**

A vendor must inform the AGENCY if it changes its address or become delinquent in taxes. Also, the vendor must tell the AGENCY if one of its contracts is suspended by another government agency or if it is debarred by another government agency. All notices must be in writing and received by the AGENCY within 15 days of the change, delinquency, suspension, or debarment.

#### **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 this Agreement.

#### **IV.8. Hold Harmless**

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 an AGENCY 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. These Authorized Resellers must be identified on the attached Authorized Resellers Form, included in the Exhibit Section as Authorized Resellers.xls. The Authorized Resellers must agree to sell the product at or below the posted pricing that the Awarded Vendor provides to AGENCY, 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 an AGENCY 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: A) that they maintain permanent places of business, B) that they have the capability to satisfactorily and expeditiously furnish the items offered, C) that the firm will provide satisfactory customer sales support and service to all LEAs, D) that they have current relationships with LEAs for verification of customer satisfaction and E) 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.

### **V. Bid Specifications** [\[return to top\]](#)

Sections V.1. through V.20. deal with bid specifications for products.

## **V.1. Product Lines Sought**

This bid is for technology and furniture products associated with specific types of manufacturer-branded product lines or their equal. The product line listed and its associated description is a specification for all products manufactured under that product brand name and type as described

By law, equivalent product lines may be offered and considered. If equivalent product lines are bid, AGENCY reserves the right to request samples, provided at Bidder's expense within two days of request. Samples maybe used, tested, opened or destroyed in the process of established equivalency. Product lines being bid are listed in the bid announcement attachment and as listed on the electronic bid form.

## **V.2. New Products**

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.)

However, in a case where a specification calls for a brand of recycled ink and toner products, a recycled product is eligible for consideration, but where a specification called for an OEM (Original Equipment Manufacturer) brand of ink and toner, only new products will be considered.

## **V. 3. Serial Numbers**

Any equipment offered 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 Products**

New products that become available after the start of the KCSOS and Awarded Vendor 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 equivalent to the percent of discount off list or mark up over cost of other products. Awarded Vendors may replace or add products to an existing agreement if the products are replacing previous products, is superior to the original products offered, is discounted or priced in a same or to a greater degree and/or 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. Manufacturer Standard Equipment**

AGENCY is seeking equipment manufactured by reliable national manufacturers. The products offered must be new equipment (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.

## **V.6. 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/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.7. Proof of Supply**

AGENCY 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 must 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 or KCSOS
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 or AGENCY

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 bid in the file named "PEPPM Proof of Supply Letter Exhibit A.doc."

### **V.8. Alternative Evidence of Supply**

A Proof of Supply Letter as required in Section V.7 above from the manufacturer is the best evidence of a bidding firm's access to supply. However, in extreme circumstances or where competitive forces prevent access to a letter, a Bidder may submit other written evidence and documentation to substantiate the bidding firm's capability 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 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.

### **V.9. Liens**

All materials and services shall be free of all liens.

### **V.10. 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.11. Necessary Supplies**

Bidders are encouraged to include bid pricing on all related/necessary branded supplies and accessories utilized with the product line being bid to make the products functional (for example, a printer may require a separate printer cable). Bidder may use variable discounts or markups to address differences in supply items versus equipment pricing.

### **V.12. 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.13. 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.14. Installation**

Equipment that requires professional installation – if offered by the Awarded Vendor and desired by the LEA, shall be installed within four (4) weeks of product delivery, unless LEA asks that installation be delayed. Equipment shall be installed in accordance with the manufacturers' instructions.

### **V.15. 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. AGENCY and PEPPM reserve 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.16. 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.17. 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. If voluntary assistance is offered by a Bidder, it must be explained in a letter, which must be submitted as an attachment.

However, if a Bidder can provide (installation, maintenance, etc.) services related to the product line being bid, that Bidder should respond "Yes" to the appropriate service-related question in the Question Section of the bid form and attach a document describing what services are available, how they will be provided, the bid price offered for the services and how the AGENCY discount(s)/prices will be applied.

Following is a list of some examples of specific services and service related information that may be submitted regarding services that are available for the specific product line being bid. Do not submit one services document for all product lines being bid:

- Installation
- Image loading
- Training
- Help desk support
- Asset tag service
- Hard drive removal and retention by the buyer
- Response time conditions
- Regions of coverage
- Travel time costs

If a contractor chooses to offer these type services in conjunction with the contract items

it provides to the LEA, the contractor and the LEA shall negotiate the specifics of the services to be provided at an AGENCY discounted bid price.

The file provided must allow the AGENCY and LEA to easily identify these 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 imperative 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.

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

#### **V.18. 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.19. 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. The Question Section asks whether the Bidder has properly attached the respective Returned Goods Policy for each product line being bid.

#### **V.20. Leasing**

California law allows LEAs to lease equipment and to use a piggybackable contract to lease equipment. Any awards made from this RFB shall enable an eligible LEA to make a procurement by lease, but the initial price basis for any equipment lease shall be the awarded bid price in effect at the time of the initial lease signing and before any lease financing. Any Bidder proposing to lease equipment under an award from this RFB, must provide KCSOS with lease documents as described in Section X.3.

## **VI. Ordering Procedures and Requirements** [\[return to top\]](#)

Sections VI.1. through VI.30. 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.6) may issue purchase orders against this 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, unless Section III.7 applies. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.

Purchase Orders may be issued through Epylon Awarded Vendor accounts at [www.epylon.com](http://www.epylon.com) or through facsimile equipment to the following facsimile number: 800-636-3779. Purchase orders via Epylon Awarded Vendor accounts will arrive in the Epylon Order inbox, accessed at [www.epylon.com](http://www.epylon.com) through a previously established login with a user name and password. Receipt of the electronic or facsimile transmission of the purchase order shall constitute receipt of an order. Orders received by the Awarded Vendor after 4:00 p.m. Eastern will be considered received the following business day.

3) 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.

4) 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. Independent Contractor/Awarded Vendor**

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

### **VI.5. Compliance with Law**

The Awarded Vendor shall comply with all applicable federal and state laws and regulations and local ordinances in performing its obligations under the Purchase Order.

### **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. However, California LEAs pay sales taxes on all their purchases.

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**

California LEAs pay sales taxes on all their purchases. No charge will be allowed for other federal, state, or local taxes from which the LEA is exempt. Prices shall be net and shall not include the amount of any such exempt 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. 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. Such loss, injury, or destruction shall not release the Awarded Vendor from any contractual obligations. Except as otherwise provided in Section VI.13 all items must 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. Items ordered through this bid award should be delivered within thirty (30) days of receipt of Purchase Orders. If that is not possible, LEA must be notified in writing (or by telephone) of the delay and 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. 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.12. 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.13. Default**

A) The AGENCY (LEA) may, subject to the provisions of Section VI.14, Force Majeure, and in addition to its other rights under the Agreement (Purchase Order), declare the Awarded Vendor in default by written notice thereof to the Awarded Vendor, and terminate (as provided in Section VI.15, Termination Provisions) the whole or any part of the Agreement for its state's LEAs (Purchase Order) for any of the following reasons:

- 1) Failure to deliver the awarded item(s) within the time period specified on the Agreement (Purchase Order) or as otherwise specified;
- 2) Improper delivery;
- 3) Failure to provide an item(s) which is in conformance with the specifications referenced in the invitation for Bids;
- 4) Delivery of a defective item;
- 5) Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
- 6) Insolvency or bankruptcy;
- 7) Assignment made for the benefit of creditors;
- 8) Failure to protect, to repair, or to make good any damage or injury to property;

- 9) Breach of any provision of the Agreement (Purchase Order).
- 10) Failure to maintain its baseline catalog online;
- 11) Failure to update prices as per Section X.7;
- 12) Non-performance in sales as per Section X.2;
- 13) Failure to meet E-Rate Program Compliance requirements including suspension or debarment (See Section V.18 E-Rate Program Compliance);
- 14) Suspension or Debarment occurring during the term of the contract (See Section IV.3 Suspension or Debarment)

B) In the event that the AGENCY or LEA terminates the Agreement (Purchase Order) in whole or in part as provided in Subparagraph a. 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.

C) If the Purchase Order is terminated as provided in Subparagraph a. 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.

D) The rights and remedies of the AGENCY (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 (Purchase Order).

E) The AGENCY's (LEA) 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.

F) Following exhaustion of the Awarded Vendor's administrative remedies as set forth in Section VI.16 (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.14. 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 (LEA) 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 (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 (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.15. Termination Provisions**

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.13, 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 California law (e.g. SSHE 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.16. Assignability and Subcontracting**

A) The agreement shall be binding upon the parties and their respective successors and assigns.

B) 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 the prior written consent of the LEA.

C) 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.

D) 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.

E) 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.

F) Any assignment consented to by AGENCY 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 Awarded Vendor Agreement and to assume the duties, obligations, and responsibilities being assigned.

G) 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.

H) KCSOS reserves the right to change its agent assigned to the management of this contract and so notify awarded vendors.

#### **VI.17. Nondiscrimination/Sexual Harassment**

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.18. 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 law 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.19. Vendor Integrity Provisions**

A. For purposes of the following Sections numbered VI.20 through VI.30 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.20. 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.21. Confidential Information**

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

#### **VI.22. 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.23. 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.24. 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.25. 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.26. 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.27. 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.28. 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.29. 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.30. Epylon Supplier Network**

Awarded Vendors and Authorized Resellers must be members of the Epylon Supplier Network to accept purchase orders under this contract.

## **VII. Bid Pricing Specifications** [\[return to top\]](#)

Sections VII.1. through VII.21. provide bid pricing specifications for product lines bid.

### **VII.1. PEPPM Bid Price Submission Template**

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

There are two tabs to 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 with information on 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. Neither AGENCY nor PEPPM will 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 web site posting.

## **VII.3. Method of Pricing**

This bid is seeking specifically 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, National Educational, Web, Retail, etc). The AGENCY and its CPA firm will need access to cost/list price data to ensure bid compliance during the contract period.

## **VII.4. Identify Cost Basis**

The price basis, that is, the price from which the markup or the discount is to be calculated, must be clearly identified on the Quote Sheet tab of the PEPPM Bid Price Submission Template for each product line being bid. If bidding Discount From List, the catalog or price list and its effective date must be identified for future reference by auditors, PEPPM and AGENCY on the PEPPM Quote Sheet.

## **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 you are bidding Discount From List, the percent should be entered as a negative number, because you are subtracting a percent from your list price.

If you are 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 0.00,

### **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 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 unresponsive or subject to a reduction in score.

### **VII.7. Importance of Manufacturer's SKUs**

It is important that you correctly record the manufacturer's SKU number 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. Irregularities in listing the manufacturer's SKU number may result in a bid being deemed unresponsive. Do not use supplier SKUs, distributor SKUs or any hybrid of supplier and manufacturer SKUs. Only manufacturer SKUs can be used to compare bids.

### **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 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.

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 preferably sorted by 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 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.

When developing categories for variable discount 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 or they cannot be added.

If categories for variable discount levels are submitted, the list of categories must be enumerated in the white boxes of the quote sheet tab on the Excel bid template. The spreadsheet must be attached to the corresponding product line being bid. If there are not enough spaces to enumerate the different discounts or markups for each product line, you must attach a separate spreadsheet alongside the product line you are bidding.

## **VII. 12. New Product Pricing**

The bid pricing structure submitted must also apply to any new products invented, created, offered, announced and made available through PEPPM during the contract period. New products and associated supplies added must be priced according to bid discount or markup submitted with bid. Pricing for new products offered at lower discounts or higher markups than was originally bid will not be permitted on PEPPM/AGENCY posted price lists. Bidders using variable discounts 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, 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, if any. 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 annual renewal date. 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 alternate 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 alternate 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 in a one-for-one fashion) from the vendor through the PEPPM program if the third-party items have been awarded as an AGENCY bid. (e.g., a NEC monitor cannot be listed as an individual item by the vendor that is awarded the bid for IBM equipment, if AGENCY has solicited and awarded a bid on NEC equipment).

Note: The question of prices on third-party items is a critical one to the integrity of the PEPPM effort. 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 IBM Computers at a markup of five percent (5%) must offer every item on its price list (IBM and third-party items) at a markup of five percent (or less).

Bid 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 other computer components to create a complete computer bundle. Software

Bidders are not permitted to bundle hardware with a software offering without permission from AGENCY.

#### **VII.14. Unacceptable Pricing**

MARGIN OVER COST pricing method IS NOT acceptable.

#### **VII.15. Allowances for Freight**

If bidding Markup Over Cost, the allowance for freight is to be built-in to either the cost of the product or the markup percent.

If bidding Discount From List, the allowance for freight is to be built-in to 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. 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 will equal the final AGENCY price.

#### **VII.16. Minimum Order**

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 shipping if requested by the LEA or for shipments outside the continental United States.

#### **VII.17. Large Volume Purchase and Voluntary Price Reductions**

AGENCY reserves the right for itself and for all LEAs to request Awarded Vendor voluntary price reductions from AGENCY agreement pricing. In the event the voluntary volume price reduction procedure is selected by the LEA, the LEA reserves the right to contact 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 Awarded Vendor indicating the volume or voluntary discount pricing and stating that it is "As per PEPPM" bid price quote.

- a. AGENCY reserves the right to research, conduct and execute electronic reverse auctions under the KCSOS and Awarded Vendor Agreement with interested and/or selected Awarded Vendors in conformance with appropriate

statutes.

b. In the event, one vendor is the sole Bidder on a particular product line, AGENCY and LEA reserve the right to seek voluntary discounts from the amount of discount bid after an award is made.

Increasingly, LEAs inquire about the impact of volume orders on PEPPM pricing. Bidders are urged to stipulate volume discounts according to Bidder-designated criteria on product/price lists in such a way that LEAs can easily identify any additional discounts.

### **VII.18. Deviations**

Any deviations from the directions contained in the Instructions tab in the PEPPM eBid Product Line Template must be so noted and attached to the official "Quotation Sheets" provided. Product and price lists reflecting the bid price structure must include any and all discounts and deductions from state and federal taxes from which the LEAs are exempt.

### **VII.19. 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 updates must be posted for LEAs through the PEPPM Online or Epylon.com system, unless special arrangements for an Awarded Vendor to maintain a custom web site have been made. Other than specific PEPPM quotations made in response to LEA requests, the PEPPM Online home page and/or the Epylon eCommerce PEPPM pricing must be the official Awarded Vendor and product/price sources for all legally qualified LEA purchases.

Awarded Vendor or manufacturer home pages/price lists are not acceptable alternatives, unless the Awarded Vendor has specific written authority from PEPPM or AGENCY to establish Retriever/Punchout relationships with Epylon 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 Product Line Bid - California Terms and Conditions. All quotes for PEPPM purchases should have the “as per PEPPM ” notification to assure that the Awarded Vendor is pricing at or below PEPPM bid price structure.

#### **VII.20. Most-Favored-Nation**

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

#### **VII.21. Bid Effective Period**

AGENCY requires that a bid response to this solicitation be valid and irrevocable for one-hundred twenty days (120) 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 (February 29, 2012) from the bid opening date, which is November 1, 2011.

### **VIII. Bid Procedures and Directions [\[return to top\]](#)**

Sections VIII.1. through VIII.15. provide directions necessary for submitting a complete, responsive and responsible bid.

#### **VIII.1. Responsible 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 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 questions can be e-mailed to customerservice@epylon.com.

Simple technical questions about the PEPPM program or bid may be directed to

PEPPM at (570) 523-1155 x2174 or x2169.

Questions on policy and/or interpretation of the bid document should be e-mailed to [jrandecker@csiu.org](mailto:jrandecker@csiu.org), [dmanney@peppm.org](mailto:dmanney@peppm.org). When any question and/or answer has relevance to all Bidders, the question and response will be posted on the bid form so that all Bidders can be beneficiaries of the information and no Bidder has an advantage in bidding.

It is the Bidder's responsibility to check [www.peppm.org](http://www.peppm.org) before submitting the bid to learn of any clarifications or interpretations related to the bid documents.

### **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 Product Line Bid - California, are due at 3 p.m. Pacific Time, Tuesday, November 1, 2011.

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. Withdrawal of Bids**

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. If a bidder does not click on the "Submit" button, the bid will stay in draft form in the Bidder's in-box and will not be received by KCSOS.

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 p.m. Pacific Time, Tuesday, November 1, 2011, 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, Epylon 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 conditions. 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.

#### **VIII.8. 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 Ts and Cs as well as all bid information submitted as part of the bid.

#### **VIII.9. Public Record**

All bids submitted to this 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 or its agent by appointment.

#### **VIII.10. 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.11. Validity of Proposal/Bid**

It is understood and agreed that the Bidder's bid proposal shall be valid and held open for a period of One Hundred Twenty (120) days from bid opening date. This date, February 29, 2012, must be the date listed on the bid form indicating how long your bid will be good for. If you list a different date, you must explain your specific objections in the Questions Section or your date will be ignored and these Terms and Conditions will apply.

#### **VIII.12. 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. Any inability to comply with the conditions and specifications as outlined in this bid must be clearly stated in the answer to the relevant question in the Question Section. In addition, the specific objections must be stated in the Question Section or stated in a document and attached to the bid form.

#### **VIII.13. Clarity in Response**

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

#### **VIII.14. Payment of Bid Fees**

KCSOS will not charge or authorize the collection of any bid submission fees in connection with this invitation to bid.

#### **VIII.15. Payment of Award Fees**

KCSOS will not charge or authorize the collection of any bid award fees in connection with this invitation to bid.

### **IX. Bid Evaluation and Award Process [\[return to top\]](#)**

Sections IX.1. through IX.8. relate to the evaluation procedures of the bid and determination of awards.

#### **IX.1. Award or Rejection of Bids**

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. 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.

## **IX.2. Non-Responsive Bid**

Any bid that does not conform to the mandatory or essential terms, conditions and/or specified requirements for this solicitation may be considered non-responsive.

## **IX.3. Bid Negotiations**

After awarding a contract to the lowest bidder, AGENCY reserves the right to request voluntary pricing discounts from an Awarded Vendor. The Awarded Vendor has no obligation to offer any additional discounts.

## **IX.4. Qualification for Evaluation**

In accordance with accepted standards of competitive sealed bid awards as set forth in the Procurement Code of the state of California, 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. To be considered responsive, a bid 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.

Note: Any deviation from requirements indicated herein must be stated on an attachment or described in one of the answers to Questions. Otherwise, it will be considered that bids are in strict compliance with all requirements, and any successful Bidder will be held responsible therefore.

## **IX.5. Scoring Basis**

The award of all bids in California will be based on the lowest effective prices from responsive and responsible bids from competing Bidders. However, KCSOS reserves the right to make awards in accordance Education Code 1276.

## **IX.6. 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. Particular attention will be given to any unpaid PEPPM invoices covering the past three years. These payments are part of your past performance regarding the PEPPM program and your contractual obligations. Where no past performance information is available, the reports of references will be used to gauge past performance. Vendor's deemed to have documented poor past performance, including delinquent payments or no sales, may be considered not responsible and may be determined to be ineligible for an award.

### **IX.7. Timeline for Awards**

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

### **IX.8. Multiple Awards**

The AGENCY will not make multiple awards in any single category. AGENCY intends to make a single award within in product category, but make multiple awards for the bid solicitation as a whole.

## **X. Post Award Requirements** [\[return to top\]](#)

Sections X.1. through X.13. 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**

- A. 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.
- B. 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 AGENCY discounted pricing that was provided to PEPPM for posting. If a Bidder utilized the "Markup Over Cost" method, the Bidder is responsible for maintaining records of the monthly cost data utilized in the calculation of their AGENCY pricing that was provided to PEPPM for posting.

- C. 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. Bidder 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 AGENCY or 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 must submit a file detailing lease arrangements available to LEAs where applicable. PEPPM will post the information via PEPPM Online. (Awarded Vendor shall be required to provide such information electronically in a Microsoft Word 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.

If the Awarded Vendor can provide leasing arrangements to an LEA and the LEA is interested in leasing equipment from the Awarded Vendor for the awarded product line(s), the Awarded Vendor must provide the following support to the LEA in making sure that the correct paperwork and order process is followed:

- The equipment base price of the lease was derived from using AGENCY discounted prices
- The Awarded Vendor shall provide a PEPPM Quote to the LEA showing that the base price for the leased equipment is at or below the posted AGENCY price

The LEA shall submit a copy of all leasing documents, any associated PEPPM/AGENCY quotes and any other Awarded Vendor required document(s) with a Purchase Order.

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.

#### **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) including product and price information. PEPPM will post information for such programs on its website. (Awarded Vendor will be required to provide that information electronically in a Microsoft Word document).

#### **X.5. Ordering Instructions**

FOLLOWING the award of bids, all Awarded Vendors must provide specific "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](http://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 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](http://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 Ordering Instructions document must be provided in Microsoft Word format using the required Ordering Instruction Template form no later than December 12, 2011 and must be emailed to Michelle Kipple at [mkipple@peppm.org](mailto:mkipple@peppm.org). This file must be clearly identified/labeled by including the title, "Ordering Instructions," Awarded Vendor name, product line bid, and date.

#### **X.6. Submitting Price Lists**

Following a notice of award, all Awarded Vendors will be required to submit current electronic price lists (for posting) utilizing the Price List Template and the Ordering Instruction Template for publication no later than December 12, 2011. PEPPM will publish these price lists for LEA access via the PEPPM Online Internet service and the Eylon eCommerce system.

File Submission Format: Awarded Vendors submitting Excel spreadsheets for prices and updates will be required to use a specifically designed template to submit their data.

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](http://www.peppm.org) or [www.epylon.com](http://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, PEPPM 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

Data must include searchable whole words, no abbreviations, and fully searchable descriptive terms.

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 AGENCY 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 AGENCY 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.

- 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:  
<product line>\_<MMDDYYYY>.xls (i.e. Dell\_03152008.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. Banner Advertising**

In preparing responses, Bidders should understand that Awarded Vendors may be able to submit banner advertising for PEPPM Online. 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. Catalog Functionality**

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 web site, with Epylon's shopping cart functionality ("Retriever/PunchOut").

The Awarded Vendor choosing Retriever/PunchOut must be able to configure its own proprietary web site 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.11. 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.12. eQuote Responses**

Awarded vendors are expected to respond in a timely manner to requests for quotes or volume discounts from buyers using the PEPPM Public View website.

## **X.13. Web Site Training**

Awarded Vendors are expected to have company representatives participate in in-person or online training to learn how to use the PEPPM Public View website and the functions within their Epylon web-based accounts.

## **XI. Other Terms and Conditions** [\[return to top\]](#)

Sections XI.1. through XI.14. relate to miscellaneous legal provisions that are part of the bid and resulting KCSOS and Awarded Vendor Agreement.

### **XI.1. Bid Document Ownership Rights**

The AGENCY, PEPPM, their agents, or any LEA shall have the authority to reproduce, distribute (within the AGENCY, PEPPM 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, KCSOS, and Epylon.

### **XI.2. 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.3. 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.4. 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.

### **XI.5. 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 laws 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 in personam jurisdiction over it, and consents to service of process in any manner authorized by the respective state's law.

### **XI.6. Amendments**

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.7. 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.8. 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.9. Procurement Code**

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

#### **XI.10. Legal Remedies**

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

#### **XI.11. 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.12. 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.13. Copyright**

These Terms and Conditions are copyrighted by CSIU, KCSOS and the Epylon Corporation, September 26, 2011.