



KERN COUNTY SUPERINTENDENT OF SCHOOLS

Request for Bids

PEPPM 2025 Office and Instructional Supply Catalog Bid – California

Electronic Bid # 546422

Bid Due Date: Friday, June 6, 2025, 3 p.m. PT

Kern County Superintendent of Schools, in cooperation with the PEPPM cooperative purchasing program, seeks bids for catalogs of office and instructional supply products under two different distribution models.

I Introduction and Overview

I.1 Bid Title

PEPPM 2025 Office and Instructional Supply Catalog Bid – California

I.2 Electronic Bid Number

The applicable electronic bid form is numbered 546422.

I.3 Organization of Terms and Conditions

- I [Introduction and Overview](#)
- II [Bid Document Definitions and Interpretations](#)
- III [Legal Authority and Eligible Buying Agencies](#)
- IV [PEPPM Fees](#)
- V [Bidder Qualifications](#)
- VI [Catalog and Product Specifications](#)
- VII [Ordering Procedures and Requirements](#)
- VIII [Pricing Specifications](#)
- IX [Bid Procedures and Directions](#)
- X [Bid Evaluation and Award Process](#)
- XI [Uniform Grant Guidance Requirements](#)
- XII [Post-Award Requirements](#)
- XIII [Other Terms and Conditions](#)

I.4 Bid Scope

This is a Request for Bids (“RFB”) for office and instructional supplies and equipment products contained within a commercially available paper or electronic web catalog.

I.5 Bidding Agency

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

I.6 The Cooperative

PEPPM has a proven record of serving school districts and other public agencies across all the United States with cooperative purchasing contracts competitively bid under the high standards expected for public-sector procurement. The PEPPM cooperative purchasing program helps schools and other public agencies drive down the cost of acquisition and derive the best value for their technology investments.

I.7 Piggybackable Contracts

Contracts awarded under this RFB are intended to be used by all interested California school districts, charter schools, local governments, state-run schools or agencies, and, at the option of Awarded Vendors, other public agencies in states outside of California.

I.8 Bid Due Date

All bids must be received electronically by Friday, June 6, 2025, 3 p.m. PT (the “Bid Due Date”).

The Agency may extend the Bid Due Date and time in advance of the Bid Due Date by issuing an addendum to this RFB.

I.9 Bid Opening

Bids will be opened and publicly read at 3 p.m. PT, Friday, June 6, 2025 (the “Bid Opening Date”), at 630 San Ramon Valley Boulevard, Suite 210, Danville, California 94526. If public gatherings are prohibited due to a health emergency, a public online opening will be held by way of video conferencing software. Information on registering for credentials will be found in the External Notes Section of the electronic RFB.

I.10 Prebid Meetings

No prebid meeting will be held for this RFB.

I.11 Other Important Dates

- | | |
|---------------------------------------|-----------------|
| • Exceptions Due Date | May 14, 2025 |
| • Response to Exceptions | May 21, 2025 |
| • Questions Due Date | May 28, 2025 |
| • Tentative Award Date | July 1, 2025 |
| • Punchouts and Ordering Instructions | August 29, 2025 |
| • Contract Start Date | October 1, 2025 |

I.12 Advertising and Legal Notice of the Request for Bids

The Agency’s local, legal advertising requirements are met with legal notices in the *Bakersfield Californian*, a newspaper of general circulation in the county where the Agency is located. In addition, notices are placed in other newspapers for nationwide coverage, such as *USA Today*.

I.13 Contract Term

The initial term of the awarded Contracts shall begin on October 1, 2025, and continue until September 30, 2028, unless terminated, canceled, or extended.

II Bid Document Definitions and Interpretations [\[Return to Top\]](#)

II.1 Captions

The captions appearing at the beginning of each Section or subsection of the Contract Documents are for reference and convenience only and shall be disregarded whenever an interpretation of the Contract Documents is required.

II.2 Capitalized Terms

Unless the context otherwise requires, capitalized terms used but not otherwise defined in the Contract Documents shall have the respective meanings specified in these Terms and Conditions.

II.3 Use of Pronouns

For the Contract documents, one gender shall include any other gender, and the singular shall include the plural, and all rights granted and received shall be joint and several,

II.4 Provisions Required by Law

Each provision of law and any clause required by law to be in the Contract or Purchase Order will be read and enforced as though it were included herein. If, through mistake or otherwise, any such provision, any provision like this is not inserted or is not correctly inserted, then upon application of either party, the Contract or Purchase Order will immediately be physically amended to make such insertion or correction.

II.5 Christian Doctrine

Any clause required by rule or regulation not included in this RFB, the Contract or Purchase Order will be read as if in this RFB, the Contract, or Purchase Order whether or not physically included.

II.6 Non-Exclusive Contract

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the Agency and Eligible Entities. Agency and Eligible Entities reserve the right to obtain equal or similar products from another source.

II.7 Definition of "Agency"

"Agency" shall mean the Kern County Superintendent of Schools ("KCSOS").

II.8 Definition of "Agreement"

"Agreement" shall mean the Awarded Vendor Agreement between Agency and the Awarded Vendor.

II.9 Definition of "Authorized Reseller"

The term "Authorized Reseller" shall mean a firm, company, individual, business, partnership, or joint venture, such as dealers, distributors, value-added resellers, etc. that the Awarded Vendor has designated to help fulfill the Contract for one or more specific PEPPM Catalog awards held by the Awarded Vendor. Authorized Reseller responsibilities may include, but are not limited to, marketing activities, providing ancillary services, receipt of orders, fulfillment of orders, invoicing, receipt of payment, and paying PEPPM Transaction Fees as determined by the Awarded Vendor.

A list of proposed Authorized Resellers must be included as part of a bid response, and the submission of this list will be interpreted to mean that the lead company bidding is bidding as a joint venture with its Authorized Resellers, who will be bound by the same Contract Terms and Conditions and responsibilities as the primary Awarded Vendor, including attestations as to debarment status, non-

collusion, and financial responsibility. Each reseller-partner on the list must sign an Authorized Reseller Form and attest to the company's agreement of the RFB's Terms and Conditions, including notice of any debarments.

II.10 Definition of "Awarded Vendor"

"Awarded Vendor" is the Bidder declared by the Agency to be the lowest, responsive, responsible Bidder with a discrete Catalog to whom the Agency's Board of Directors has awarded a Contract.

II.11 Definition of "Bidder"

"Bidder" is any firm, company, individual, business, partnership, joint venture, or other entity that has completed and submitted a response to this Request for Bids.

II.12 Definition of "Catalog" or "Catalogs"

A "Catalog" is a grouping of products and services representing merchandise and services from multiple manufacturers aggregated by a company for a one-stop shopping experience as a commercially available, published paper book, booklet, single website, or mobile application.

II.13 Definition of "Clarification"

"Clarification" means communication with a Bidder for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the Bidder's bid. It is achieved by explanation or substantiation, either in response to an inquiry by the Agency or as initiated by the Bidder. Clarification does not allow the Bidder to revise or modify its bid, except to the extent that correction of apparent clerical mistakes results in a revision.

II.14 Definitions of "Contract Documents," "Contract" and "Purchase Order"

Contract Documents Between Agency and Awarded Vendor. As between the Agency and Awarded Vendor, the "Contract Documents" consist of this Request for Bids, its Terms and Conditions, any applicable state-specific terms and conditions, all information incorporated into the electronic bid form by Agency or Bidder, the Bidder's responses to Questions, the Bidder's PEPPM Bid Quote Sheet(s), the Bidder's pricing spreadsheet, the Bidder's Ancillary Services Form, the Agreement, all other attachments and exhibits to the Request for Bids, all addenda to the Request for Bids issued before the Bid Opening Date, and all subsequent written amendments to the Agreement (e.g., adding state-specific terms and conditions). The Contract Documents form the "Contract" between Agency and the Awarded Vendor during the Contract term and any authorized extensions. "Purchase Order" may also include a mutually agreeable Statement of Work executed between the Eligible Entity and an Awarded Vendor.

Contract Documents Between Awarded Vendor and Eligible Entity. As between an Eligible Entity and an Awarded Vendor, the "Contract Documents" shall include, in addition to the Contract Documents listed above between Agency and Awarded Vendor, the Purchase Order, (but excluding any pre-printed terms and conditions on such Purchase Order that are in conflict with the Contract Documents), the Awarded Vendor's performance, payment and maintenance bonds (if applicable), lease financing documents (if applicable), maintenance service agreement (if applicable), the Prevailing Wage rate determination (if applicable), and any state-specific terms and conditions that are part of the Contract Documents, and all subsequent written amendments to the Purchase Order, and shall form the "Contract" between the LEA and Awarded Vendor, which Contract is referred to in these Terms and Conditions as the "Purchase Order."

II.15 Definition of “Effective Date”

The “Effective Date” of a Purchase Order is the date on which the Awarded Vendor receives a Purchase Order that has been executed by the Eligible Entity and has all approvals required by the Eligible Entity.

II.16 Definition of “Eligible Entity”

“Eligible Entity” means an LEA or other Eligible Organizations that qualify to be buyers. Several Sections describe “Eligible Entities” [starting here](#).

II.17 Definition of “eCommerce Consultant”

The "eCommerce Consultant" is a private purchasing services company engaged by Agency to help with the bid process and provide a multitude of procurement services, including bid development, consulting, eCommerce, marketing, order management, and accounting services.

II.18 Definition of “eCommerce Merchant Agreement”

The term "eCommerce Merchant Agreement" is the document attached to the electronic bid form governing the eCommerce Consultant's services and software integral to the PEPPM program.

II.19 Definition of “Epylon”

“Epylon” shall mean Epylon Corporation, the eCommerce Consultant with an address of 630 San Ramon Valley Boulevard, Suite 210, Danville, California, 94526.

II.20 Definition of “LEA”

The term “Local Educational Agency” or “[LEA](#)” is defined [elsewhere](#) in the Terms and Conditions.

II.21 Definition of “Non-Responsive Bid”

Any bid that does not reasonably and substantially conform to the required or essential terms, conditions or specified requirements for this solicitation shall be considered “Non-Responsive.” Bids found to be Non-Responsive will not be considered for an award.

II.22 Definition of “PEPPM”

PEPPM (pronounced *PEP-um*) is a national cooperative purchasing program specializing in the development and award of technology-related purchasing contracts administered by the Central Susquehanna Intermediate Unit (“CSIU”).

II.23 Definition of “Responsible Bidder”

A responsible Bidder is a vendor that has submitted a responsive bid and one that has the capability and qualifications to perform the Contract requirements in all respects, plus the financial strength, integrity, and reliability to assure good-faith performance. Agency must determine a Bidder to be responsible before awarding a Contract to Bidder.

II.24 Definition of “Responsive Bid”

A “Responsive Bid” is a bid that reasonably and substantially conforms to the required or essential terms, conditions, and specified requirements for this RFB. Bids must be responsive to receive award consideration.

II.25 Definition of “Punchout”

The term “Punchout” is a website technology term for the functionality that lets one website pass credentials to another site, enabling a user to access uniquely scoped or protected content and interactive functions.

II.26 Definition of “Transaction Fee”

"Transaction Fee" is that fee paid by an Awarded Vendor on the net dollar amount of invoiced products and ancillary services sold under an Agency Contract. "Transaction Fee" is more fully defined [elsewhere](#) in the Terms and Conditions.

III Legal Authority and Eligible Buying Agencies [\[Return to Top\]](#)

III.1 Agency Role in California

Agency is an elected county superintendent of schools, an office established by Article IX of the California Constitution. The current office holder is John G. Mendiburu, Ed.D, empowered with authority to award and enter into contracts.

III.2 Authority for Bidding, Contracting, and Cooperative Use of Contracts

The PEPPM cooperative purchasing program was originally established in 1982. It is a national cooperative purchasing program administered by the Central Susquehanna Intermediate Unit, a political subdivision of Pennsylvania, which is cooperating with the Kern County Superintendent of Schools.

Exercising powers under Article IX of the California Constitution, the KCSOS solicits bids for LEAs under Constitutional authority and California statutes.

Agency also claims bidding authority for bidding and use of its cooperative purchasing Contracts under the California Public Contract Code, the Education Code, and the Government Code.

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 under California Public Contract Code Sections 20118 and 20652. Using these statutes, the KCSOS hereby declares its intent and authorization to make all Contracts awarded under this RFB "piggybackable" by other LEAs.

The Agency waives any right to receive payment from other Eligible Entities 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 LEAs is listed as a PDF attachment to the Terms and Conditions Section and is titled "Partial List of Eligible Agencies."

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.

KCSOS 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 because 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 programs for 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 under Public Contracts Codes 20118 and 20652 but also under Education Codes 38110 and 38112 dealing with cooperatives and Standard School Supplies & Equipment.

Further Agency extends its agreement for other public agencies to use Contracts arising out of this RFB under the authority of Government Code 6502 by mutually exercising powers common to the parties, whether in California or outside the state, if the Awarded Vendor consents.

Therefore, the Agency intends that the Contracts awarded under this RFB be made available for use by LEAs and other Eligible Organizations in all 50 U.S. states, Washington DC, Puerto Rico, and other territories to the fullest extent permitted by law, as amended from time to time.

III.3 Local Educational Agencies (LEAs)

“Local Educational Agencies (LEAs)” means the following tax-exempt, nonprofit institutions and organizations (each an “LEA” and collectively “LEAs”):

- Public school districts
- Area vocational technical schools (AVTS units)
- Intermediate units and county offices of education
- BOCES
- State-approved private schools
- Public libraries
- Nonpublic schools
- State-approved charter schools
- Community colleges
- Other organizations defined as “local educational agencies” under applicable law.

III.4 Other Eligible Organizations

“Eligible Organizations” means these institutions and organizations whether residing inside or outside of the State of California, *subject to the Awarded Vendor’s approval*:

- Tax-exempt, nonprofit colleges, and universities, other than community colleges which fall within the definition of LEAs
- Other tax-exempt, nonprofit educational institutions or organizations which do not fall within the definition of LEAs
- County governments, local municipalities, county/municipal/public authorities, and special districts
- State agencies
- Other political subdivisions
- Other tax-exempt, nonprofit public health institutions or organizations
- Other tax-exempt, nonprofit fire companies, rescue companies, or ambulance companies
- Other entities, including a council of governments or an area government, which expend public funds for the procurement of supplies, services, or construction
- Other organizations, institutions or entities permitted under applicable law to avail themselves of Agency Contracts

III.5 Eligible Entities

The LEAs and other Eligible Organizations are sometimes collectively referred to in this RFB as, each an “Eligible Entity” and collectively the “Eligible Entities.” Unless approved by the Awarded Vendor, Eligible Entities do not include U.S. federal governmental entities.

III.6 Extending Contract Awards to Other States and U.S. Territories

Although this RFB is tailored for all LEAs in California, the Agency intends to allow for “piggybacking” on Agency Contracts by Eligible Entities residing inside or outside of the State of California that wish to participate. Therefore, an Awarded Vendor must be able to serve the entire United States.

In addition to California LEAs, the Agency will make its Contracts available to other Eligible Entities residing inside or outside of the State of California if they meet the following conditions:

- The Agency Contract meets the Eligible Entity's bidding requirements and is judged to be a good value
- The Awarded Vendor is willing to extend its PEPPM bid prices and Contract terms to the Eligible Entity
- The order is processed according to PEPPM ordering procedures or approved deviations

III.7 Geographic Reach of the Awarded Vendor

Bidders must have the ability to serve the entire United States and U.S. Territories and all Eligible Entities therein.

III.8 Intergovernmental Agreement

By purchasing products under an Agency Contract or entering into a Purchase Order with an Awarded Vendor under an Agency Contract, the Eligible Entity attests, affirms, acknowledges, and agrees that:

- It is an organization eligible to participate in the Contract under the Cooperative Procurement Code
- It is bound by all of the Terms and Conditions of the Contract applicable to the Eligible Entity, including, without limitation, these Terms and Conditions, state-specific terms and conditions, and applicable law
- Under no circumstances shall any other Eligible Entity or the Agency be responsible for payments on account of said Eligible Entity's purchases, it being the intent that any such purchases shall constitute the separate agreement of Eligible Entity with the particular Awarded Vendor
- Agency may disclose non-specific aggregate Eligible Entity information (such as the geographic spread of participants and number and types of participants) to third parties
- The Agency and Eligible Entity intend that Eligible Entity's purchase of products and services under a Contract or entry into a Purchase Order with an Awarded Vendor, hereby bound by these Terms and Conditions, constitutes the necessary intergovernmental agreement between the Eligible Entity and Agency to satisfy the Cooperative Procurement Code requirements and any requirements for an interlocal agreement under the applicable procurement code of the Eligible Entity's state. No additional agreement is required. If, however, the Eligible Entity requests that the Agency execute a separate interlocal agreement, Agency will do so, provided such interlocal agreement is in form and substance acceptable to Agency.

III.9 Compliance with Laws and Specific Terms and Conditions

Awarded Vendor shall comply with all laws, whether local, state, territorial, federal or otherwise, applicable to it in its provision of any of the products or ancillary services to be provided under the Contract. It shall be the Awarded Vendor's responsibility to determine the applicability and requirements of any such laws and abide by them.

Eligible Entities in states outside of California may have further requirements or conditions listed with this bid that clarifies the ability of LEAs or other Eligible Entities to piggyback other state or cooperative procurement Contracts like Agency's. State-specific terms and conditions may be listed in an addendum to this Request for Bids and pertain only to the individual states listed. The inclusion or absence of any state-specific terms and conditions should not be construed as tacit approval by the state for purchases through the PEPPM cooperative purchasing program. Adherence to the state-specific terms and conditions listed only applies if a Bidder has agreed to extend its Agency Contract to LEAs (and other Eligible Entities, if applicable) in that specific state. Only Contracts held by Awarded Vendors willing to adhere to these additional state-specific terms and conditions will be listed as available in that state.

Other state-specific terms and conditions may be determined after the bid is awarded and added to the Contract via an amendment to the Awarded Vendor Agreement agreed upon by the Awarded Vendor and Agency, or added to an LEA's or other Eligible Entity's Purchase Order via an amendment agreed upon by the Awarded Vendor and LEA. The Awarded Vendor's agreement to either of the foregoing amendments shall not be unreasonably withheld, conditioned or delayed.

III.10 eCommerce Merchant Agreement

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

III.11 Agency's Interest in a Contract Resulting from This RFB

Agency's interest and liability for the use of this RFB and the Contracts used by Eligible Entities shall be limited to the competitive bidding process performed relating to the Contract and shall not extend to the products, ancillary services, or warranties of the Awarded Vendor or the intended or unintended effects of the products and ancillary services procured by the Eligible Entity.

Agency shall not be liable to any Awarded Vendor or Eligible Entity for any special, indirect, incidental, exemplary, reliance, consequential, or punitive damages, lost profits, or other business interruption damages, whether based on breach of Contract, tort (including negligence), product liability, or otherwise. Agency's liability shall be limited to direct, actual damages only, and the Agency shall not be liable for damages in excess of the Transaction Fee it receives on the applicable transaction. Eligible Entities and Awarded Vendors acknowledge that the limitations listed above are fundamental elements of the PEPPM program and resulting agreements and the Agency would not provide the PEPPM program or enter into the agreements absent such limitations.

III.12 New Laws; Change to Existing Laws

If a new law, rule or regulation comes into effect; or there is a change in any existing law, rule or regulation; or there is a change in the interpretation of any applicable law, rule or regulation by any court of law or regulatory body; and such event makes performance by Agency or an Eligible Entity under the Contract or a Purchase Order illegal, impracticable or impossible, the Agency or such Eligible Entity may at its option suspend performance under, or terminate, the Contract or such Purchase Order without further obligation to the Awarded Vendor or Authorized Reseller other than to pay any amounts owed through the date of suspension or termination.

III.13 Applicability of E-Rate Provisions

Provisions related to E-rate in these Terms and Conditions are not applicable to an Awarded Vendor if no E-rate Form 470 has been filed in conjunction with the publication of the RFB.

For this RFB, PEPPM 2025 Instructional Supply Catalog Bid – California, Electronic Bid Number 546422, no form 470 has been filed.

IV PEPPM Fees [\[Return to Top\]](#)

IV.1 PEPPM Bid Evaluation Fee

There are no bid evaluation fees for a Bidder submitting a bid in response to this RFB.

IV.2 PEPPM Bid Award Fee

Successful Bidders will NOT be charged any award or setup fees in connection with an award in California.

IV.3 Payment of Bid Evaluation and Bid Award Fees

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

IV.4 Transaction Fees

Awarded Vendors shall be required to pay a Transaction Fee, in USD, to the Agency for all purchases by Eligible Entities made through the awarded Contracts. The Transaction Fee shall be 1.75 percent of "Net Sales," which means gross sales of products and ancillary services, less returns and canceled orders within thirty (30) days, shipping, and other taxes (excluding taxes based on net income). This applies to all orders, regardless of the method used to submit the order, the quantity of products or ancillary services, or the dollar amount of the order.

The eCommerce Consultant will collect the Transaction Fee on behalf of Agency.

The Transaction Fee described here is the same as the agreed-upon eCommerce Consultant Marketing Fee contemplated by Section 7 of the Epylon eCommerce Merchant Agreement. The Agency Transaction Fee replaces and supersedes any requirement for higher fees in the eCommerce Merchant Agreement.

Authorized Resellers will be responsible for paying the Transaction Fee for Authorized Resellers' transactions unless the Awarded Vendor notifies the eCommerce Consultant of its intent to pay the Transaction Fee on behalf of their Authorized Resellers. Awarded Vendors shall remain responsible for paying the Transaction Fee on behalf of its Authorized Resellers if the Authorized Reseller fails to remit the Transaction Fee. By way of clarification, the immediately preceding sentence does not apply to an Awarded Vendor's Authorized Reseller where such Authorized Reseller is itself an Awarded Vendor for a different Product Line and is selling to the Eligible Entity in its capacity as an Awarded Vendor for such different Product Line.

Transaction Fees publicly disclosed here will not be charged to or paid by the Eligible Entities themselves but are an Awarded Vendor's cost of doing business. Awarded Vendor or its Authorized Resellers shall not include any additional itemized amount corresponding to the Transaction Fees in the bid responses, awarded Contract prices, or any other quote including E-rate mini-bids to Eligible Entities.

Failure to pay Transaction Fees within thirty (30) days of an order may result in suspension or termination of the Awarded Vendor's Contract whether sales were processed directly by the Awarded Vendor or its Authorized Resellers. The Awarded Vendor shall reimburse the Agency for any costs and

expenses (including, without limitation, attorney's fees) arising out of any claims or actions taken on behalf of the Agency to collect any unpaid Transaction Fees.

IV.5 Fees in Non-Conforming Jurisdictions

Notwithstanding Section IV.4, no Transaction Fee is authorized to be collected or charged to Awarded 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 Contract in such jurisdictions shall be the same as for LEAs in all other counties of California. However, any Eligible Entity using a Contract where Section IV.4 fees are not allowed shall be required to pay directly 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 Eligible Entity for providing the services incidental to the purchase of items under Contract.

IV.6 Cost of Bid Preparation

The Agency will not reimburse Bidders for the cost of developing, presenting, or responding to this RFB.

V Bidder Qualifications [\[Return to Top\]](#)

V.1 Declaration of Non-Collusion

Assuring that prices are arrived at independently and without collusion is so crucial that this RFB requires the Bidder to affirmatively and truthfully answer "Yes" to the non-collusion questions in the Question Section. Otherwise, the bid may not be submitted to Agency.

By submitting this bid, the person named on the electronic bid form declares that he or she has authority to offer the prices bid and acknowledges and agrees that:

- The price(s) and amount of the bid were arrived at independently and without consultation, communication, or agreement with any other contractor, Bidder, or potential Bidder.
- Neither the prices nor the amount of the bid, and neither the approximate prices nor the approximate amount of the 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.
- 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 a complementary bid.
- Their bid 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.
- Neither Bidder nor its affiliates, subsidiaries, officers, directors, or employees are currently under investigation by any governmental agency and have not in the last three 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 except as set forth in a separate attachment to your bid.
- The representations above are material. They will be relied on by the Agency in awarding the Contract(s) for which this bid is submitted. Any misstatement is and shall be treated as fraudulent concealment of the facts relating to the submission of bids for this RFB.

V.2 Suspension or Debarment

By submitting a bid, the Bidder certifies for itself and all its Authorized Resellers that, within the past five years, they have not been under suspension, debarment, or otherwise lawfully precluded from participating in any public-sector procurement activity.

After Bidder's submission and during the term of any Contracts or Purchase Orders, Agency and Eligible Entities may inquire whether any Bidder, Awarded Vendor or Authorized Reseller has been suspended or debarred or is otherwise lawfully precluded from participating in any public-sector procurement activity.

V.3 Overdue Tax Liabilities and Other Delinquent Obligations

The Bidder certifies by submission of its bid that it does not know of any overdue tax liabilities of Bidder or its intended Authorized Resellers or other delinquent obligations owed to Agency, including, but not limited to, unpaid Transaction Fees or other fees from previous contracts.

V.4 Notice of Any Changes

An Awarded Vendor must inform the Agency if it changes its address or become delinquent in taxes. Also, the Awarded Vendor must tell the Agency if another government agency suspends one of its contracts or if another government agency debars it. All notices must be in writing and received by the Agency within 15 days of the change, delinquency, suspension, or debarment.

V.5 Americans with Disabilities Act

Under federal regulations put into force under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Awarded Vendor agrees that it shall cause no individual with a disability to be excluded from participation in the Contract or Purchase Order or from activities provided for under the Contract or Purchase Order based on a disability. As a condition of accepting any Contract or Purchase Order, the Awarded Vendor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations put into force under Title II of The Americans With Disabilities Act that are applicable to all benefits, services, programs, and activities relevant to the Contract or Purchase Order.

V.6 Covenant Against Contingent Fees

The Awarded Vendor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract or Purchase Order upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide Authorized Resellers maintained by the Awarded Vendor to secure business. For breach or violation of this warranty, the Agency or Eligible Entity, as applicable, shall have the right to terminate the Contract or Purchase Order, as applicable, 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.

V.7 Sole Source of Responsibility

Agency desires a "Sole Source of Responsibility" vendor, meaning the Awarded Vendor will take sole responsibility for the sale and delivery of the broadest scope of products within a catalog across the largest possible geographic area, and to the largest possible cross section of Eligible Entities.

Having status as the "Sole Source of Responsibility," an Awarded Vendor may establish relationships with Authorized Resellers to execute its contractual duties. The Awarded Vendor assumes all responsibility for the products and ancillary services provided by its Authorized Reseller, its Authorized

Reseller's actions, and Transaction Fees of any Authorized Reseller. This does not apply to an Awarded Vendor's Authorized Reseller where such Authorized Reseller is itself an Awarded Vendor for a different Catalog and is selling to the Eligible Entity in its capacity as an Awarded Vendor for such different Catalog.

V.8 Authorization for Resellers

As described elsewhere in this RFB, bid awards will be made in two separate categories, one for responsible and responsive low-price Bidder who has a national footprint and can fulfill all orders directly. The other will be to a responsible, responsive low-cost Bidder who uses a reseller model to take and fulfill orders. As part of the reseller model, the Awarded Vendor and its Authorized Resellers may offer and sell products to Eligible Entities. Awarded Vendors must make sure their Authorized Resellers sell contracted products and services at or below bid pricing. They must also make sure their resellers obey all terms and conditions of the Contract and corresponding Purchase Order and pay all Transaction Fees unless the Awarded Vendor has agreed to pay the Transaction Fees on the Authorized Reseller's behalf.

If an Authorized Reseller does not pay its Transaction Fees, the Awarded Vendor becomes responsible for the payment of the Transaction Fees. The Awarded Vendor is responsible for maintaining the Ordering Instructions, which includes the list of Authorized Resellers. Additional Authorized Resellers may be added after bid award subject to prior approval of the Agency, but Agency gives no assurance that such changes will be endorsed by all Eligible Entities.

The Awarded Vendor is responsible for oversight of its Authorized Resellers. Agency reserves the right to reject an Awarded Vendor's proposed or Authorized Reseller based on such Authorized Reseller's unsatisfactory performance or behavior under past PEPPM or Agency contracts.

V.9 Bidder Profiling

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

- Maintain permanent places of business;
- Have a legal source of supply to furnish the products offered within a catalog;
- Will provide customer sales support and service to all LEAs and applicable Eligible Organizations;
- Have current relationships with LEAs or other customers for verification of customer satisfaction;
- Can demonstrate an active sales network;
- Will serve all selected LEAs and applicable Eligible Organizations

V.10 Historically Under-Utilized Businesses (HUBs)

The Agency requests any small business, minority business, women's business enterprise, veteran-owned business or labor surplus area firm to identify their status as such so it can be made known to interested Eligible Entities. A HUB may identify itself in its answer to a HUB question in the Question Section.

V.11 Insurance

The Awarded Vendor must purchase and maintain insurance for the protection of claims for damages because of bodily injury, including personal injury, sickness, disease or death of the Awarded Vendor's employees for claims of damages due to injury or destruction of tangible property, including loss of use resulting therefrom, and from claims arising out of the performance of the Contract or Purchase Order

or caused by negligent acts for which the Awarded Vendor is legally liable. The Awarded Vendor must maintain throughout the term of the Contract and throughout the term of any outstanding Purchase Orders with an Eligible Entity at least \$1,000,000 per occurrence commercial general liability insurance (basic and umbrella coverage) covering the services and work contemplated by the Contract and Purchase Order.

The Awarded Vendor must buy and maintain throughout the term of the Contract and throughout the term of any outstanding Purchase Orders with an Eligible Entity automobile and truck liability coverage with a minimum combined single limit liability of \$300,000.

If requested by the Agency or an Eligible Entity, the Awarded Vendor must provide a certificate of insurance evidencing all required coverage with a provision that notice of cancellation shall be provided in accordance with policy provisions. All required insurance must be written on an occurrence basis and maintained with a carrier authorized to conduct business in the State of California or the state in which the Eligible Entity resides, having a minimum "excellent" rating of A.M. Best A-. The Agency and Eligible Entity shall be included as additional insureds as respects insurable liabilities assumed by Awarded Vendor under this Agreement on the Commercial General Liability policy of insurance required to be carried by Awarded Vendor under the Contract or Purchase Order.

The Awarded Vendor is required throughout the term of the Contract and through the term of any outstanding Purchase Orders to comply with the California worker's compensation laws and any such worker compensation acts from other states in which the Eligible Entity resides, and any supplements or amendments thereto, which may have been or may hereafter be passed.

V.12 Definitions Related to Vendor Integrity

For purposes of the Sections numbered Sections V.12 through V.23 only, the following definitions shall apply:

"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 Eligible Entity

"Consent" means written permission signed by a duly authorized officer or employee of the Agency or Eligible Entity, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Agency or Eligible Entity shall be considered to have consented by virtue of execution of the Contract or Purchase Order, as applicable

"Vendor" means Awarded Vendor or Authorized Reseller who may be an individual or entity that has entered into the Contract or a Purchase Order with an Eligible Entity, including directors, officers, partners, managers, key employees and owners of more than a 5 percent interest

"Financial interest" means a) ownership of more than a 5 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

"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

V.13 Highest Standards of Integrity

The Vendor shall maintain the highest standards of integrity in the performance of the Contract and 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 Eligible Entity.

V.14 Confidential Information

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

V.15 Pecuniary Benefit

The Vendor shall not, in connection with the Contract or any other agreement with the Agency or the Purchase Order or any other agreement with any Eligible Entity 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 Eligible Entity.

V.16 Giving Gratuities

The Vendor shall not, in connection with the Contract, Purchase Order or any other agreement with the Agency or Eligible Entity, 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 Eligible Entity.

V.17 Accepting Gratuities

Except with the consent of the Agency or Eligible Entity, neither the Vendor nor anyone in privity with the Vendor 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 Contract or a Purchase Order except as provided therein.

V.18 Supplemental Financial Interests

Except with the consent of the Agency or Eligible Entity, the Vendor shall not have a financial interest in any other vendor, designated partner, or supplier providing services, labor, or material on a project under a Contract or Purchase Order.

V.19 Notification of Violations

The Vendor, upon being informed that any violation of these provisions (i.e., Sections V.12 through V.23) has occurred or may occur, shall immediately tell the Agency or Eligible Entity in writing.

V.20 Certification of Non-Violation

The Vendor, by execution of the Agreement and Purchase Order and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that it has violated none of these provisions (i.e., Sections V.12 through V.23).

V.21 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 relevant to the Vendor's integrity or responsibility, as those terms are defined by relevant statutes, or regulations. This 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 must be disclosed under applicable law and refers to or concerns the Contract

or Purchase Order. The Vendor shall retain this information for three years beyond the termination of the Contract or Purchase Order unless a longer period is otherwise provided by law. For example, E-rate rules require E-rate applicants and Service Providers to maintain all E-rate related documents including but not limited to procurement, billing, and communications, for ten years from the last date to receive service in a particular funding year.

V.22 Rights and Remedies in the Event of Violation

For Vendor's violation of any of the above provisions (i.e., Sections V.12 through V.23), the Agency or Eligible Entity may terminate the Contract, Purchase Order, and any other agreement with the Vendor, claim damages 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, and debar and suspend the Vendor from doing business with the Agency or Eligible Entity; provided that before any termination action under this Section, Vendor shall be provided with written notice of the violation and 30 days to cure the violation. 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 Eligible Entity may have under law, statute, regulation, or otherwise.

V.23 Right of Vendor Employee Rejection

LEAs that are school districts, nonpublic schools, charter schools, or public technology schools reserve the right to reject any person they deem unfit to be permitted on school grounds and in proximity to students. After written notice from the Eligible Entity or Agency, the Awarded Vendor shall have such persons performing services under the Purchase Order removed from the site immediately. The Eligible Entity's right to declare a person unfit shall not be limited to the required exclusion of such persons due to the provisions of federal and state child protective services laws.

V.24 Separation of Employer Responsibilities

It is agreed that the Awarded Vendor, in performing services and providing products under the Contract or any Purchase Order, is acting as an independent contractor and is not an agent, servant, partner, or employee of Agency or any Eligible Entity. The Awarded Vendor has control over the services and products it delivers under the Contract and any Purchase Order and shall be solely responsible for its own federal, state, and local income taxes, salary, social security payments, and any other payments incurred by the Awarded Vendor in the performance of the Contract and any Purchase Order. Awarded Vendor must comply with all legal requirements governing employment. None of the benefits provided by Agency or Eligible Entities to their own employees, including but not limited to retirement benefits, workers' compensation insurance, disability insurance, medical insurance, and unemployment insurance, are available to the Awarded Vendor and/or any of the Awarded Vendor's agents, servants, and employees. The Awarded Vendor has no authority under the Contract or any Purchase Order to assume or create any such obligation or responsibility, expressed or implied, on behalf or in the name of Agency or Eligible Entities, or to bind Agency or Eligible Entities in any way whatsoever.

V.25 Nondiscrimination and Sexual Harassment

During the term of the Contract and any Purchase Order, the Awarded Vendor agrees:

In the hiring of any employees for manufacturing supplies, performance of work, or any other activity required under the Contract or any 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.

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 making of supplies, the performance of work, or any other activity required under the Contract or any Purchase Order on account of gender, race, creed, or color.

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 have a notice that sexual harassment will not be tolerated, and employees who practice it will be disciplined.

The Awarded Vendor shall not discriminate by reason of gender, race, creed, or color against any designated partner or supplier qualified to perform the work to which the Contract relates.

If the Agency or Eligible Entity has reason to suspect that the Awarded Vendor violated the Nondiscrimination/Sexual Harassment Clause, the Agency or Eligible Entity may request, and the Awarded Vendor shall promptly provide, applicable information to prove compliance. If the Awarded Vendor or any designated partner does not have documents or records reflecting the information requested, it shall provide this information on reporting forms supplied by the Agency, Eligible Entity, or appropriate departments of state government.

The Awarded Vendor shall include this Nondiscrimination/Sexual Harassment Clause in every subcontract that specifically supports the Contract or any Purchase Order so that such provisions will be binding upon each designated partner.

The Agency or Eligible Entity may cancel or terminate the Contract or Purchase Order, as applicable, 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.

V.26 Fair Labor Standards Act

By submitting a bid, the Bidder certifies for itself, that to the best of its knowledge and belief, Bidder and all its Authorized Resellers, properly classify employees in a way consistent with the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8 (FLSA), and that if awarded a contract, Awarded Vendor shall, and shall require its Authorized Resellers, to continue to classify employees in a way consistent with the FLSA. An Awarded Vendor must inform the Agency if it or any of its Authorized Resellers is found or found to be classifying employees in a way inconsistent with the FLSA. All notices must be in writing and received by the Agency within 15 days of the finding/determination

V.27 References and Past Performance

A Bidder must be responsible and capable of executing all duties to be covered under the Contract.

To evaluate a Bidder's qualifications to perform under the Contract, Agency will require the submission of three signed reference forms. Also, the Agency will consider the performance of Bidder on previously awarded PEPPM or Agency contracts and Bidder's past conformance to bid terms and conditions, including submission of pricing updates, submission of Ordering Instructions, customer service and payment of fees.

If a Bidder is a wholesaler and has no direct relationships with an LEA, then the wholesaler must provide references from its resellers.

VI Catalog and Product Specifications [\[Return to Top\]](#)

VI.1 Types of Catalogs Sought

This RFB seeks formula pricing for products and services within commercially available catalogs. A “Commercially Available Catalog” is construed to mean a catalog with widespread availability and distribution, as opposed to a custom or one-off catalog. A key distinction of a Commercially Available Catalog is that the base pricing is applicable to a wide audience. When base commercial prices change, the price changes for all audiences. Based on the price in their Commercially Available Catalog, Bidders will offer a PEPPM pricing formula from the catalog price to create a new bid price applicable to PEPPM buyers.

VI.2 Two Separate Distribution Models

PEPPM seeks catalogs representing two distribution models:

- one from a national vendor who can sell and fulfill orders directly;
- a second from a vendor who uses local or regional Authorized Resellers to fulfill orders in addition to itself

A contract award for each model will ensure that Eligible Entities throughout the entire United States have access to a reliable source of office supplies and equipment and prompt delivery.

Each model type is listed on a table within the electronic bid form. Bidders will identify which model they will use by clicking and checking the appropriate box on the bid form.

VI.3 Content of Catalog Sought

No matter what the distribution model, the Core List for each award will be the same, and the Rest-of-Catalog content will be similar for both distribution models. This Request for Bids seeks bids on products typically sold through online and paper-based catalogs. Besides Core List products, a Bidder’s catalog must contain, but is not limited to, products in the following categories

- A. Office Supplies
- B. Instructional Supplies
- C. Furniture
- D. First-Aid and Safety
- E. Breakroom Supplies

VI.4 List of All Manufacturers in Commercially Available Catalog

Bidders must include with their response an Excel spreadsheet listing the names of all manufacturers or brands included in the Commercially Available Catalog. For the sake of simplicity, the list may include both brands and manufacturers or just brands, understanding that many brands derive from a single parent company. At least 100 brands and/or manufacturers must be represented.

VI.5 Core Line Items Are Attached

Specific line items sought, with their descriptions and model numbers, are attached as an Excel spreadsheet to the bid form.

Core Lists are identical for both types of distribution models sought.

These Core Items are to be priced explicitly for the contract. These are the most frequently ordered items by Eligible Entities. Accordingly, Agency expects the most aggressive pricing on these items. All Core Items must be available to Eligible Entities for the duration of the contract.

If any product in the Core List has been recently discontinued and is no longer available, the Bidder shall offer a functional equivalent and indicate in the notes section that the specified item has been discontinued. Agency reserves the right to remove these line items from evaluation in the determination of the lowest Bidder.

If any item is discontinued by the manufacturer during the Contract, Agency may require the Vendor to add a functionally equivalent substitute item at the same price or at a discount structure.

VI.6 Brands

Brand names on the Core List are included for descriptive purposes to indicate the quality, design, and utility desired by Agency, but the specifications are not intended to restrict competition. Brands of equal make or type to those specified will be considered unless otherwise indicated in the bid. Each Bidder offering substitutes shall indicate the manufacturer's name and model number of the brand(s) being bid and may be required to submit samples in accordance with the samples provision in this RFB.

VI.7 Equivalents

Agency seeks bids for products as described on the bid form and the Excel Core List Pricing Template. The identification of a branded product line is a specification and standard for goods to be procured. For each product identified by the Agency, a Vendor may bid a product-for-product "equivalent." If the product being bid is an equivalent and not the actual branded product specified, the Bidder must, upon request, provide Agency with a non-returnable sample of each product bid within the product line for testing. Samples of "equivalent" products must be shipped to Agency at Bidder's expense within two days of request by Agency.

Bidders may bid with a product it thinks is equivalent to the specification. As examples and as an aid to bidding, the Agency lists in the table below some examples of specifications alongside products offered as equivalents in the past, but which have ended up not being considered equivalent.

Specification	Deemed Not "Equivalent"
Sulfite Construction Paper	Groundwood pulp construction paper
Ticonderoga Yellow, #2 Pencils	Private label brands or Universal brand
Sargent Art Plastilina Clay	American Art Clay Co., Inc. 25D White Art Clay
Sharpie® Chisel Tip Permanent Marker, Medium Chisel Tip, Black, Dozen	Sharpie® Retractable Permanent Marker, Fine Bullet Tip, Black, Dozen
Avery® Permanent Glue Stic, 1.27 oz, Applies Purple, Dries Clear	Avery® Permanent Glue Stic, 1.27 oz, Applies White, Dries Clear
Crayola crayons	Jot brand; unbranded Chinese imports by Greenbrier
Crayola colored pencils	Colored pencils by Liqui-Mark
Post-It Notes by 3M	Highland sticky notes by 3M

VI.8 Toxic Art and Craft Supplies

Bidders should know the California restrictions for the labeling and the purchase of art and craft materials by schools as stated in AB 3439 (beginning with Education Code Section 32060). Products that do not meet these requirements shall not be awarded under this RFB.

Products offered under this bid solicitation must conform to the American Society for Testing and Materials (ASTM) chronic health hazard labeling standards for art and craft materials (ASTM D 4236– "Standard Practice for Labeling Art Materials for Chronic Health Hazards") for adult use. Products may not be sold to schools for use by children in grades K-6 if they appear on the current list of "Art and Craft Materials That Cannot Be Purchased for Use in Kindergarten through 6th Grade" as published by the California Department of Health Services.

The list of products that are prohibited for K-6 students is attached to the electronic bid form. Items on this list should not be submitted as part of any bid.

In addition, Bidders and Awarded Vendors, when offering products in a Commercially Available Catalog, must ensure the products offered comply with the Federal Hazardous Substances Act (Sec. 23 [15 U.S.C. §1277]), which requires all art and craft product labels to include information about acute and chronic health hazards and safe handling instructions.

If a Bidder finds any item in the specifications to violate this section or guidance from the Office of Environmental Health Hazard Assessment, the Bidder may offer a substitution that complies.

VI.9 Prices for Rest-Of-Catalog Items

A Bidder must also offer a Commercially Available Catalog, set of catalogs, or a commercially available website from which Eligible Entities can order additional supplies in addition to the list of products on the Core List.

Pricing for other items in this category must be on a pricing formula applied against the catalog price or website price for general retail or educational sales. The Bidder may establish categories of variable discounts for items within its catalog or website. These discounts, whether a single percentage or variable percentage by category, must be listed on the "Quote Sheet" tab of the pricing spreadsheet, which is to be uploaded to the bidding website. All of the Bidder's products in its Commercially Available Catalog must be submitted on a separate spreadsheet as a net pricer, that is, the effective bid price after applying the Bidder's discount or mark-up formula.

VI.10 New, Requested, or Non-Catalog Items

Products within the scope defined by this RFB, but not currently in a Bidder's catalog, may be sold by an Awarded Vendor provided that, in its status as a Bidder, the now-Awarded Vendor has on record a mark-up over cost pricing formula for products sourced from a wholesaler such as S.P. Richards or Essendant. The mark-up over cost formula must be used for these types of items because the Bidder and Awarded Vendor cannot demonstrate a price basis from its Commercially Available Catalog.

This provision is not a license to sell products at a higher price than could be purchased on another PEPPM contract, nor is it a license to sell products not typically found in a commercial office supply catalog.

VI.11 New Product Additions

An Awarded Vendor may add newly invented products, newly marketed products, brands of products new to their catalog, and other new products for sale under the following conditions:

- A clear pricing formula was originally bid and applies to the new products or brand of products;
- Prices are at or below any products under another PEPPM technology product line contract;
- No request is made to subvert competitive procurement procedures;
- Offerings do not extend higher technology prices to PEPPM buyers;
- The new products fit within the scope of office and instructional supplies;
- Substitute or replacement products are equal to or superior than the original offerings

PEPPM or the Agency may approve or reject any additions or replacements in its sole discretion, with or without cause.

VI.12 Construction Paper

Participating Eligible Entities in the PEPPM program have expressed a need for both economical construction paper and high-quality construction paper. This RFB separates its specifications for construction paper into the following categories: Economy (with groundwood pulp) and Quality (with 100 percent sulphite). Separate products and SKUs should be offered for construction paper in both categories.

VI.13 Availability of Green Products

Agency encourages the use of environmentally friendly, green products. Bidders are encouraged to include within their bid submission an electronic copy of any catalogs or product price lists that describe available green products.

VI.14 Availability of Antimicrobial Products

Agency encourages the placement of antimicrobial office products in its inventory or its catalog. Bidders must answer a question in the Question Section indicating if they have more than 100 antimicrobial products in their catalog and available for purchase.

VI.15 Changes in Packaging for Core Items

If during the term of the contract, a manufacturer 1) changes the packaging configuration that affects the unit of measure of the item, or 2) changes an item's Stock Keeping Unit (SKU) number or other part number, the Awarded Vendor must promptly notify PEPPM of the changes.

The contracted price for any item with new packaging must equal the bid price of the original item corresponding to the lowest, most common unit of measure. For example, if the original bid price were for two pens at 10 cents, and the new packaging were for a box of one dozen pens, the new acceptable contract price would be 60 cents.

Under no circumstances shall an Awarded Vendor simply change its inventory policies to stock a new unit of measure to force an LEA to order more merchandise than the LEA originally expected by reading published bid prices. For example, a brand of pen was bid as a cello pack with three pens inside. The cello pack is still available from the manufacturer. It is unacceptable for an Awarded Vendor to discontinue the three-pack in favor of a box containing a dozen pens, when the originally bid unit of measure, the three-pack, is available from the manufacturer.

It is the responsibility of the Bidder to bid Core Items in the units of measure it expects to supply during the Contract, and packaging differences from the specification may not be an acceptable substitute.

VI.16 Substitutions

It is preferred that a Bidder bid the specified item. If Bidder does not have the exact item specified, a substitute may be provided, but the substitution must be equivalent to the item specified. The substitute may be different in manufacturer or brand. Upon request, samples must be provided for a substitution to be considered. Agency will have final authority and discretion as to whether the “substitution” meets equivalent specifications. Where specifications call for a “brand name” quality (e.g., 3M Post-It Notes) on one line and a lesser quality item on an adjacent line (e.g., Highland sticky notes), the lesser quality item will not be considered an acceptable substitute for the “brand name” item. Usually, the specification will state that certain substitute brands are not acceptable.

If the substitution is not accepted, Agency may require the exact specified item to be provided at the bid price of the substitute, or, in its sole discretion, Agency may strike the specified item from the Core List.

Among the reasons a substitution may be considered not equivalent include differences related to, but not limited to, color, packaging, units of measure, effectiveness, toxicity, weight, dust, durability, warranty, size, visual effect, strength, stickiness, smell, texture, viscosity, added features, missing features, user reviews, state prohibitions, pollution, and electrical usage.

VI.17 Alternates

It is preferred that a Bidder bid the specified item. A Bidder may offer an alternate. An alternate is not necessarily an exact equivalent but may have a similar function as the item specified and is offered as an additional alternative to a Bidder’s substitute. Agency will have final authority and discretion as to whether the “alternate” has functional value and may be added to the contract. Place information about alternates in the notes column of the spreadsheet.

VI.18 Samples

California law allows the consideration of equivalents. Bidders who are bidding items and brands different from those specified or where no brand is indicated in the bid documents must submit samples within two business days of Agency’s request. Any Agency requests for samples will be made after the bids are submitted and during the evaluation process. Agency will provide shipping instructions. The instructions must be followed for samples to be considered. All samples shall be provided by the Bidder at no cost and become the property of Agency, unless otherwise agreed to in writing by Agency and the Bidder. Samples may be used, tested, and destroyed in the process of evaluation.

Samples sent directly from manufacturers must be properly labeled in accordance with the above provisions. Vendors should not provide case quantities of an individual sample. Do not depend on the goodwill of manufacturers to make sure proper samples have been provided or drop-shipped.

VI.19 Case Lot Shipments

If items being bid are to be shipped in case lots only, the Bidder shall specify on the bid form and indicate the applicable case size. Agency reserves the right to award to other than the low Bidder, if in its opinion, case lot shipments will restrict or prohibit Agency, or any Eligible Entity, from placing Purchase Orders.

VI.20 Discrepancies with Model or Manufacturer SKU Numbers

If a Bidder finds a discrepancy with a model number or SKU number for an item, and if the model number for that same item is no longer the model number associated by the manufacturer with that item, a Bidder may indicate such by inserting "new number" in the Notes space on the Pricing Sheet. By inserting "new number" in the Notes space on the Pricing Sheet, a Bidder understands that its offer is for the exact same item for which there is no change to the specifications and that consideration shall be given only to cases only where this applies.

VI.21 Discontinued Products

During the Contract, if any Core List product is no longer made, an Awarded Vendor must notify PEPPM with proof that the item is no longer being produced. The awarded item may be removed from the Contract, or the vendor may propose a substitute, which may be offered under Contract at the same discount or same unit price as the original item or lower, at Agency's sole discretion.

VI.22 Post-Award Adjustment of the Core List

By mutual consent, PEPPM and an Awarded Vendor may invoke the provision for voluntary discounts to amend or modify the Core List in any category based on need, usage, or purchase history of Eligible Entities.

VI.23 Made-New Product Provisions

Products offered by a Bidder and those sold by an Awarded Vendor or Authorized Reseller must be new and may not be refurbished, except for properly labeled and disclosed remanufactured ink and toner products.

Agency accepts that some manufacturers may use some recycled, incidental components meeting like-new standards.

Awarded Vendors must make sure all products sold have the component parts and features meeting commercial standards for products in their awarded catalogs. All components inside a product must be manufacturer-approved, unless otherwise noted, and subject to the full manufacturer's warranty.

Also, an Awarded Vendor must make sure that any products offered or sold in response to this RFB are the same models indicated by their external label and source of manufacture.

VI.24 Quantities

This is an indefinite quantity bid for which there shall be no limit to the number of orders placed, in any quantity, by Agency, or any participating Eligible Entity, for the term of the Contract. Estimated usage is based either on projections or historical usage within times, places, and circumstances that may not be duplicable. Multiple awards may be made which diminish potential sales among Awarded Vendors. Agency and Eligible Entities may use other contracts from which to buy. With multiple contracts in place, usage histories may be an inaccurate estimate of potential spending by Eligible Entities to a single contractor.

VI.25 No Guarantee of Volume

Neither Agency nor any other participating Eligible Entity guarantees any specific volume of sales through Contracts awarded under this RFB. Estimated usage is not a guarantee of any amount of spending by Eligible Entities.

VI.26 Installation and Service

Any products needing to be installed (furniture, for example) or any ancillary services rendered shall be provided in accordance with the manufacturer's instructions and in accordance with the schedule mutually agreed upon between Awarded Vendor and the Agency or Eligible Entity.

An Awarded Vendor may provide and bill for ancillary installation services needed to make purchased products functional, provided it has submitted an Ancillary Service Form in conjunction with its bid and response to the RFB.

VI.27 Proof of Supply

Bidders must attest that they have access to a legal and legitimate supply of goods for items in their catalog, even if offering their own private label or private brands. Bidders must provide this information verifying their ability to access and deliver bid products at or below the bid pricing for the products within their catalog.

Therefore, Bidders must include a generalized statement within a file as to how they obtain the products for the Catalog they are bidding. Include this statement as an attachment alongside the distribution model being bid.

VI.28 Liens

All products offered and sold shall be free from all liens.

VI.29 Licenses

Awarded Vendor (and its Authorized Resellers) shall maintain all federal, state and local licenses, certifications, bonds, and permits applicable and required for operations in California and in all other states in which Awarded Vendor chooses to do business under the Contract.

VI.30 Standard Warranty

The Awarded Vendor shall pass through to the Eligible Entity the manufacturer's warranty for each product sold.

The Awarded Vendor warrants that, to its knowledge, all products provided under the authority of the Contract shall at the time of delivery be free of any defects in material and workmanship and shall conform to the published specifications of the manufacturer of the products.

Awarded Vendors selling laptops, personal computers, desktops, and servers must provide a standard manufacturer's warranty. Awarded Vendors selling computers must maintain certifications that the manufacturers have concerning compatibility and compliance with up-to-date operating systems, as well as federal safety and communications guidelines.

VI.31 Ancillary Services Related to Products

Bidders may offer pricing for ancillary services useful or necessary for the planning, use, deployment, and maintenance of the products they sell, though not specifically published in a Catalog.

The provision of ancillary services is not a requirement for a bid to be responsive, except where a Bidder is required to provide such services at no additional cost under a contractual arrangement with its supplier or manufacturer.

However, the Agency will evaluate bids for the presence either a) an ancillary service spreadsheet form alongside each catalog category being bid or b) a statement the Bidder is not offering ancillary services.

If awarded, any ancillary services offered will be part of the Contract and presumed bid-protected as allowed by law.

Such ancillary services may include, but are not limited to furniture assembly, analysis and design, asset tagging, consulting, equipment configuration, heat mapping, cloud-based configuration, engineering, hard drive removal and retention, help desk support, image loading, installation, maintenance, training, and travel.

If offering ancillary services, a Bidder must submit a PEPPM Ancillary Services Form, quoting a discounted bid price compared to the vendor's standard rate card fees. Agency will use this form to evaluate and determine the bid price of any ancillary services offered. Stating prices "will be negotiated" is not acceptable; such offers will not be considered for inclusion in an award.

Bidders must submit a separate spreadsheet form for each respective Catalog category being bid with an offer of ancillary services.

Bidders are advised not to manipulate per-unit product discounts and offer above-market ancillary service prices. Agency staff will review the availability and reasonableness of ancillary services and prices when evaluating bids.

Adjustments to the ancillary service standard prices for any offered ancillary services may be submitted to the Agency annually and are subject to the Agency's sole approval. The Awarded Vendor may only request adjustments to the ancillary service prices once a year one month prior to the award anniversary date and must submit a written request to the Agency for any changes in standard pricing. The request must document why the ancillary service standard price changes are justified, such as changes in labor rates, etc. Only prices for services listed on the Ancillary Services Form of the bid submission can be adjusted. More services cannot be added during the adjustment period. The original PEPPM discount formula on the Ancillary Services Form of the bid submission must be maintained.

If a requested change is not approved, in order for ancillary services to remain bid-protected, the Awarded Vendor must offer the prices and rates included on the Ancillary Services Form of the bid submission or a previously approved adjustment.

Requests for adjustment must be submitted to PEPPMDocuments@peppm.org, asking for an Ancillary Services Adjustment Form.

For Awarded Vendors that offer ancillary services provided indirectly through an Authorized Reseller or designated service provider, the pricing for the services provided by the designated service provider must be at or below the prices provided by the Awarded Vendor as part of their bid.

Pricing based on "per-hour" rates or similar units does not determine the final cost to the Eligible Entity, just the rate. If an Awarded Vendor has offered ancillary services in conjunction with the products it provides to the Eligible Entity, the Awarded Vendor and the Eligible Entity shall mutually agree upon the scope of the ancillary services to be provided at the PEPPM discounted price.

In several jurisdictions, Eligible Entities must pay Prevailing Wage for certain ancillary services. Bidders may include two sets, or side-by-side schedules, of ancillary service pricing with their bids—one for projects which are not subject to the payment of prevailing wages, and one for projects which are subject to the payment of prevailing wages.

VI.32 Returned Goods Policy

Bidders must have a policy regarding how they handle the return of goods from Eligible Entities. A document describing the policy must be attached alongside the name of each distribution model being bid.

VI.33 Hazardous Materials

Awarded Vendors and their Authorized Resellers must comply with any state statutes regulating hazardous materials, chemicals, labeling, and availability of material safety data sheets in the states they are selling in. See Section VI.8.

VI.34 Export Restrictions and Statement of Assurance

Agency Contracts involve products, software, and technical data governed by the U.S. Export Administration Regulations (“EAR”) and all other applicable U.S. export control laws and regulations.

Awarded Vendor and Eligible Entity shall comply with all U.S. export laws and all other applicable

U.S. export control laws and regulations, as amended from time to time, including, but not limited to, §736 (General Prohibitions), §742 (Control Policy), §744 (End-user and End-use Based), §746 (Embargoes and Other Special Controls), and §774 (Commerce Control List) of the EAR, as they relate to export or re-export. Eligible Entity certifies that, unless authorized by U.S. laws and regulations (either by specific regulation or written authorization from the U.S. Government), it shall not export or re-export the products, software, technical data purchased under an Agency Contract from the Awarded Vendor, or the direct product thereof in violation of applicable U.S. export control laws and regulations. Eligible Entity acknowledges that:

- It is unlawful to export or re-export (without written U.S. Government authorization permission) Awarded Vendor’s products, technology, or software if they know that they will be used:
- In the design, development, production, or use of missiles in or by a country listed in Country Group D:4
- In the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3
- In the design, development, production, stockpiling, or use of nuclear weapons in or by a country listed in Country Group D:2 (Supplement No. 1 to EAR §740); and
- Export or re-export of Awarded Vendor’s technology, software, source codes, or direct products thereof to a country or national thereof listed in Country Group D:1 or E:2 may be prohibited, unless authorized by U.S. regulations (§740 of the EAR) or written authorization from the U.S. Government.
- The provisions of this Section shall survive the term and termination of the Contract and Purchase Order.

VI.35 Products Not Intended for Critical Application

The products sold under Agency Contracts are not designed for any “Critical Applications.” “Critical Applications” means life support systems, medical applications, human implantation, commercial aviation, nuclear facilities, or systems, or any other applications where product failure could lead to injury to persons, loss of life, or catastrophic property damage.

Any medical lab and equipment items sold as part of a Vocational Catalog are intended for educational and vocational training purposes.

Awarded Vendors disclaim any and all liability arising out of the use of the products in any Critical Applications. If an Eligible Entity uses the products in a Critical Application, such Eligible Entity, and not Awarded Vendor, assumes full responsibility for this use.

VII Ordering Procedures and Requirements [\[Return to Top\]](#)

VII.1 An Overview of the Ordering Process

To put the following Contract provisions into context, Agency provides this simplified overview of the PEPPM ordering process:

- Eligible Entities shop on the Awarded Vendor's website, PEPPM, or Epylon websites; create shopping lists; talk with Awarded Vendors; or get quotations from Awarded Vendors;
- Eligible Entities address their Purchase Orders to Awarded Vendors, itemizing desired products and Contract pricing;
- Awarded Vendors fulfill orders as directed on the Purchase Order;
- Awarded Vendors invoice Eligible Entities at Contract pricing or below;
- Eligible Entities pay Awarded Vendors directly;
- The Awarded Vendor reports all sales to PEPPM

VII.2 Display of Contract Pricing

Vendors must display all eligible Contract pricing on their own website, tailored as necessary, to show PEPPM Contract pricing for any awarded Catalog.

For maximum visibility and the best shopping experience for customers, PEPPM may also request that an Awarded Vendor provide Contract pricing or a subset of popular Catalog items, along with descriptions, keywords and other relevant data on an approved PEPPM template so that information can be loaded into PEPPM's electronic catalog on PEPPM.org. In displaying contracted line items, PEPPM will:

- Make line items searchable by keyword, by manufacturer, or by category;
- Link items to the Awarded Vendor's online website Catalog

VII.3 Online Catalog Website: Up, Ready and Functional

Following the award of catalog bids, all Awarded Vendors will be required to submit to PEPPM a URL link to a functioning online catalog. At a minimum, the website must display the contracted product description, unit of measure, manufacturer name, manufacturer SKU, vendor SKU, and Contract price. Pictures and expanded descriptions are preferred. PEPPM will link to this website through the PEPPM pages along with Ordering Instructions.

Awarded Vendors must maintain current PEPPM discounted pricing for their online catalog. Failure to maintain current information and pricing may result in the suspension of the processing of orders until conditions of the Contract are met. Continued negligence in maintaining current product information and pricing may result in termination of the PEPPM award. 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.

Upon request, but not more often than once a month, an Awarded Vendor must be able to provide a snapshot file of its price basis for their bid discount to PEPPM for bid price verification.

VII.4 Punchout and Direct Receipt of Orders

An Awarded Vendor must be able to use Punchout technology to establish a website catalog with contract pricing to PEPPM through the Epylon Corporation.

An Awarded Vendor must also post its Contract pricing for display on its own website for Eligible Entities' shopping and delivery of Purchase Orders to the Awarded Vendor or Authorized Resellers. Before launch, the site must be approved by KCSOS or its agent for compliance with ordering protocols.

Protocols include the collection of data necessary for accurate monthly sales reporting in an approved format. In such cases, KCSOS may also require more frequent, real-time or batch reporting methods. Approvals are at sole discretion of the Agency.

VII.5 Instruments for Orders

The standard method for ordering is for Eligible Entities to issue a Purchase Order to the Awarded Vendor or Authorized Reseller. Eligible Entities shall precisely address their Purchase Orders to the proper vendors, following posted Ordering Instructions. Some Eligible Entities may choose to use alternative purchase instruments, such as formal contracts or procurement cards, as may be allowed by these Terms and Conditions. No upcharge is allowed if an Awarded Vendor allows the use of procurement or credit cards.

VII.6 Submission of Purchase Orders

If a vendor is not accepting orders directly and not self-reporting to PEPPM, Eligible Entities must send their Purchase Orders to the PEPPM Clearinghouse, which will review and archive orders, and then transmit Purchase Orders to the company designated on the Purchase Order. An Eligible Entity may send the Purchase Order and all its attachments by fax to (800) 636-3779 or it may scan all relevant documents and transmit the Purchase Order by email to Orders@PEPPM.org.

Posted Ordering Instructions will inform Eligible Entities of any alternative order process in cases where Awarded Vendors have been given written permission from Agency to receive orders directly.

VII.7 Electronic Transmissions

Except in cases where companies are authorized to receive orders directly, all Purchase Orders shall be sent electronically to vendors through the eCommerce software maintained by the eCommerce Consultant. Eligible Entities will either enter their orders directly into this system or the PEPPM Clearinghouse will enter orders on behalf of the Eligible Entities.

Vendors, upon receipt of a Purchase Order in their eCommerce inbox, shall promptly and properly transmit an acknowledgment and order status by using tools provided on the site.

To the maximum extent permitted by law, the parties agree to accept an electronic Purchase Order submission and acceptance, executed by an authorized user of the eCommerce system, as representing any necessary "[electronic signature](#)" required by law.

VII.8 Authority of the Purchase Order

Receipt of a Purchase Order constitutes authority to the Awarded Vendor or Authorized Reseller to sell and make delivery of the ordered products, according to these Terms and Conditions and directions listed on the Purchase Order.

VII.9 Awarded Vendor Is an Independent Contractor

In performing its obligations under a Purchase Order, the Awarded Vendor is acting as an independent contractor and not as an employee or agent of the Agency or any Eligible Entity.

VII.10 Term of the Purchase Order

The term of the Purchase Order shall start on the date that the Awarded Vendor receives a Purchase Order that has been executed by the Eligible Entity. This is the "Effective Date."

Subject to any other provisions stipulated in the document, the Purchase Order shall end on the later of:

- Complete delivery and acceptance of the awarded products;
- The expiration of any specified warranty and maintenance period;
- Payment by the Eligible Entity for the product(s) received;
- The expiration date identified on the Purchase Order

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

VII.11 Orders Near a Contract Expiration Date

The fulfillment of a Purchase Order may extend beyond the Agency Contract's expiration date as long as the Eligible Entity issues a Purchase Order before the Contract's expiration.

The expiration date of the Contract term is to be considered the final date to enter into a valid Purchase Order under the Contract.

As such, all Purchase Orders received by the Awarded Vendor up to and including the expiration date of the Contract term are acceptable and must be shipped in accordance with the delivery time specified in the Contract. If normal delivery time cannot be met, Awarded Vendor must notify Eligible Entity, which has the option to accept or reject the extended delivery time.

VII.12 Invoice Requirements

Unless otherwise agreed between Eligible Entity and Awarded Vendor:

- The Awarded Vendor shall send (which may include via email) an itemized invoice to the "Bill To" address on the Purchase Order promptly after the product(s) are delivered. For hardware "delivery" shall be the date the hardware arrives on Eligible Entity's premises. For software, "delivery" shall be the date the software features are enabled and ready for Eligible Entity to use.
- Where products are being installed or implemented by the Awarded Vendor, the installation or implementation services invoice shall be presented after the products are installed, have successfully completed diagnostic routines, and are available for Eligible Entity's use. The foregoing does not preclude the Eligible Entity and the Awarded Vendor from agreeing to a different invoicing schedule depending on the scope and length of such installation or implementation services (for example, implementing a project in phases, with each phase having distinct milestones and payment obligations).

- Time and material services will be invoiced monthly in arrears.
- Maintenance, management type services and cloud services will be invoiced monthly in advance unless otherwise agreed.
- Invoices should include only amounts due under the Purchase Order. The Purchase Order number shall be prominently noted on all invoices, and the amounts invoiced must be at or below the bid Contract prices.

VII.13 Payments

Eligible Entities will pay Awarded Vendors directly upon receipt of invoice and confirmation that products have been delivered.

All invoices are to be sent directly to the Eligible Entity, which will normally pay invoices within 30 days of receipt or in compliance with their board policy on bill payment. The Agency will encourage Eligible Entities to arrange for prompt payment where possible and for payments of partial shipments.

Payment shall not be deemed as acceptance of the products furnished by the Awarded Vendor. Where the Awarded Vendor is responsible for installation of the products, acceptance of delivered products is deemed to occur when the equipment is installed, has successfully completed diagnostic routines and is available for Eligible Entity's use.

The Awarded Vendor agrees that the Eligible Entity 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 Eligible Entity from any payments due the Awarded Vendor under any Purchase Order with the Eligible Entity, subject to the Eligible Entity promptly providing any tax exemption certificate or other documentation to support the deduction.

At the discretion of the Awarded Vendor, the Eligible Entity may use a valid purchasing card to pay for the products at the time of purchase. All fees related to this type of payment are the responsibility of the Awarded Vendor. In no case shall the Awarded Vendor increase Contract or invoiced prices to offset purchasing card fees incurred by the Awarded Vendor.

VII.14 Tax Exemptions

No charge will be allowed for federal, state, or local taxes from which the Eligible Entity is exempt. Prices shall be net and shall not include the amount of any such tax. Exemption certificates, if required, will be furnished on forms provided by the Eligible Entity. LEAs are exempt from all sales and excise taxes imposed by the Internal Revenue Service and have accordingly registered with or been recognized by the Internal Revenue Service to purchase tax-exempt.

VII.15 Delivery

All products shall be delivered F.O.B. Destination, with the Awarded Vendor selecting the shipping company or method. All products should be delivered within the time period specified on the Purchase Order. For readily available office and instructional supplies, Agency expects delivery within three days, if not next day.

Where delivery cannot be made within the time period specified on the Purchase Order, Eligible Entity should be notified in writing or by telephone of the delay and of an estimated delivery date.

Delivery must be made to the place designated on each respective Purchase Order. Direct delivery to buildings must be placed at a point in the building as directed at the place of delivery. The Awarded Vendor must furnish proof of delivery upon request from any Eligible Entity. 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.

Any system configurations ordered shall be delivered as a complete system, unless otherwise agreed by the ordering Eligible Entity. When required by the Eligible Entity, 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 five business days of receiving the Purchase Order from the Eligible Entity.

Awarded Vendor's PEPPM prices include the cost of normal delivery. If non-standard rigging charges apply to equipment purchases (or leases), a quote will be provided to the Eligible Entity within five business days of receiving the Purchase Order from the Eligible Entity, or as soon as possible thereafter upon Awarded Vendor becoming aware that the order involves a non-standard delivery.

The Eligible Entity has five business days after receiving the quote for non-standard rigging charges to cancel the Purchase Order. In no event shall Eligible Entity be responsible for non-standard rigging charges that are not made known to the Eligible Entity prior to delivery of the equipment and Awarded Vendor shall bear the cost of same.

VII.16 Inspection and Rejection

No products received by the Eligible Entity shall be deemed accepted until the Eligible Entity has had a reasonable opportunity for inspection. The Awarded Vendor and the Eligible Entity agree that a reasonable timeframe for inspection shall not exceed 30 calendar days from date of delivery. Products that have not been rejected during such 30-day period shall be deemed accepted. If a defect or non-conforming item is discovered during the inspection period, the Eligible Entity will promptly notify the Awarded Vendor of the defect or nonconformance. The Awarded Vendor must then arrange for the rejected products to be removed from the premises or returned without expense to the Eligible Entity within 15 days after notification, or such longer time period mutually agreed upon by Awarded Vendor and Eligible Entity. Rejected products remaining longer than 15 days or such mutually agreed upon time period will be deemed abandoned, and the Eligible Entity 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 Eligible Entity's costs and expenses for the storage and sale of the products. Upon notice of rejection, the Awarded Vendor shall promptly replace all rejected products with others conforming to the specifications and not defective. If the Awarded Vendor fails, neglects or refuses to do so, the Eligible Entity shall then have the right to procure a corresponding quantity of such equivalent products, and deduct from any moneys due or that may thereafter become due to the Awarded Vendor, the difference between the price stated in the Purchase Order and the actual price the Eligible Entity paid to the alternative vendor.

Notwithstanding the foregoing, where the Awarded Vendor is responsible for installation of the products, acceptance of delivered products is deemed to occur when the products are installed, have successfully completed diagnostic routines and are available for Eligible Entity's use. However, the deemed acceptance in the foregoing paragraph will control if the Eligible Entity requests that such installation not take place during the 30-day period following delivery of the products. Notwithstanding acceptance, for products covered by a maintenance service agreement, the Awarded Vendor shall

either keep the products in good working order or Awarded Vendor will replace the products with a like-new or refurbished equivalent or better model conforming to the specifications.

VII.17 Shipping Errors

Awarded Vendor agrees that its shipping errors will be covered at its own expense. Eligible Entities are financially responsible for shipping errors originating from its Purchase Orders or written instructions. No oral shipping instructions should be accepted by either party.

VII.18 Title and Risk of Loss

Title to ordered products that are leased shall remain with Awarded Vendors or lessor. Title to ordered products that are purchased transfers to the Eligible Entity at the time of shipment. Notwithstanding such transfer of title, Awarded Vendors agree to bear the risk of loss, injury, or destruction of the products ordered prior to receipt of the products by the Eligible Entity. Such loss, injury, or destruction shall not release the Awarded Vendor from any contractual obligations.

VIII Pricing Specifications [\[Return to Top\]](#)

VIII.1 Pricing Methodology

This RFB requires Bidders to provide responsive bid pricing by way of 1) fixed prices on a Core List, and 2) pricing formulas on products comprising the rest of their catalog. The pricing formulas must be calculated against a price basis to show final effective prices. The final effective prices, correctly calculated, will form the data for evaluation and comparison to competing bids.

In compliance with federal Uniform Guidance regulations, the Agency has a working estimated range and expectation of potential bid prices and discount formulas based on historical bids, sales, and market research

VIII.2 Pricing Formulas

A Bidder may opt to use one or a combination of the following formulas methodologies:

- Percent discounts off a published and identifiable price list or a Commercially Available Catalog;
- Mark-up percentages over the documentable wholesale cost of products

VIII.3 Identification of the Price Basis

The price basis is the foundation for discount formulas. Bidders must identify their price basis on the Quote Sheet Tab of the official Rest-of-Catalog Template, which in most cases will be their Commercially Available Catalog.

If bidding by the discount-from-list method, the Bidder must describe the published list or Commercially Available Catalog—along with its last published date, from which discounts will be calculated. Some examples of an acceptable price basis include Manufacturer's Suggested Retail Price (MSRP), retail web catalogs, paper catalogs, and manufacturer's national education pricing.

Likewise, if bidding by the mark-up-over-cost method, a non-manufacturer Bidder must describe the documentation that will substantiate the basis for markups. Some examples include wholesaler catalogs or websites, gold-level pricing schedules from manufacturers, paid invoices, pricing contracts, and manufacturer pricing formulas.

A mark-up over cost formula must be used for any off-catalog purchases made, and the Quote Sheet must indicate a category for off-catalog products and a corresponding percentage of mark-up.

VIII.4 Core Item Prices Are Fixed

Prices for Core Items are to be bid with a fixed price for the term of the Contract and offered by way of the official Core List Template. Core prices shall be fixed unless Agency or PEPPM approve price increases in accordance with rules set forth elsewhere in this RFB. Core List prices are not dynamic as they are for the rest of items in the Awarded Vendor's Commercially Available Catalog.

VIII.5 Variable Percentage Formulas

Bidders may offer varying formula percentages within a single Catalog. However, the Bidder must correlate a specific formula percentage alongside a well-described category of products within the Catalog.

As theoretical examples, a single Bidder may bid 10 percent off list for ink and toner, 15 percent off office essentials, 30 percent off list for furniture, and 2 percent off list for copy paper. Or a Bidder may bid 10 percent off products manufactured by company ABC and 12 percent manufactured by company XYZ.

The Quote Sheet Tab of the PEPPM Rest-of-Catalog Pricing Template has space for about 30 different subcategories of percentage formulas. If that space is insufficient, a Bidder may add an additional spreadsheet to the bid form or combine descriptions on one line where percentages are equal.

VIII.6 Effective Bid Pricing for Evaluation

Bidders must apply their pricing formula to all Rest-of-Catalog products offered, creating final effective bid prices that evaluators will use to determine the lowest bid.

In addition to pricing the Core List items, Bidder must provide, based on their pricing formula, a current bid-day net price for all the items in their catalog.

For all Rest-of-Catalog products, a Bidder must either enter or paste information into the approved Rest-of-Catalog Template to include:

- True Manufacturer SKU
- Manufacturer Name
- Product Name
- Product Description
- Unit of Measure
- Basis Price for the Product
- Percentage discount or mark-up over cost

The spreadsheet will automatically calculate the final effective bid price from cells containing the price basis and the percentage formula.

Therefore, if bidding by discount off list, a Bidder would enter a negative percentage (e.g., -.10.5 percent) because the formula is subtracting from a list price.

Alternatively, if bidding mark-up over cost, a Bidder would enter a positive percentage figure (e.g., 10.5 percent) because the formula is adding to a cost basis.

If the Bidder's discount or mark-up is zero, the value "0.0 percent" would be entered in the appropriate discount or mark-up column.

VIII.7 PEPPM Rest-of-Catalog Pricing Template

The official PEPPM Rest-of-Catalog Pricing Template is the Microsoft Excel workbook that Bidders must use to submit their pricing formulas and calculate effective bid pricing. The template contains two working spreadsheets, the Quote Sheet Tab and the Bid Response Tab.

The template can be downloaded from the electronic bid form alongside the Bid category being bid. The spreadsheets must not be modified, copied, or unlocked. Otherwise, Bidders run the risk that their spreadsheets will not load correctly when they submit their bids.

If there is insufficient space to load all Catalog items into a single spreadsheet, other spreadsheets may be attached to the bid. In the Additional Documents section.

VIII.8 Importance of Final Effective Price

It is the Bidder's responsibility to look at the final, calculated, effective prices on the Bid Response Tab spreadsheet and Rest-of-Catalog spreadsheet to see that they are calculated correctly. These are the official bid prices. If they are not correct, then either the price basis or the percent entered is incorrect because the spreadsheet automatically calculates the accurate effective prices based on Bidder's entries.

VIII.9 Importance of Correct Manufacturer SKUs

When adding product information to the Bid Response Tab on the PEPPM Rest-of-Catalog Pricing Template, Bidders must enter the correct and accurate manufacturer SKU for each product. Failure to use the original and correct manufacturer SKUs may make a Bid Non-Responsive.

The first phase of the evaluation process uses a manufacturer's SKU number, after stripping away hyphens, spaces, and leading zeros, to compare pricing between competing companies.

Any Bidder-created identifiers that change a manufacturer's SKU must be removed before submission. Bidders must make their best efforts to match their "Manufacturer SKUs" to the manufacturer's published SKUs including or excluding identifier characters for such things as government or education pricing, country of use, color, or other manufacturer product identifiers. Bidder should note that these requirements are for their PEPPM Rest-of-Catalog Template submitted at the time of the bid.

Likewise, any equivalent substitutions offered on the Core List must show true manufacturer SKUs.

Irregularities in listing the manufacturer's SKU numbers may result in a bid being determined Non-Responsive.

VIII.10 New Product Pricing

The Bidder's quoted pricing formulas will also apply in the future to any new products created, invented, introduced, and made available through PEPPM during the Contract period. New products and associated supplies to be added must be priced according to the quoted pricing structure.

If a new product or product group does not fit into one of its formula categories, an Awarded Vendor may appeal to PEPPM in writing for consideration to include the new products or brands on Contract. The written request must include an explanation of the circumstances that prevent the new products from logically falling into an existing category of formula pricing.

The Agency and PEPPM reserve the right to reject any and all requests for additional products to be added to an Awarded Vendor's Contract Product list and corresponding price structure. No consideration will be given for requests that circumvent competitive bidding requirements.

VIII.11 Price Increase Allowance for Certain Types of Paper Products on Core List

A Bidder awarded a contract for Core List items that include cut-stock paper, construction paper, janitorial papers, paper towels and face tissues or toilet papers under this contract shall have the right to propose an increase in its paper prices quarterly on July 1, October 1, January 1 and April 1. Such increase shall not exceed the increase Awarded Vendor has incurred from its suppliers. If any increases in prices are applied and the cost basis of paper decreases in a subsequent quarter, prices shall be decreased accordingly, but the Vendor shall not be obliged to set prices below the original bid price. Notwithstanding this provision, Agency shall have the right to request voluntary discounts.

VIII.12 Definition of "Paper Products"

In interpreting Section VIII,11, the term "cut-stock paper" is defined and clarified as follows:

"Cut-stock paper" is a smaller unit of paper derived from bulk paper rolls or parent sheets, cut down for use in handwriting, notetaking, and artwork; or also for use in office machines such printers, small presses, copiers, mimeographs, Risographs, and craft cutters.

Cut-stock paper is a receptive medium for ink, toner, pencil, paint, watercolor, and other similar media. Cut-stock paper undergoes minimal manipulation or change in the transition from parent sheets to a smaller unit. Acceptable changes from raw sheets include the application of printed lines, padding, adhesives, and hole punching.

The following are examples of applicable cut-stock paper products under this Section:

- Copy Paper
- Index Paper
- Cover Stock
- Textured Papers
- Cotton Stationery
- Three-Hole Punch
- Lined Filler Paper
- Classroom Writing Papers & Newsprint
- Post-It Notes
- Construction Paper
- Graph Paper
- Padded Tablets with Chipboard
- Offset Printing Papers
- NCR (No Carbon Required) Papers
- Yellow and Legal Pads
- Scrapbook Sheets
- Index cards

The following are examples of papers that are not considered cut-stock papers under this Section:

- Sewn, Stapled, and Bound Papers (Excluding Padded Tablets)
- Books
- Lined or Blank Notebooks with Spiral or Comb Binding

- Diaries, Planners, and Calendars
- Custom Printed products
- File Folders
- Color Art Tissue Paper
- Crepe Paper
- Rolled Cash Register and Adding Machine Paper
- Rolled Craft Paper, Butcher Paper, or Bulletin Board Papers
- Rolled, Large Format Ink Jet Papers
- Die-cut Tablets in Circular, Oval, or Non-Rectangular Shapes
- Die-Cut Patterns, Letters, or Cutouts
- Photo Paper
- Thermographic Papers for Fax Machines and Receipt Printers
- Vinyl and Plastic Papers

VIII.13 Price Increase Allowance for Core Items

Within 60 days prior to the anniversary of the Contract start date, an Awarded Vendor may make a request for a price increase for the new annual term on all Core Items. The request for an increase must be based on the actual percentage change in cost basis to the Awarded Vendor from its suppliers. Documentation must be provided for each Core Item change requested. Upon analysis of the requested price increases, PEPPM may refuse to honor a roll-over request, and the Agency may rebid the Contract, if it believes it can achieve a better value by rebidding.

It will not be necessary for an Awarded Vendor to ask for a price increase on non-core catalog items since the terms in allow a vendor's price basis to change as its Commercially Available Catalog prices change.

VIII.14 Errors on the Bid Response Tab

If a Bidder makes a material error by expressing percentage formulas on the Bid Response Tab that are not described on the Quote Sheet, its bid may be Non-Responsive. Likewise, a bid may be Non-Responsive if a Bidder neglects to list products on the Bid Response Tab for which a percentage formula is described on the Quote Sheet. PEPPM and Agency reserve the right to correct or calculate responses on the Bid Response Tab based on A Bidder's offered discounts on the Quote Sheet and offered base pricing.

VIII.15 Allowances for Freight

Awarded Vendors should never identify standard freight charges separately when submitting Contract prices to PEPPM for publication. If bidding mark-up over cost, Bidders must ensure the allowance for freight is built into either the cost of the product or the mark-up percent. Likewise, Bidders offering a discount from list must ensure the allowance for delivery is to be built into the list price of the product or the discount percent.

VIII.16 Minimum Order for Free Shipping

The minimum order qualifying for F.O.B. delivered price via Awarded Vendor's standard shipping method shall be \$200 to the same shipping address. Orders for less than \$200 to the same address may be accepted by the Awarded Vendor to ship prepaid with actual shipping charges added to invoice as a separate item.

Shipping prices added must be actual documented costs of shipping. Awarded Vendor may charge for expedited, other special shipping circumstances or methods, if requested by the Eligible Entity.

Shipping from or to the continental United States to or from Hawaii, Alaska, or overseas U.S. territories may also be considered as special shipping. Eligible Entity must be notified on quotes if and when a shipping charge will be applied to their cost of purchase.

An Awarded Vendor may appeal in writing to Agency for relief from the free-shipping threshold when the requirement disadvantages a buyer or forces an Awarded Vendor to sell at a loss. Any exceptions shall be at Agency's sole discretion. If granted, notice shall be provided in an Awarded Vendor's Ordering Instructions to Buyers.

VIII.17 Large-Volume Purchase and Voluntary Price Reductions

An Awarded Vendor, upon request from an Eligible Entity, may offer a voluntary price reduction or a quotation for a large-volume discount from the listed PEPPM bid price. Such price decreases are discretionary on the part of the Awarded Vendor who is under no obligation to give the same or similar discount to another Eligible Entity unless required under federal E-rate Lowest Corresponding Price (LCP) rules.

When offering any such additional discounts, the Awarded Vendor will provide a written quotation to the requesting agency, indicating that the discounted price is an "As per PEPPM" bid price quote. The Eligible Entity shall include the quotation as an attachment to its Purchase Order.

Agency reserves the right to research, conduct, and execute electronic reverse auctions or requests for quotes or proposals for aggregated numbers of specific products under the Contract with interested or selected Agency Awarded Vendors in conformance with applicable laws.

Bidders are urged to stipulate any additional, predetermined discounts according to Bidder-designated criteria on its Quote Sheet so that Eligible Entities can quickly see if any additional discounts are available as a standard practice.

VIII.18 Geographic Pricing

Some manufacturers or wholesalers impose or offer different wholesale pricing structures based on the geographic location of a buying Eligible Entity or a "special deal" program based on a geographic region. Examples may be a Crayola regional pricing schedule or a limited HP Big Deal program. A Bidder may pass these lower prices along to Eligible Entities in corresponding locations without having to offer them to agencies in other locations. Awarded Vendors must pass along to Agency and PEPPM information about their participation and use of special or regional pricing programs. For the purpose of bidding and bid evaluations, Bidder should use the lowest possible national price. If bidding with a lower, special regional price, the Bidder will be held to sell at that price, as allowed by law, even if selling at a loss.

VIII.19 Request to Cancel or Adjust MSRP

Should a manufacturer adjust an MSRP or a price list used by an Awarded Vendor as its bid-basis thereby resulting in the Awarded Vendor's financial loss, an Awarded Vendor may request that the items be removed from the Catalog or adjust the percentage-off-MSRP. This decision to remove or adjust shall be made at the sole discretion of PEPPM or Agency. Should the Agency or PEPPM decide to adjust the percentage-off-MSRP, then the Agency will work with the Awarded Vendor to equitably adjust the percentage-off-MSRP by balancing the competing interests of the Awarded Vendors and the Eligible Entities.

The following procedure shall apply when an Awarded Vendor requests that the Agency remove or make an adjustment pursuant to this paragraph:

- Along with the Awarded Vendor's written request to cancel, rebid or adjust, the Awarded Vendor shall provide all documentation needed for the Agency to make a decision;
- Within seven days of receipt of the written request and supporting documentation, the Agency shall provide a written determination indicating whether the Awarded Vendor's request was accepted or rejected, or whether additional information is needed to make a determination

VIII.20 Public Works and Prevailing Wage Rates

If a project for a California Eligible Entity involves construction or a service defined as a public work, an Eligible Entity may be required to bid for labor services separately from the purchase of products allowed and bid-protected under this Contract. In such instances, an Awarded Vendor may be required to comply with Prevailing Wage laws, licenses, and permits. To the extent applicable to an Eligible Entity from another state, such state's Prevailing Wage rate act, regulations and minimum wage rates are made a part of the Purchase Order. When applicable, use Davis-Bacon wage rates for federally assisted projects.

IX Bid Procedures and Directions [\[Return to Top\]](#)

IX.1 Help on Submitting a Responsive Bid

To assist Bidders in submitting responsive bids, PEPPM provides directions, access to help files, a bid checklist, and contacts for technical support in filling out the electronic bid form.

Bidders must examine the entire bid package, then seek clarification of any item or requirement that may not be clear. They must check all their responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after the due date and time.

The following Sections provide an overview of bid procedures, requirements, and directions leading to a responsive bid.

IX.2 Registration

Vendors interested in bidding must obtain a supplier account at www.Epylon.com if they do not already have one. The entire bidding process will be conducted electronically using Epylon's eBid software. Epylon imposes no fee to register or use its eBid software.

IX.3 Delivery of the PEPPM Bid Form

Bid forms will be sent automatically to all those vendors who have accounts and have indicated an interest in receiving technology bids on the Epylon system. Newly registered vendors will find the bid form shortly after their account application has been approved. If vendors reviewing their inbox do not see the PEPPM bid form, there are three possible reasons:

- Another employee under the company's account has accepted the bid form on behalf of the company. Only one bid form may be active for any given company, but any employee can forward the bid form to another company representative. Contact Epylon Customer Service to see if another company employee has opened the bid form.
- The company has not categorized itself as a technology-related supplier. Contact Epylon Customer Service to be added as a "technology supplier." Then the bid form will be promptly

forwarded to the company's inbox.

- The company has divided its employees into geographic territories, and the bid has been directed to employees designated for California.

For assistance in finding the bid form, Bidders should contact Customer Service at (888) 211-7438 or at Service@Epylon.com.

IX.4 Prebid Meetings

No prebid meeting will be held for this RFB.

IX.5 Bidders' Questions

Bidders who have bid questions about the bid or its Terms and Conditions may submit them online within the bid form no later than 4 p.m. PT on the [Questions Due Date](#).

Bidders who have questions or trouble using the bidding software may contact Epylon Customer Service any time at (888) 211-7438 or Service@Epylon.com. Be advised that customer service operators work on Pacific Time and waiting times grow longer as the bid deadline approaches. Customer service will not answer policy questions about the bid or its Terms and Conditions.

IX.6 Exceptions to Terms and Conditions

Any proposed exception from the requirements indicated in this Request for Bids or from the Terms and Conditions must be stated in writing and submitted by email by the [Exceptions Due Date](#) to BidQuestions@PEPPM.org.

This exception process may also be used to notify the Agency of any errors or contradictions found in the Terms and Conditions.

Any exceptions accepted by the Agency will be incorporated into a bid addendum to be published in the electronic bid documents within 10 days of the Exceptions Due Date or fewer. To ensure a fair and equal bidding process, any addendum will apply to all Bidders and all bids or a specified Catalog and Bidders bidding on the specified Catalog category.

No material exceptions will be accepted with final electronic bid submissions received on the [Bid Due Date](#). Any exceptions submitted by Bidder with their final electronic bid submission may disqualify the bid from consideration at the sole discretion of the Agency.

Following the award of a Contract to an Awarded Vendor, Agency reserves the right to amend the Terms and Conditions of this RFB with the mutual consent of the Awarded Vendor solely to make non-material changes, correct errors, or craft minor adjustments that would not have had any material effect on any potential bid prior to awards.

IX.7 An Overview of the Bid Form

Completing a bid requires opening an electronic bid form starting from an inbox on the Epylon eCommerce system. Users may work on their bids at any time and save their work as they progress. There are four major components to the bid:

- *Answers to Questions:* If a question is tagged as required, a response must be provided, or the user will get an error message when saving their work. Some questions accept answers with file attachments.
- *Choosing Distribution Model to Be Bid:* Bidders may bid upon only one of the distribution

categories specified by checking a box alongside the distribution model name and description. Bidders must attach several files alongside the particular distribution model chosen.

- *Completion of the Core and Rest-of-Catalog Pricing Templates:* The Rest-of-Catalog Template is a spreadsheet with three tabs. Bid discount formulas must be entered on the Quote Sheet Tab. Data (percentages and base prices) for calculating bid formulas into effective prices are entered on the Bid Response Tab. The separate Core Items Template must be filled out with fixed pricing. More information on filling out the forms is located in the [Pricing Specification Section](#).

IX.8 Required Attachments

Some questions prompt Bidders to upload file attachments to the bid form. Attachments must be attached to one of three places on the electronic bid form.

Attachments that go alongside the name of each Catalog category being bid are:

- List of All Manufacturers Offered in the Catalog
- Returned Goods Policy
- Proof of Supply Explanation
- Ancillary Services Form
- Signed Awarded Vendor Agreement
- PEPPM Core List Pricing Template
- PEPPM Rest-of-Catalog Template

Attachments that go alongside a required question are:

- Detailed Marketing Plan
- Any Optional Files to Expand Upon an Answer to a Question
- Leasing Information (Optional)
- Signed Authorized Reseller Agreements
- Reference Forms (Containing at Least Three References)

Attachments that can be uploaded to the Additional Response Information Tab are:

- Any Optional Files to Provide the Agency More Information
- Extra Pricing Files Due to Large Number of Items Not Fitting in One Pricing Spreadsheet

IX.9 Marketing Plan

Agency requests that all Awarded Vendors develop a marketing program to promote knowledge of their awarded Contracts by way of activities and media such as printed materials, web-based information, emails, advertising, social media, telemarketing, webinars, trade shows, and other commercial avenues of communication. This plan must be described or attached to the bid form in response to a question in the Question Section.

IX.10 Danger of Procrastination

It is in the best interests of Bidders to submit their bids far enough in advance of the [Bid Due Date](#) to avoid any hindrances out of the control of the Bidder, eCommerce Consultant or Agency. Such impediments could include extremely heavy internet traffic, phone line disruption, busy circuits,

unexpected computer outages or weather-related obstacles. Agency assumes no responsibility for impediments out of its control and encourages Bidders to submit early to avoid any possibility their bids may be late.

IX.11 Submission

When Bidders complete their bids, clicking on the Continue button at the bottom of the page enables the Bidders to make one last review of their work before submission. When satisfied, Bidders must click the submit button to send the bid electronically to the Agency. Once successfully transmitted, the bid will display as "Sent" in the user's inbox.

IX.12 Electronic Signature

In submitting a bid, the person named as the Bidder's representative on the electronic bid form declares that the use of his/her Username and Password constitute his/her Electronic Signature and that he/she is solely liable for full control and access to the password. Neither the Agency nor eCommerce Consultant has access to the user's password. By submitting the electronic bid form, he/she declares that he/she has the authority to submit the bid to the Agency and to bind his/her company to the Contract, including, without limitation to all Terms and Conditions, final pricing, statements and all other commitments submitted to Agency.

IX.13 Status of Submitted Bids

After Bidder clicks the submit button all answers and submissions are locked, encrypted, sealed, and sent to the Agency inbox. The Agency cannot open them until the Bid Opening Date. However, Bidders can access their own submissions to print out a complete and accurate record of their responses precisely as seen by the Agency when the bids can legally be opened.

IX.14 Withdrawal

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 form, scroll to the bottom of the page and click the Retract Response Button before the Bid Opening Date.

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

IX.15 Receipt and Opening of Bids

Electronically sealed bids must be received by the [Bid Due Date](#). Bids will be electronically unsealed and publicly read at the Bid Opening Date and Time. Opening and public reading will consist of opening and displaying the electronic bid form the submitted bids in front of any interested members of the public and staff in a public setting.

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.

IX.16 Late Bids

The Agency will not consider late bids.

IX.17 Firm Offer Holds

After the public opening, bids will be evaluated. The Agency will conduct this process as quickly as possible so that award recommendations can be formulated. Bidder's bid, including responses to the RFB, bid formulas discount formulas, and pricing shall be **valid and irrevocable for 120 days** after the [Bid Opening Date](#).

IX.18 Protests

Protests shall be filed with the Agency and shall be resolved following applicable law. A protest must be in writing and must be filed with the Agency. A protest of the RFB must be received at the Agency before the [Bid Opening Date](#). A protest of a proposed award or of an actual award must be filed within 10 days after the protester knows or should have known the basis of the objection.

A protest must include:

- The name, address, and telephone number of the protester;
- The original signature of the protester or its representative;
- Identification of the solicitation;
- A detailed statement of the legal and factual grounds of protest, including copies of any relevant documents; and the form of relief requested

IX.19 Use of Submitted Documents

Everything submitted by a Bidder as part of a bid may be part of a public record. Bidders should not attach files or information to their bids that contain trade secrets or non-disclosable information. If documents, files, or information submitted are copyrighted, Bidders, by submitting, give the Agency and Eligible Entities a license to reproduce the material as part of bid documentation with the copyright notice as initially provided. Agency shall have the right to reproduce and publish all bid submission information, documents, and files. To the extent allowed by law, it is Agency's policy not to release Bidder's financial information, customer names, or references that, if public, would give an advantage to a competitor or be disadvantageous to a Bidder.

X Bid Evaluation and Award Process [\[Return to Top\]](#)

X.1 Qualification for Evaluation

Following applicable California state law and accepted standards for competitive, sealed bidding, the Agency will make awards, one for each distribution model, to the lowest, responsive, responsible Bidder.

X.2 Creation of Contracts

Evaluated bids that are recommended for an award do not become formal Contracts until the Agency's elected Superintendent of Schools or designated signatory signs the Contracts.

X.3 Bid Evaluation Process

Bids received on time will be evaluated. A high-level overview of the evaluation process is as follows:

- Bids will be evaluated to determine whether the Bidder is responsive and that all required attachments and documents are present;
- Bidder's responses to questions will be examined to ensure the Bidder is responsible and capable of providing products to LEAs and other Eligible Organizations under Agency's Terms and Conditions;

- Any Bidder deemed not responsible will be notified and entitled to a hearing;
- Pricing will be compared to competing bids for the same distribution model to rank pricing from lowest to highest;
- A low-price Bidder will be identified;
- Lowest, responsive bids from responsible Bidders will be recommended for an award.

In cases where offered catalogs are 50 percent different one to another, Agency reserves the right to make a multiple award within a single distribution model to the lowest corresponding Bidder.

X.4 Low Bid Determination

After factoring the offer of any equivalent substitutes, common line items for both Core Items and Rest-of-Catalog will be compared among Bidders to determine the low-cost Bidder as a whole.

An award will be made to:

- The lowest, responsible, responsive Bidder having a Single Source National Distribution Model, and
- The lowest responsible, responsive Bidder having an Authorized Reseller Model

Agency reserves the right to consider:

- Percent difference between line items and PEPPM benchmark pricing from other contracts
- Number of line-item wins, that is, the total number of SKUs which have the lowest price among all competitors
- Total dollar value of all items offered times a quantity of one.

In addition, at the Agency's discretion, evaluation may also exclude or clarify:

- Line-item anomalies, that is, individual line-item prices based on abnormal packaging, prices, for non-comparable offerings, items containing obvious non-material errors (example: a bid with a negative price), items for which items offered do not appear to be equal or to meet specifications.

X.5 Rejection of Bids

The Agency reserves the right to accept or reject any or all bids, or any part thereof, or items therein, and to waive informalities and/or technicalities, as it deems best to protect its interests. Without limiting the foregoing, the Agency is authorized to reject:

- Late bids;
- Bids that are Not Responsive;
- Bids from Bidders deemed not responsible, so judged following a hearing;
- Bids in which quoted prices are higher than street prices or are unreasonable compared to other Contracts.

X.6 Ambiguities

If a bid is responsive but contains ambiguities, the Agency may engage in Clarification. Bidders should submit any requested supplementary information promptly. Failure to respond is grounds for rejection of the bid. In such inquiries, a Bidder may not revise its offer, and no material changes will be accepted.

X.7 Evaluation of Responsiveness

Submissions by Bidders must pass a test for responsiveness before the bids will be evaluated for price. The following factors will be evaluated for responsiveness:

Factors related to a Bidder's bid as whole:

- The bid was received on time
- RFB Terms and Conditions were accepted
- Reference forms for the Bidder were attached

Factors related to Catalog specifications:

- Catalog offered was for the Catalog specified
- A signed Awarded Vendor Agreement was attached
- A returned goods policy was attached
- A source-of-supply document was attached
- Quote Sheet present, indicating pricing formulas and a price basis
- Pricing formulas were represented and correctly applied on the Bid Response Tab of the pricing template
- Manufacturer SKU numbers were present, accurate, and representative of the products being bid so that effective prices could be compared to those of competing Bidders
- The Bidder attached an ancillary service form spreadsheet or stated in an answer to questions that it was not providing any ancillary services
- Spreadsheet was attached with Rest-of-Catalog products and corresponding bid prices
- A list of manufacturers or brands found in the catalog was attached.
- Public policy compliance
- Certifies it classifies employees in a manner consistent with the [Fair Labor Standards Act, 29 U.S.C. 201, chapter 8](#)
- At least 100 brands and/manufacturers are represented in the Bidder's catalog
- Signed Authorized Reseller forms were attached (if applicable)

X.8 Evaluation of Responsibility

Bidders must pass a test for responsibility before their bids will move on to be evaluated for price. The following factors will be evaluated for Bidder responsibility:

- Evidence of a permanent place of business;
- Bidder is not insolvent or currently involved in bankruptcy;
- Bidder has no known overdue tax liabilities;
- Bidder owes no overdue PEPPM Transaction Fees;
- Bidder certifies it has not colluded in submitting its bid or developing pricing;
- Bidder is not under suspension or debarment;
- Bidder maintains sales representatives or a sales network of resellers;

- Bidder has provided positive references from buying agencies or has past PEPPM experience;
- Bidder has given evidence of previous sales in the public sector;
- Bidder has a system of customer support and service available to all chosen Eligible Entities as described on the bid form;
- Bidder has complied with any previous or existing PEPPM or Agency contracts;
- Bidder has included a list of all Authorized Resellers, with signed participation agreements

X.9 Evaluation of Pricing

Effective pricing from competing, responsive and responsible Bidders will be compared to identify the low-cost Bidder among comparable catalogs for each distribution model. Awards will be made to the lowest, responsive, responsible Bidder. In the event of tie bids, the winning Bidder will be decided by the flip of a coin or another method of chance selected by Agency.

X.10 Non-Material Deviations

In evaluating bids, the Agency may waive Bidders' minor errors or non-material deviations where no competitive advantage is obtained, and the information submitted by a Bidder can lead to a fair award decision among competing bids.

XI Uniform Grant Guidance Requirements [\[Return to Top\]](#)

XI.1 Federal Rules May Apply to Purchases with Grant Funds

When an Eligible Entity seeks to procure goods and services through an Agency Contract using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Grant Guidance," "UGG" or new "EDGAR"). Each Eligible Entity has the responsibility to advise Awarded Vendor or applicable Authorized Reseller if an order will use funds under a federal grant or contract, in which case Sections XI.1 through XI.13 shall apply. An Awarded Vendor or Authorized Reseller, at its option, may refuse to accept an order where an Eligible Entity specifies the use of federal funds and requires compliance with the following Uniform Guidance Requirements, provided, however, that, if the Awarded Vendor or Authorized Reseller accepts the order, then Sections XI.1 through XI.13 shall apply.

XI.2 Awarded Vendor Violation or Breach of Contract Terms

Purchase Orders for more than the simplified acquisition threshold currently set at \$250,000.00, which is the inflation-adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils), as authorized by 41 U.S.C. § 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Provisions regarding Awarded Vendor default will be set forth in the Purchase Order.

XI.3 Termination for Cause or Convenience

For any Purchase Order of more than \$10,000.00 made using federal funds, the Awarded Vendor or Authorized Reseller agrees that the following terms and condition shall apply:

The Eligible Entity may terminate or cancel any Purchase Order at any time, without cause, by providing seven (7) business days advance written notice to the Awarded Vendor or Authorized Reseller. If the

Purchase Order is terminated for convenience in accordance with this paragraph, the Eligible Entity shall only be required to pay Awarded Vendor or Authorized Reseller for products delivered to the Eligible Entity before the termination and not otherwise returned in accordance with Awarded Vendor's or Authorized Reseller's return policy. If the Eligible Entity has paid the Awarded Vendor for products not yet provided as of the date of termination, the Awarded Vendor shall immediately refund such payment(s).

The Eligible Entity may terminate or cancel any Purchase Order under the Contract with cause under [Section XIII.6](#).

XI.4 Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all Eligible Entity purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. The Awarded Vendor agrees that such provision applies to any Eligible Entity purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and the Awarded Vendor agrees that it shall comply with such provision.

XI.5 Davis-Bacon Act

When required by federal program legislation, the Awarded Vendor agrees that, for all Eligible Entity prime construction contracts/purchases in excess of \$2,000, the Awarded Vendor shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the Awarded Vendor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, the Awarded Vendor shall pay wages not less than once a week.

Current Prevailing Wage determinations issued by the Department of Labor are available at <https://beta.sam.gov>.

The Awarded Vendor agrees that, for any purchase to which this requirement applies, the award of the purchase to the Awarded Vendor is conditioned upon the Awarded Vendor's acceptance of the wage determination. The Awarded Vendor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

XI.6 Contract Work Hours and Safety Standards Act

Where applicable, for all Eligible Entity contracts or purchases in excess of \$100,000 that involve the employment of mechanics or laborers, the Awarded Vendor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of

the Act, the Awarded Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

XI.7 Rights to Inventions Made Under a Contract or Agreement

If the Eligible Entity's federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. The Awarded Vendor agrees to comply with the above requirements when applicable, but expressly retains as much of the entire right, title, and interest throughout the world to each subject invention as allowed by applicable law.

XI.8 Clean Air Act and Federal Water Pollution Control Act

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251- 1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). When required, the Awarded Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

XI.9 Debarment and Suspension

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Awarded Vendor certifies that the Awarded Vendor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Awarded Vendor further agrees to immediately notify the Eligible Entity with pending purchases or seeking to purchase from the Awarded Vendor if the Awarded Vendor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

XI.10 Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment (31 USC 1352)–Bidders who bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. As applicable, Bidders agree to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti- Lobbying Amendment (31 USC 1352).

XI.11 Procurement of Recovered Materials

For Eligible Entity's purchases utilizing federal funds, the Awarded Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as the district may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practical, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XI.12 Profit as a Separate Element of Price

For purchases using federal funds more than \$250,000, the Eligible Entity may be required to negotiate profit as a separate element of the price. See, 2 CFR § 200.324(b). When the Eligible Entity makes a reasonable determination that such information is required by law, the Awarded Vendor agrees to provide information and negotiate with the Eligible Entity regarding profit as a separate element of the price for a particular purchase. However, the Awarded Vendor agrees that the total price, including profit, charged by the Awarded Vendor to the Eligible Entity shall not exceed the awarded pricing.

XI.13 Bonding Requirements

Pursuant to 2 CFR § 326, the Agency requires applicable bid security, performance, and payment bonds on construction projects. As such, for construction or facility improvement Contracts or subcontracts exceeding the simplified acquisition threshold currently set at \$250,000, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the Eligible Entity, provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A bid guarantee from each Bidder equivalent to 5 percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Bidder will, upon acceptance of the bid, execute such contractual documents as required within the time specified.

- A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

XI.14 Not-To-Exceed Price

If requested by the Eligible Entity, on any contract based on time and materials, the Awarded Vendor shall set a ceiling price that the Awarded Vendor exceeds at its own risk pursuant to 2 C.F.R. § 200.318(j).

XI.15 Contracting with Historically Under-Utilized Businesses

When possible, the Awarded Vendor should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below. Such consideration means:

1. These business types are included on solicitation lists;
2. These business types are solicited whenever they are deemed eligible as potential sources;
3. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
4. Establishing delivery schedules (for example the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
5. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring any subcontractor to take the affirmative steps listed in subparagraphs (1) through (5) of this Section if subcontracts are to be let.

XI.16 Equivalent products

Comparable (Alternate) Products: Where the specification states a named product followed by “or equal,” an alternate or comparable product may be bid; however, the burden is on the Bidder to provide evidence that a proposed alternate meets or exceeds the Agency specified named product and its attributes and that it provides an equal or better warranty. If comparable product(s) are proposed in the bid, the Bidder must provide a detailed comparison for each to include a list of all the significant qualities of the product named in the Specification and those of the proposed alternate product(s). Significant qualities include attributes such as performance, weight, size, durability, visual effect and specific features and requirements indicated. The Agency reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification. Note: Where a Product equivalent is being offered for an E-rate Product, [Section VI.18](#) shall control.

Substitutions for Cause: An Awarded Vendor may only propose substitutions pursuant to a Purchase Order submitted by a purchasing Eligible Entity in the event of unavailability of product, regulatory changes or unavailability of required warranty terms. The Awarded Vendor must notify both the Agency and the purchasing Eligible Entity of all substitutions for cause with full documentation at least 30 working days in advance of the commencement of work. All documentation must demonstrate that the proposed substitution is equal to or better than the specified product on all physical and in-service attributes and warranty provisions and can be implemented by subcontractors as necessary without

disruption to the project. The purchasing Eligible Entity must approve all substitutions. The Eligible Entity reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named product in the specification.

Substitutions for Convenience: Bidders may not propose substitutions for convenience.

XI.17 Preference for American-Made Materials

Awarded Vendor should, to the greatest extent practicable and consistent with the law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States,(including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

“Produced in the United States” means that all manufacturing processes, from the initial melting stage through the application of coatings, occur in the United States for iron and steel products.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Federal agencies providing federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

XI.18 General Compliance and Cooperation with Eligible Entity

In addition to the foregoing specific requirements, the Awarded Vendor agrees, in accepting any Purchase Order or Contract from the Eligible Entity, it shall make a good-faith effort to work with the Eligible Entity to provide such information and to satisfy such requirements as may apply to the Eligible Entity’s purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements and Contract cost and price analyses required under the Uniform Grant Guidance.

For example, the Eligible Entity must perform a cost or price analysis in connection with every procurement transaction, including contract modifications, in excess of \$250,000, Such a cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price without looking at the individual cost elements. Thus, the Awarded Vendor agrees to make a good-faith effort to work with the Eligible Entity to complete such a cost or price analysis to comply with the law.

XII Post-Award Requirements [\[Return to Top\]](#)

XII.1 Audit Requirements

Agency reserves the right to ask Awarded Vendors or Authorized Resellers for proof of correct bid-price posting, quoting, and invoicing. From time to time, Agency will conduct spot checks or hire a third-party accounting firm to statistically sample records to verify the integrity of PEPPM posted pricing and invoiced sales. Therefore, Awarded Vendors are required to:

- Maintain standard business records for at least three years following any sale or payment;
- Store underlying cost data for pricing if they have bid under a mark-up-over-cost method;
- Keep a record of an underlying price-list basis if they have bid under a discount-from-list method;

- Cooperate with PEPPM staff or auditors for any request for records to sample or verify any of their posted pricing or invoiced sales

XII.2 Minimum Sales

While Agency guarantees no minimum sales, Awarded Vendors are expected to achieve at least \$1 million in sales per year. When an Awarded Vendor fails to meet the threshold or is off-track in meeting the threshold, Agency may contact the company to obtain a progress report of sales in its pipeline, identify obstacles to sales, or suggest enhanced public information to PEPPM customers. Lack of sales means that Eligible Entities are not getting the true value offered by a low-bid contract. An Awarded Vendor not on track to meet the minimum in sales agrees to meet with PEPPM by phone, by video conference, or in person to develop plans that will deliver proper contract benefits to Eligible Entities.

XII.3 Contact and Ordering Instructions

PEPPM will send newly Awarded Vendors an email with instructions on how to complete a standard template for Buyer Ordering Instructions. Awarded Vendors must fill out and return the document in Microsoft Word format for every Catalog awarded. The instructions will give Eligible Entities advice on how to fill out their Purchase Orders, whom to contact, and what resellers, if any, are authorized to sell under the Contract.

Ordering Instructions must be updated whenever an Awarded Vendor's information changes, especially when contact information changes or when resellers are added or removed.

XII.4 Vendor Website Functionality

Within 60 days of a notice of award, an Awarded Vendor must have available a website with catalog functionality to display PEPPM contracted pricing and related product information. The website must be able to:

- Be linkable through PEPPM.org and affiliated websites;
- Accept access by PEPPM buyers and customers;
- Make clear a user is viewing PEPPM bid-protected pricing;
- Include PEPPM's logo;
- Filter any Awarded Vendor products so only PEPPM contracted products display;
- Search, filter, and sort products;
- Show product name and product description, manufacturer name, manufacturer SKU, vendor SKU, unit of measure, and PEPPM Contract pricing;
- Provide additional expanded detail, documents, or photographs as desired by the Awarded Vendor;
- Add items to a shopping list or cart with list marked as a "PEPPM Quote" or send cXML data to PEPPM.org in real time to be added to a PEPPM list;
- Not accept orders directly unless approved by PEPPM or Agency

XII.5 Price Lists

Upon request, Awarded Vendors may have to submit price-list spreadsheets as prescribed in an Agency template. Data presented should include line items for both physical products and intangible products. In such cases, the Agency will provide specific directions in an email notice

Submitted data will be transferred by Agency to electronic catalogs on PEPPM.org and other eCommerce systems. The data will showcase bid-protected products to Eligible Entities to foster purchases.

Vendor's spreadsheet contents must be written so buyers can easily find and identify products under Contract. Data that includes abbreviations or lacks keyword descriptions will be disadvantaged compared to other competitor's items covered by another PEPPM-related Contract.

Agency and its eCommerce Consultant reserve the right to use a third-party content provider to describe or expand upon product descriptions from an Awarded Vendor.

XII.6 Pricing Updates

The pricing in an Awarded Vendor's catalog may change when the base pricing in its Commercially Available Catalog changes for the company's wider audience. However, the bid discount formula may not change. Awarded Vendors must always maintain current PEPPM discounted pricing for their online catalog. If using discount from list, vendor must provide a snapshot file of the published catalog price list used as the basis for their bid discount to PEPPM for bid price verification monthly.

If PEPPM has chosen to display certain Catalog products on its website, PEPPM's link to Catalog pricing must navigate to the current pricing on the Awarded Vendor's website. Therefore, Awarded Vendor is required to provide PEPPM with current and up-to-date links.

XII.7 Specials and Promotions

During the term of its Contract, an Awarded Vendor may offer specials and promotions.

XII.8 Leasing Information

A California Eligible Entity may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment or other major items of equipment owned by, or to be owned by, the Eligible Entity, if the purchaser agrees to lease the equipment back to the entity for use by the Eligible Entity following the sale.

The approval by the governing board of the Eligible Entity of the sale and leaseback shall be given only if the governing board finds, by resolution, that the equipment is data-processing equipment or another major item of equipment and that the sale and leaseback is the most economical means for providing electronic data-processing equipment or other major items of equipment to the Eligible Entity.

Awarded Vendors may allow Eligible Entities to enter into rental, lease, or lease purchase agreements, provided that such agreements are following state statutes and state Department of Education policies, rules, and regulations, as well as any state-specific laws and regulations applicable to Eligible Entities in other states. Awarded Vendor agrees that leases will comply with the Uniform Commercial Code for the Eligible Entity's home state.

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

Awarded Vendor must indicate in its terms and conditions whether the shipping costs for the return of leased or rented equipment are the responsibility of the Eligible Entity, and what that cost will be. No sale or assignment of a lease contract to a third party will be made without first informing Agency and the Eligible Entity of the sale or assignment. If an Awarded Vendor sells or assigns a lease contract to a third party, the cost of return must not be greater than the cost of return to the original Awarded Vendor.

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

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

Awarded Vendor may use a state procurement agency-approved lease agreement terms and conditions or may substitute its own leasing terms and conditions with the approval of the Eligible Entity.

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

XII.9 Contract Promotion, Advertising, and Marketing

An Awarded Vendor shall not advertise or publish information concerning an award or Contract before an announcement is made by the Agency. However, after the Agency signs and announces new Contracts, an Awarded Vendor may make truthful and accurate marketing statements regarding its Agency awards.

Before an Awarded Vendor issues a press release about its Contracts, the Agency or PEPPM must give prior approval.

For each awarded Catalog, Awarded Vendors are required to carry out marketing plans as offered in their bid submissions. At any time, PEPPM may telephone or email an Awarded Vendor for a progress report and evidence of activities conducted under their marketing plans.

XII.10 Request for Voluntary Discounts and Promotions

Awarded Vendors are required to provide an answer, even if no, to requests from LEAs for voluntary, additional discounts or volume discounts—in particular, from any requests deriving from the Agency or eCommerce Consultant's websites. When extending an optional discount, the Awarded Vendor is not obligated to provide a similar or equal discount to another LEA, except where required by federal E-rate Lowest Corresponding Price rules.

XII.11 Punchout Functionality

An Awarded Vendor may petition PEPPM or Epylon, by email, for a Punchout technology solution. Under this arrangement, a vendor hosts its products on its website and provides necessary data back to PEPPM to ensure compliance with its Contract with the Agency. Prior to approval, an Awarded Vendor

must demonstrate its ability to meet standards set by Agency and its eCommerce Consultant, which are available upon request. Permissions are granted at Agency's sole discretion.

XII.12 Training of the Sales Force and Authorized Resellers

Awarded Vendor is responsible to inform and train its sales force and Authorized Resellers on the use of its Agency Contracts for sales under Agency's bid-protection provisions.

XII.13 Contract Extension

At no time will the contract be in force for more than three whole years at a time. Agency reserves the right to extend any bid award, twice, for a period of up to one additional year at a time. The extension of any awarded bid will be optional upon the agreement of the Agency and the Awarded Vendor.

The Agency reserves the right to offer month-by-month extensions until a new Contract is awarded. These month-by-month extensions of the awarded Contract will be optional upon the agreement of the Agency and the Awarded Vendor.

XIII Other Terms and Conditions [\[Return to Top\]](#)

XIII.1 Entire Agreement

The Contract will represent the complete agreement between the Agency and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Contract shall be in writing in the form of an amendment signed by Agency and Awarded Vendor (and the eCommerce Consultant if the eCommerce Consultant is a necessary party).

The Purchase Order will represent the complete agreement between the Eligible Entity and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Purchase Order shall be in writing in the form of an amendment signed by Eligible Entity and Awarded Vendor.

XIII.2 Novation

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

XIII.3 Default Related to the Contract

The Agency may, subject to the provisions of force majeure, and in addition to its other rights under the Contract, at law or in equity, declare the Awarded Vendor in default by written notice thereof to the Awarded Vendor, and terminate the whole or any part of the Contract (including, without limitation, for one or more states) for any of the following reasons:

- Failure to deliver the awarded item(s) within the time period specified under a Purchase Order or as otherwise specified.
- Improper delivery.
- Failure to provide an item that is in conformance with the specifications in the RFB.

- Delivery of a defective item, where such defect is not cured subject to VII.15.
- Failure or refusal to remove and replace any item(s) rejected as defective or non-conforming within 15 days after notification.
- Insolvency.
- Assignment made for the benefit of creditors.
- Failure to protect, to repair, or to make good any damage or injury to property as required by the Contract.
- Breach of any provision of the Contract, if such breach is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to adequately perform the services set forth in the Contract and Purchase Order issued thereunder, if such failure is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to make progress in the performance of the Contract and/or giving Agency reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Contract, if such failure is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to observe any of the Terms and Conditions of the Contract, if such failure is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to pay Transaction Fees.
- Failure to follow the established procedure for Purchase Orders, invoices and receipt of funds as stipulated by the Agency and/or Eligible Entity.
- Failure to maintain its baseline catalog online.
- Failure to update prices.
- Nonperformance in sales.
- Failure to meet E-rate Program Compliance requirements including suspension or debarment.
- Suspension or Debarment occurring during the term of the Contract.
- The Awarded Vendor, Authorized Reseller, or awarded Catalog has been identified by the U.S. Government as posing a national security threat to the integrity of communications networks or the communications supply chain.

XIII.4 Default Related to the Purchase Order

The Eligible Entity may, subject to the provisions of force majeure, and in addition to its other rights under the Purchase Order, at law or in equity, declare the Awarded Vendor in default by written notice of it to the Awarded Vendor, and terminate the whole or any part of a Purchase Order for any of the following reasons:

- Failure to deliver the awarded item(s) within the time period specified on the Purchase Order or as otherwise specified.
- Improper delivery.
- Failure to provide an item which is in conformance with the specifications referenced in the RFB.
- Delivery of a defective item, where such defect is not cured subject to VII.15.
- Failure or refusal to remove and replace any item(s) rejected as defective or non-conforming within 15 days after notification.
- Insolvency.
- Assignment made for the benefit of creditors.

- Failure to protect, to repair, or to make good any damage or injury to property as required by the Contract.
- Breach of any provision of the Purchase Order.
- Failure to adequately perform the services set forth in the Purchase Order.
- Failure to make progress in the performance of the Purchase Order and/or giving Eligible Entity reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Purchase Order.
- Failure to observe any of the Terms and Conditions of the Contract or Purchase Order.
- Failure to follow the established procedure for Purchase Orders, invoices and receipt of funds as stipulated by the Eligible Entity.
- Suspension or Debarment occurring during the term of the Purchase Order.
- The Awarded Vendor, Authorized Reseller, or awarded Catalog has been identified by the U.S. Government as posing a national security threat to the integrity of communications networks or the communications supply chain.

If the Eligible Entity terminates the Purchase Order in whole or in part as provided above, the Eligible Entity may procure, upon such terms and in such manner as it determines, any products similar or identical to the products so terminated.

If the Purchase Order is terminated as provided in above, the Eligible Entity, in addition to any other rights provided in this paragraph, may require the Awarded Vendor to transfer title and deliver immediately to the Eligible Entity in the manner and to the extent directed by the Eligible Entity, any partially manufactured or delivered products 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 products accepted by the Eligible Entity shall be at an amount agreed-upon by the Awarded Vendor and Eligible Entity. The Eligible Entity may withhold from amounts otherwise due to the Awarded Vendor for any partially manufactured or delivered products, such sum as the Eligible Entity reasonably determines to be necessary to protect the Eligible Entity against loss due to the Awarded Vendor's default.

XIII.5 Awarded Vendor Relief

Upon request and approval from PEPPM, an Awarded Vendor may refuse to accept Purchase Orders from an otherwise Eligible Entity in cases where:

- Eligible Entity has not paid invoices.
- Eligible Entity is consistently late in paying invoices.
- Eligible Entity is a credit risk.
- Eligible Entity makes unreasonable and excessive returns.
- Eligible Entity abuses volume discount privileges.
- Awarded Vendor can demonstrate it is not making a profit or is losing money with the Eligible Entity.
- Other unusual circumstances that harm the Awarded Vendor, other Eligible Entities, or the integrity of the PEPPM program.

XIII.6 Remedies

The rights and remedies of the Agency or Eligible Entity provided in these Terms and Conditions shall not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or under the Contract or Purchase Order.

The Agency's or Eligible Entity's failure to exercise any rights or remedies provided in these Terms and Conditions, at law, in equity, or under the Contract or Purchase Order shall not be construed to be a waiver by the Agency or Eligible Entity of its rights and remedies regarding the event of default or any succeeding event of default.

To the extent that an Eligible Entity has an administrative dispute resolution process that is mandated by law, the Awarded Vendor agrees to adhere to such process.

XIII.7 Force Majeure; Intervening Governmental Action

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

The Awarded Vendor shall notify the Agency regarding obligations pursuant to the Contract or the Eligible Entity regarding obligations pursuant to the Purchase Order orally within five business days and in writing within 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:

- Describe fully such cause(s) and its effect on performance;
- State whether performance under the Contract or Purchase Order, as applicable, is prevented or delayed, and
- 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 10 business days of Agency's or Eligible Entity's written request such supporting documentation as the Agency or Eligible Entity may reasonably request. After receiving such notification, the Agency or Eligible Entity may elect either to cancel the Contract or Purchase Order, as applicable, 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 Eligible Entity by notice to the Awarded Vendor, may suspend all or a portion of the Purchase Order, and resume activities when the suspension ends, including making any delayed payments resulting from the suspension.

Intervening Governmental Action: The prices for the products offered by the Awarded Vendor shall remain fixed as may be required by the terms and conditions of this RFB, except if the Awarded Vendor incurs significant cost increases due to tariffs or other trade restrictions on its products or their component parts. In such case, the Awarded Vendor may request an emergency price increase by providing written notice to PEPPM within 30 days of the impact on the Awarded Vendor of the actual implementation of the applicable tariff or trade restriction. The notice must include documentation supporting the request and the relationship and impact that the implementation had upon the cost of

the products for which an increase is sought. Any price increase shall not exceed 25 percent of the original contract price for the affected products, unless the tariffs cause the Awarded Vendor to sell below its cost, in which case Agency will entertain approving a contract price that preserves vendor's previous bid-price profit margin. PEPPM shall review the request and justification. If the request is agreed upon, Agency or its agents shall notify the Awarded Vendor, in writing, that the request has been granted either in full, or in part, or denied. In no event shall the Awarded Vendor increase its prices until it is notified by Agency or PEPPM in writing that its emergency request for price increases has been approved. If tariffs are removed, Agency may cause contract prices to revert to the original bid price.

XIII.8 Termination of Purchase Order

The Eligible Entity has the right to terminate a Purchase Order for the following reasons. Termination shall be effective upon written notice to the Awarded Vendor.

Termination for Cause: The Eligible Entity shall have the right to terminate a Purchase Order for Awarded Vendor default upon written notice to the Awarded Vendor unless the Awarded Vendor promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the Eligible Entity's notice of default. Notwithstanding any termination for cause, the Awarded Vendor shall be paid for work satisfactorily completed prior to the Effective Date of the termination, less the Eligible Entity's damages due to the Awarded Vendor's default.

Non-Appropriation: If the Eligible Entity purchasing from the Awarded Vendor or an Authorized Reseller is a state or local agency under laws of the state applicable to such Eligible Entity (e.g., Pennsylvania State System of Higher Education (PASSHE) members under Pennsylvania law), the Eligible Entity's 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 Eligible Entity shall have the right to terminate the Purchase Order (including any applicable lease). In such event, Eligible Entity must: (1) certify that its governing body did not appropriate funds for the applicable fiscal year; (2) certify that the canceled equipment is not being replaced by similar equipment or equipment performing similar functions during the ensuing fiscal year; and (3) return the equipment to Awarded Vendor, free from all liens and encumbrances, in good condition to a location designated by the Awarded Vendor (which location must be within the Eligible Entity's state, if so requested by Eligible Entity), whereupon Eligible Entity will be released from its obligations to make any further payments to Awarded Vendor, with Awarded Vendor retaining sums paid to date.

XIII.9 Termination of Contract

Agency shall have the right to terminate the Contract for Awarded Vendor default upon written notice to the Awarded Vendor unless the Awarded Vendor promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the notice from the Agency or its agents.

At any time, the Agency reserves the right to conduct a review of the Awarded Vendor's performance of Contract responsibilities with the possibility of cancelation of the whole or any part of this Contract due to failure by the Awarded Vendor to carry out any obligation, term or condition of the Contract. The Agency may, but is not obligated to, follow the following procedure:

- Step 1: Issue a warning Letter of Concern outlining the violations and length of time to

- correct the problems;
- Step 2: Issue a Letter of Intent to cancel the Contract, if the problems are not resolved by a given date;
- Step 3: Issue a Letter to Cancel the Contract

Upon receipt of the written Letter of Concern, the Awarded Vendor shall have 10 business days to provide a satisfactory response to Agency detailing how Awarded Vendor intends to address Agency's concerns. Failure on the part of the Awarded Vendor to address adequately all issues of concern may result in Contract cancellation.

In the event of termination of the Awarded Vendor Contract, each Purchase Order shall remain in full force and effect until the end of its scheduled term and shall be governed by the Terms and Conditions of the Contract and Purchase Order as if the Contract were still in effect. No new Purchase Orders shall be entered into after the Effective Date of the termination of the Contract.

XIII.10 Assignability and Subcontracting

The Contract and Purchase Order shall be binding upon the parties and their respective successors and assigns.

The Awarded Vendor shall not subcontract with any person or entity to perform all or substantially all of the work to be performed under the Contract or a Purchase Order, without notifying the Agency and Eligible Entity, as applicable. The use of delivery/removal carriers does not constitute subcontracting. Awarded Vendor may use subcontractors regularly retained by Awarded Vendor in the ordinary course of business to perform cost, freight, and insurance, custom factory integration (CFI), warranty, break/fix, administrative and back office services, provided such subcontractors shall not have access to Eligible Entity's confidential information other than billing and contact information, and Awarded Vendor shall indemnify and hold harmless Agency and Eligible Entity from any claims, penalties, damages, and expenses of any nature (including attorneys' fees and costs) arising out of or relating to such subcontractors.

The Awarded Vendor may not assign, in whole or in part, the Contract or any Purchase Order or its rights, duties, obligations, or responsibilities thereunder without the prior written consent of the Agency and Eligible Entity, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed.

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

Any assignment consented to by Agency or Eligible Entity 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 Contract or Purchase Order, as applicable, and to assume the duties, obligations, and responsibilities being assigned. Unless the Agency or Eligible Entity has consented to an assignment and agreed in writing to release the assignor from liability under the Contract or Purchase Order, no assignment shall release the Awarded Vendor from liability under the Contract or Purchase Order.

A change of name by the Awarded Vendor, for which the Awarded Vendor's federal identification number remains unchanged, shall not be considered an assignment hereunder. The Awarded Vendor

shall give the Agency and any Eligible Entities holding outstanding Purchase Orders written notice of any such name change.

Notwithstanding the foregoing, the Awarded Vendor may, without the consent of the Eligible Entity, assign the Agreement to a successor entity in connection with a merger, consolidation or dissolution of all or substantially all of Awarded Vendor's assets or business, provided that Awarded Vendor's successor entity assumes in writing all of Awarded Vendor's obligations under this Agreement and agrees in writing to be bound by this Agreement, 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 Eligible Entity together with a written acknowledgment from the assignee that any such payments are subject to all of the Terms and Conditions of the Purchase Order.

Further, notwithstanding the foregoing, the Awarded Vendor may, without the consent of Agency or Eligible Entity, assign leases to a third-party for the purposes of securitization or factoring.

XIII.11 Intellectual Property Indemnity

Awarded Vendor shall defend, indemnify and hold harmless the Agency and Eligible Entity (collectively, "Indemnities") from and against all claims, damages, losses and expenses, including without limitation reasonable attorney's fees and legal costs, that Indemnities incur as a result of any third-party claims, demands, or actions arising out of or resulting from a claim or allegation that any products provided by Awarded Vendor in connection with the Contract or a Purchase Order ("Covered product") infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property right of any third party enforceable in the United States (each a "Covered Claim"). Awarded Vendor shall have no obligation for Covered Claims to the extent they are caused by: (i) the combination of a Covered Product with third party products with which such Covered Product was not intended to be used; (ii) the unauthorized modification of a Covered Product; (iii) the use of a Covered Product for a purpose or in a manner for which such Covered Product was not designed; or (vi) the use of a Covered Product after Awarded Vendor has informed Eligible Entity of modifications or changes to the Covered Product that do not result in a material loss of functionality and that are required to avoid such Covered Claim, and has offered to promptly implement such modifications or changes free of charge, if such Covered Claim would have been avoided by implementation of such modifications or changes. To obtain the benefit of the foregoing indemnification, Indemnitees must (a) promptly notify Awarded Vendor of a Covered Claim; (b) provide Awarded Vendor with such reasonable assistance as Awarded Vendor reasonably requires from time to time, provided Awarded Vendor shall pay for all Indemnitees' out of pocket costs; and (c) give Awarded Vendor full control of the defense and settlement of the Covered Claim, provided that no settlement shall require an admission of guilt from Indemnitees or the payment of any amount not indemnified for hereunder. If a Covered Claim is made, or in Awarded Vendor's opinion is likely to occur, Awarded Vendor, at its sole discretion and expense, may perform one of the following: (a) use its reasonable endeavors to procure for Indemnitees the right to continue using the Covered Products; (b) use its reasonable endeavors to replace or modify the Covered products so that they become non-infringing, without material loss of functionality; or (c) if neither (a) or (b) are practicably available to Awarded Vendor acting reasonably, reimburse to Indemnitees all pre- paid amounts, and reimburse Indemnitees for the total cost of such Covered Products depreciated on a straight-line basis over a period of five years. This Section states the exclusive and entire liability of Awarded Vendor to Indemnitees for Covered Claims.

XIII.12 Indemnification

To the fullest extent allowed by law, the Awarded Vendor shall indemnify and hold harmless the Agency and Eligible Entity from and against all claims, damages, losses and expenses, including without limitation reasonable attorney's fees and legal costs that Agency or Eligible Entity incur as a result of any third-party claims, demands, or actions arising out of or resulting from the Awarded Vendor's actual or alleged negligence, willful misconduct, or breach of the Contract or a Purchase Order.

This includes, without limitation, claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, caused in whole or in part by acts or omissions or negligence of the Awarded Vendor, its Authorized Resellers, anyone directly employed by them, or anyone for whose actions they are held to be legally liable.

The indemnification obligations under the Contract and Purchase Order shall not be limited by amount or type of damages, compensation, or benefits payable by or for the Awarded Vendor or Authorized Reseller under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Further, nothing in these indemnification provisions is intended to waive or extinguish the immunity protections of the Agency or Eligible Entity, its agents or employees as set forth in California law or other similar state or federal laws or constitutional provisions. Awarded Vendor's indemnity obligations shall be in addition to any insurance requirements under the Contract or Purchase Order. The obligations shall survive the expiration or earlier termination of the Contract or Purchase Order.

XIII.13 Limits of Awarded Vendor Liability

The Awarded Vendor's liability to Agency under the Contract shall be limited to the greater of \$3,000,000 or two times the total amount ordered by all Eligible Entities from Awarded Vendor during the 12-month period preceding the date that the dispute first arose. The Awarded Vendor's liability to any Eligible Entity under all Purchase Orders shall be limited to the greater of \$500,000 or two times the total amount ordered by such Eligible Entity from Awarded Vendor during the 12- month period preceding the date that the dispute first arose.

Unless stated otherwise in this Section, this limitation will apply regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not apply, however, to damages for bodily injury (including death) 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 intellectual property indemnity – subject, however, to the disclaimer of any consequential damages and other related categories of damages as set forth elsewhere in this Section. In no event shall Awarded Vendor, Agency or any Eligible Entity be liable for any special, indirect, incidental, exemplary, reliance, consequential or punitive damages, or loss of profits or revenue, whether based on breach of Contract, tort (including negligence), product liability or otherwise.

XIII.14 Governing Law; Jurisdiction and Venue, and Severability

The Agreement between the Agency and the Awarded Vendor and its Authorized Resellers will be governed and construed in the courts with the laws of the State of California without giving effect to its conflict-of-laws' provisions. Claimants submit to the exclusive jurisdiction of the courts of Kern County in the State of California and any United States courts located within Agency's jurisdiction for purposes of any and all litigation arising out of or relating to this Agreement or the use of the PEPPM website.

Claimants waive any objections to the forum of California for lack of venue, *forum non-conveniens*, or any other jurisdictional ground.

When claims, disputes, or other matters arise between an Eligible Entity and an Awarded Vendor, the agreement or Purchase Order shall be governed, construed, and enforced in the courts and under the laws of the state, district, or territory in which the Eligible Entity is located. Again, claimants waive any objections to the forum of the respective Eligible Entity for lack of venue, *forum non-conveniens*, or any other jurisdictional ground.

Should any term of the Contract or Purchase Order be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the Contract or Purchase Order to the extent possible. If such invalidity shall be caused by the length of any period of time set forth in any part of the Contract or Purchase Order, such period of time shall be considered to be reduced or increased, as necessary, to a period which would cure such invalidity.

XIII.15 Rights of Eligible Entities

The rights and remedies of the Agency and Eligible Entities provided in these Terms and Conditions shall not be exclusive and are in addition to any other rights and remedies provided by law, at equity, under the Contract and any Purchase Order.

XIII.16 Legal Notices

All notices explicitly or implicitly required by the Contract or Purchase Order shall be delivered by certified mail or other commercial carrier offering proof of delivery to the parties at the address referred to in the Awarded Vendor Agreement or Purchase Order. Unless proven to the contrary by the recipient, notice shall be considered received no more than two business days after its postmark by the postal service or proof of delivery by a commercial carrier.

XIII.17 Binding Nature and Survival

The Contract and each Purchase Order shall be binding on and inure to the benefit of the respective parties thereto and their respective successors and assigns. It is understood and agreed, whether or not specifically provided herein, that any provision of the Contract or Purchase Order, which by its nature and effect is required to be observed, kept, or performed after the expiration or termination of the Contract or Purchase Order shall survive the expiration or termination of the Contract or Purchase Order.

XIII.18 In the Event of Cooperative Program Termination

In the unexpected event that Agency should terminate its relationship and affiliation with the PEPPM cooperative purchasing program, Agency reserves the right to transfer the duties, roles, rights, and responsibilities ascribed to PEPPM or the CSIU in the Contract—including these Terms and Conditions—to another organization, company, agent, or agency for continued and uninterrupted service to Eligible Entities.

XIII.19 Copyright

This Request for Bids, its Terms and Conditions, the electronic bid form, and all attachments are copyrighted by Agency, the Epylon Corporation, and the CSIU, 2025 (©2025, Epylon, KCSOS, and CSIU).

[END]