

PEPPM 2019 Product Line Bid

AWARDED VENDOR AGREEMENT (“Agreement”)

BETWEEN

Central Susquehanna Intermediate Unit, Milton, Pennsylvania (“Agency”)

AND

Xerox Corporation

(Bidder's legal name referred to throughout this Agreement as "Awarded Vendor")

For Product Line:

Xerox Corporation - Copiers
Manufacturer/Publisher Name

Copiers, Multi-Function Devices, Production Systems, Software
Product Line Description (as per PEPPM Product Line Bid List)

This Agreement is made and entered into as of the date this Agreement is fully executed by the Awarded Vendor and Agency (the “Effective Date”).

Whereas, Agency issued a Request for Bids for PEPPM 2019 Product Line Bid (“RFB”), which RFB is incorporated into this Agreement by reference and made a part hereof;

Whereas, Awarded Vendor submitted a Bid in response to the Agency’s RFB for the above referenced Product Line;

Whereas, the Agency notified Awarded Vendor that it was the lowest responsive and responsible bidder for the above-referenced Product Line; and

Whereas, Awarded Vendor executes this Awarded Vendor Agreement to memorialize its acceptance of the terms and conditions of the Contract (as hereinafter defined).

Now, therefore in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is expressly acknowledged by both parties, and intending to be legally bound hereby, the parties mutually agree as follows:

1. Awarded Vendor agrees to furnish products and services for the above-referenced Product Line in accordance with the Contract.
2. Awarded Vendor’s legal address is

201 Meritt 7
Norwalk, Connecticut 06851

Agency's address is

90 Lawton Lane
Milton, PA 17847

3. The Contract shall commence on January 1, 2019 and end on December 31, 2021. Agency and Awarded Vendor may extend the term of the Contract as set forth in the PEPPM Terms and Conditions.
4. Awarded Vendor agrees to extend its bid prices according to all terms and conditions of the Contract Documents to all LEAs in Pennsylvania that are authorized to purchase the products included in the Awarded Vendor's bid.
5. To the extent that the Awarded Vendor agreed to extend its bid prices to LEAs in states other than Pennsylvania, and/or to other Eligible Entities in Pennsylvania or other states, then Awarded Vendor agrees to extend its bid prices according to all terms and conditions of the Contract Documents to all such other LEAs and Eligible Entities that are authorized to purchase the products included in the Awarded Vendor's bid as set forth in Awarded Vendor's bid.
6. Awarded Vendor agrees to remit the Transaction Fee to the eCommerce Consultant in accordance with the terms and conditions set forth in the Contract.
7. Unless the context otherwise requires, capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings specified in the RFB or other Contract Documents.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused their hands and seals to be affixed.

[Remainder of Page Intentionally Left Blank. Signature Pages Follow]

CSIU use only:

**CENTRAL SUSQUEHANNA
INTERMEDIATE UNIT**

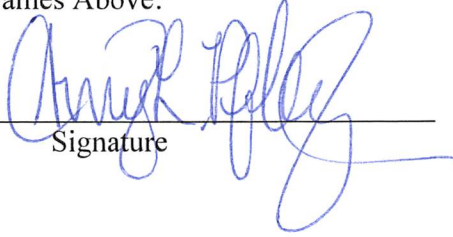
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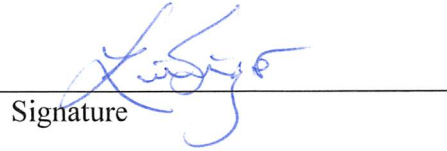
By **Kevin Singer**

Witness

CSIU Executive Director

Print Names Above:

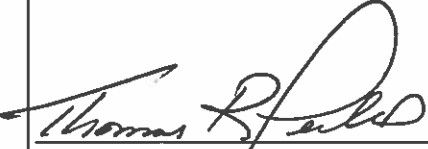

Signature


Signature

Date: November 15, 2018

Date: November 15, 2018

[signatures continued on following page]

Vendor Name (if corporation)	<u>XEROX Corporation</u>
Thomas R. Merlie	By _____
Corporate Secretary (or designee)	Corporate President (or designee)
General Manager, PA, NJ, NYC	_____
Designee Title (If not Corporate Secretary)	Designee Title (If not Corporate President)
Print Names Above:	
	_____
Signature	Signature
(CORPORATE SEAL)	
Date: <u>09/17/2018</u>	Date: _____

Vendor Name (if unincorporated)	_____
_____	By _____
Witness	Owner (or designee)
_____	_____
Title	Designee Title (If not Owner)
Print Names Above:	
_____	_____
Signature	Signature
Date: _____	Date: _____

**Xerox Clarifications to Central Susquehanna Intermediate Unit
Request for Bid
PEPPM 2019 Product Line Bid – Pennsylvania
Electronic Bid # 528897 ("Bid")**

Please note that the following Bid clarifications and the “Xerox Corporation Terms and Conditions Attachment” are a part of our bid proposal. In the event that there is a conflict between the “Xerox Corporation Terms and Conditions Attachment” and those of the Bid, the Bid shall prevail.

Section II - Bid Document Definitions and Interpretations

Contract Documents Between Awarded Vendor and Eligible Entity subsection of Definitions of “Contract Document”, “Contract” and “Purchase Order”: Xerox will make prices available to public schools, government-owned colleges and universities, cities and counties, other governmental entities, and state or local government contractors (such as charter schools) within the Commonwealth of Pennsylvania. Please note that prices will not be extended to private not-for-profit institutions or organizations.

Section III - Legal Authority and Eligible Buying Agencies

III.3 Local Educations Agencies (LEAs) and III.4 Other Eligible Organizations: Xerox will make prices available to public schools, government-owned colleges and universities, and state or local government contractors (such as charter schools) within the Commonwealth of Pennsylvania. Please note that prices will not be extended to private not-for-profit institutions or organizations.

III.12 New Laws; Change to Existing Laws: There has to be a distinction between what one must do because of law and what one chooses to do because of law. In the context of this provision, suspension or termination of the Contract because of a new or changed law constitutes an act of convenience, and that act would require recompense (in the case of suspension), or would be subject to any applicable termination charges (in the event of termination). Xerox would agree to meet with the Agency to review the new or changed law, in terms of its impact on the Contract, in order to determine if appropriate adjustments to the Contract can be made to ensure compliance.

Section V – Bidder Qualifications

V.8 Authorization for Resellers: Agency purchase orders may contain preprinted terms that are that are not in conflict with the terms of the Contract Document, but are in conflict with the nature of the transaction. Therefore, Xerox does not agree to its Resellers having an obligation to accept and obey purchase order terms that have not been specifically reviewed and agreed-to, in writing.

V.22 Rights and Remedies in the Event of Violation: Eligible Entities may cancel Purchase Orders and other agreements with the Vendor, but they may not cancel the Contract between the Agency and the Vendor. Therefore, the first sentence must be changed to make this distinction.

Section VI – Product Specifications

VI.2 New Product Provisions: In order to meet new equipment requirement, Xerox will provide either newly manufactured or factory produced new equipment. Both equipment types are currently manufactured by Xerox in a factory environment. None of the equipment provided will be remanufactured, reconditioned, recycled, refurbished, or used, although the equipment may contain some recycled components that meet new parts performance standards. Regardless of the equipment type provided, the customer will be the first user of the newly manufactured and factory produced new model equipment.

VI.12 Standard Warranty: Xerox provides warranty by way of a monthly billed maintenance agreement. If equipment is being leased or rented, the maintenance agreement is a mandatory part of the monthly lease or rental payment. Maintenance agreements commence upon installation of the equipment. Xerox will repair or replace defective parts or equipment at Xerox’s expense as long as the equipment is being maintained by Xerox under a maintenance agreement. If the maintenance agreement is cancelled or if it is not renewed, Xerox’s obligation to repair or replace equipment ceases.

VI.17 Returned Goods Policy: Xerox will accept returns, provided that the equipment has not yet been placed into service. If equipment has been placed in service, then Xerox will repair or replace defective equipment.

Section VII - Ordering Procedures and Requirements

VII.9 Term of Purchase Order, first bulleted item: Acceptance of delivered items is deemed to occur when the equipment is installed, has successfully completed its diagnostic routines and is available for use.

VII.15 Inspection and Rejection: We believe that the “...removed from the premises or returned without expense to the Eligible Entity within 15 days after notification...” is an error, and that the language should read “...removed from the premises and be returned without expense to the Eligible Entity within 15 days after notification...”.

Section XIII – Other Terms and Conditions

XIII.3 Default Related to the Contract: Should the Agency choose to terminate the Contract for any of the reasons given, such termination should only apply prospectively, meaning that all existing transactions should continue for the balance of their terms and would be unaffected by the termination. This is supported by the survival language in the Termination of Contract provision. Also, holding the Vendor to be in default is a very serious consequence, and is something that should not be done capriciously. For example, a single failure to deliver an item as scheduled should not be considered as sufficient cause for termination of the Contract. Therefore, we require that the default causals be changed as shown below:

- In the first sentence, add the words “and Termination of Contract” after the words “provisions of Force Majeure”;

- Change the first bulleted causal to read: “A consistent failure to deliver the awarded item(s) within the time periods specified under Purchase Orders or as otherwise specified”;
- Change the second bulleted causal to read: “Frequent documented improper deliveries of awarded items”;
- Change the third bulleted causal to read: “Provision of items which are not in conformance with the specifications referenced in the Request for Bids”;
- Change the sixth bulleted causal to read: “Insolvency that results in the failure of the Awarded Vendor to meet their obligations under the Contract or related Purchase Orders”;
- Change the seventh bulleted causal to read: “Assignment made for the benefit of creditors, when the Awarded Vendor is unable to meet their obligations under the Contract or related Purchase Orders”;
- Change the eighth bulleted causal to read: “Failure to make arrangements to protect, to repair, or to make good any damage or injury to property as required by the Contract within thirty (30) days of receipt of written notice of such damage”;
- Change the sixteenth bulleted causal to read: “Failure to update prices as required by the Contract”;
- Change the seventeenth bulleted causal to read: “Nonperformance in sales under the Contract”.

XIII.4 Default Related to the Purchase Order: Again, holding the Vendor to be in default is a very serious consequence, and is something that should not be done capriciously. For example, a single failure to deliver an item as scheduled should not be considered as sufficient cause for termination of the Purchase Order. Therefore, we require that the default causals be changed, as shown below:

- Change the first bulleted causal to read: “A consistent failure to deliver the awarded item(s) within the time periods specified under Purchase Orders or as otherwise specified”;
- Change the second bulleted causal to read: “Frequent documented improper deliveries of awarded items”;
- Change the third bulleted causal to read: “Provision of items which are not in conformance with the specifications referenced in the Request for Bids”;
- Change the sixth bulleted causal to read: “Insolvency that results in the failure of the Awarded Vendor to meet their obligations under the Contract or related Purchase Orders”;
- Change the seventh bulleted causal to read: “Assignment made for the benefit of creditors, when the Awarded Vendor is unable to meet their obligations under the Contract or related Purchase Orders”;
- Change the eighth bulleted causal to read: “Failure to make arrangements to protect, to repair, or to make good any damage or injury to property as required by the Contract within thirty (30) days of receipt of written notice of such damage”;
- Change the ninth bulleted causal to read: “Breach of any provision of the Purchase Order, provided that Awarded Vendor has failed to cure such breach within thirty (30) days of receipt of written notice of such breach”;
- Change the tenth bulleted causal to read: “Failure to adequately perform the services set forth in the Purchase Order, provided that the Awarded Vendor has failed to cure such failure within thirty (30) days of receipt of written notice of such failure”;

- Change the eleventh bulleted causal to read: “Failure to make progress in the performance of the Purchase Order and/or giving LEA reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Purchase Order, provided that, within thirty (30) days of its receipt of notice, the Awarded Vendor has not provided sufficient evidence of its ability to perform”;
- Change the twelfth bulleted causal to read: “Failure to observe any of the Terms and Conditions of the Contract or Purchase Order, provided that the Awarded Vendor has failed to cure such failure within thirty (30) days of receipt of written notice of such failure”;
- Change the thirteenth bulleted causal to read: “Failure to follow the Contract’s established procedure for Purchase Orders, invoices and receipt of funds as stipulated by the Eligible Entity, provided that the Awarded Vendor has failed to cure such failure within thirty (30) days of receipt of written notice of such failure”.

XIII.6 Force Majeure: Payment obligations that are associated with leases cannot be forgiven, even under a Force Majeure circumstance; nor can Force Majeure allow for early lease termination. Therefore, in order for us to offer leases under the Contract, we require that lease payments be carved out of this provision, using language similar to the following: “Other than an Eligible Entity’s lease payment obligations, which must continue unaffected if at all possible, or, if payment is affected, be caught up once the Force Majeure circumstances end, 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 or delayed 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.”

XIII.11 Indemnification: Xerox agrees to be liable for claims for damages as provided for in this provision, but only to the extent that such claims are caused by Xerox, agents, and/or subcontractors. Xerox will not be responsible for claims for damage caused by others for whom Xerox is not responsible. Therefore, we require the first two paragraphs of this provision to be changed, as follows: “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 to the extent such claims, demands or actions arise out of or results 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, to the extent caused 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.”

XIII.12 Limits of Awarded Vendor Liability: The language of this provision basically establishes a minimum cap of \$500,000 for every Purchase Order. That is not acceptable for small dollar Purchase Order transactions (i.e., \$500,000 will always be greater than two times the amount ordered; for example, a single unit purchase for \$10K should not carry a \$500K liability limit). Therefore, we require the language to be changed to reflect a more acceptable amount. Xerox requires that, instead of the \$500,000 minimum limit, a \$50,000 minimum limit (or, two times the total amount ordered, if greater) apply. The revised language in the first paragraph would read as follows: “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 \$50,000 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.”