



AMENDMENT II

(September 12, 2022)

CENTRAL SUSQUEHANNA INTERMEDIATE UNIT

Request for Bids

PEPPM 2023 Apple Bid – Pennsylvania
Electronic Bid # 533942

Bid Due Date: Tuesday, September 20, 2022, 3:00 p.m. Eastern Time

Request for Bids #533942, titled “PEPPM 2023 Apple Bid – Pennsylvania” is hereby amended with changes to certain sections of the Terms and Conditions.

TERMS AND CONDITIONS MODIFICATIONS

II.7 Definition of “Apple Product”

“Apple Product” shall mean Services, CTO [\(Configure-to-Order\)](#) Products, hardware, and software products manufactured, distributed, or licensed under an Apple-owned or licensed brand name that Eligible Entity has paid to acquire or has properly licensed from [Awarded Vendor](#) Apple for its own use, but excluding any third-party software and all other third-party products. If relevant to a successful Bidder, Apple’s standard definitions for Products and Services from Apple’s Direct Customer Agreement (ADCA) shall apply.

II.11 Definition of “Contract”

The “Contract” shall consist of this Request for Bids ~~as modified by the Parties~~, the Agreement and all subsequent written amendments to the Agreement as ~~modified~~ [mutually agreed to](#) by the Parties, any Apple Professional Services Agreement, and any Apple Master Lease Agreement. In addition, the Contract shall include all information incorporated into the electronic bid form by Agency as approved by Awarded Vendor, the ~~Awarded Vendor’s~~ responses to Questions, the Awarded Vendor’s PEPPM Bid Quote Sheet(s) ~~as modified~~, the Awarded Vendor’s pricing spreadsheet ~~as modified~~, the Awarded Vendor’s PEPPM State Selection Form, the Awarded Vendor’s Ancillary Services Form, all other attachments and exhibits to the Request for Bids, and all addenda to the Request for Bids issued prior to the Bid Opening Date [\(collectively, the “Bid Documents”\)](#).

In the event of any conflict or inconsistency among the documents listed above the following Order of Precedence (“OOP”) shall govern the Contract:

1. The Contract
2. Any Apple Professional Service Agreement (“PSA”)

3. Any Apple Master Lease Agreement (“MLA”). For lease transactions under this Contract, the Master Lease Agreement and any applicable financing documents will control with respect to the terms and conditions pertaining to the lease
4. The Agreement and all subsequent written amendments to the Agreement as modified by the Parties
5. The Bid Documents

There are no other terms, obligations, covenants, representations, statements, or conditions, oral or otherwise, of any kind, concerning this Contract, except as contained in this and those documents. Awarded Vendor and Agency acknowledge that the Contract supersedes and extinguishes all previous agreements and representations (whether oral or written), between or on behalf of the Parties with respect to its subject matter. The Contract contains all of Awarded Vendor’s and Agency’s agreements, warranties, understandings, conditions, covenants, promises and representations with respect to its subject matter. Awarded Vendor and Agency acknowledge and agree that they have not relied on any other agreements, warranties, understandings, conditions, covenants, promises or representations in entering into the Contract. Neither Awarded Vendor nor Agency will be liable for any agreements, warranties, understandings, conditions, covenants, promises or representations not expressly stated or referenced in the Contract.

Awarded Vendor is deemed to have refused any provisions in Purchase Orders, invoices or other documents or statements from Agency or Eligible Entities that purport to alter or have the effect of altering any provision of the Contract and such refused provisions will be unenforceable. Awarded Vendor shall negotiate, prior to the Effective Date, an eCommerce Merchant Agreement that is separate and apart from the Contract.

II.13 Definition of “Eligible Entity”

“Eligible Entity” or “Eligible Entities” means LEAs or other Eligible Organizations that qualify to be buyers under this Contract. [The LEAs and other Eligible Organizations are sometimes collectively referred to in this Request for Bids 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.

II.20 Definition of “Product” or “Products”

“Products” means, collectively, Apple Products and other [bundled](#) products that are sold or licensed by Awarded Vendor to Eligible Entity for its own use [under Section VIII.10](#). If relevant to a successful Bidder, Apple’s standard definitions for Products and Services from Apple’s Direct Customer Agreement (ADCA) shall apply.

II.21 Definition of “Purchase Order”

“Purchase Order” is the document (or electronic version thereof) through which an Eligible Entity can purchase Products from the Awarded Vendor. Awarded Vendor will accept Purchase Order(s) provided, however, that the sole purpose of such Purchase Order(s) shall be to provide information needed to complete the order process and any preprinted terms of such Purchase Order(s) shall be of no force or effect. The submission of a Purchase Order to the Awarded Vendor for the ~~of the Contract.~~ Products and/or Services offered in this Contract shall constitute full and binding acceptance.

II.25 Definition of “Transaction Fee”

~~“Transaction Fee” is that fee paid by an Awarded Vendor on the net dollar amount of invoiced sales under a PEPPM Contract.~~ “Transaction Fee” is more fully defined [elsewhere](#) in the Terms and Conditions.

II.27 Definition of “Apple Confidential Information”

“Apple Confidential Information” means any and all information in oral or written form that Agency or Eligible Entity knows or has reason to know is ~~C~~confidential ~~I~~information and that is disclosed in connection with this Contract or to which Agency or Eligible Entity may have access in connection with this Contract, including but not limited to financial information and data, personnel information, information regarding strategic alliances, costs or pricing data, the identities of customers and prospective customers, and any information relating to new product launch, including the release dates and Product specifications. Apple Confidential Information shall not include any information that: (i) was rightfully in the Agency’s or Eligible Entity’s possession prior to disclosure without any obligation to maintain its confidentiality; (ii) was independently developed by Agency or Eligible Entity without the use of or reference to Apple Confidential Information; or (iii) is now, or hereafter becomes, publicly available other than through disclosure by Agency or Eligible Entity in breach of this Contract.

II.29 Definition of “Limited Warranty”

“Limited Warranty” means Apple’s standard ~~L~~limited ~~W~~warranty that is set forth in the documentation that accompanies any Apple Products purchased under this Contract.

III.5 ~~Eligible Entities~~Agency’s Interest in a Contract Resulting from this RFB

~~The LEAs and other Eligible Organizations are sometimes collectively referred to in this Request for Bids as, each an “Eligible Entity” and collectively the “Eligible Entities.” Except with regard to its own consumption, to the extent Agency issues this Request for Bids and any resulting Contract for the use of Eligible Entities, Agency’s interests and liability for said use of the Contract by Eligible Entities shall be limited to the competitive bidding process performed relating to said 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 from it. In no event shall Agency 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. Any liability of Agency shall be limited to direct, actual damages only, and in no event shall the Agency 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 set forth above are fundamental elements of the PEPPM program and resulting Agreement and the Agency would not provide the PEPPM program or enter into the Agreement absent such limitations.~~

IV.4 Transaction Fees

“Transaction Fee” is that fee paid by an Awarded Vendor on the net dollar amount of invoiced sales under a PEPPM Contract. Awarded Vendors shall be required to pay a Transaction Fee, in USD, to the Agency for all purchases by Eligible Entities made through this Contract. This applies to all orders, regardless of the method used to submit the order, the quantity of ~~Apple hardware~~ Products, 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 Epsilon eCommerce Merchant Agreement. The Agency Transaction Fee replaces and supersedes any requirement for higher fees in the eCommerce Merchant Agreement.

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 shall not include any additional

itemized amount corresponding to the Transaction Fees in the bid responses, awarded Contract prices, or any other quote to Eligible Entities.

Failure to pay Transaction Fees on a timely basis will result in suspension or termination of the Awarded Vendor's Contract.

For the purpose of the Contract, the Transaction Fee shall be 1.75 percent of 'Net Sales,' of ~~Awarded Vendor-branded~~ Products, which means gross sales less returns and cancelled orders within thirty (30) days, shipping and sales and other taxes (excluding taxes based on net income).

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 to the best of such person's knowledge:

- The price(s) and amount of the bid have been 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 with the intent and for the purpose of collusion
- No attempt has been made or will be made to induce any firm or person to refrain from bidding on this RFB, 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
- The bid of Bidder 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~~ Bidder is not currently under investigation by any governmental agency, and has ~~ve~~ 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; and
- The representations above are material and important. They will be relied on by the Agency in awarding the Contract(s) for which this bid is submitted

V.2 Suspension or Debarment

By submitting a bid, the Bidder certifies that, within the past five (5) years, ~~they have~~ it has not been under suspension, debarment or otherwise lawfully precluded from participating in any public-sector procurement activity.

At any time after Bidder's submission and during the term of any Contracts or Purchase Orders, Agency and Eligible Entities may inquire whether any Bidder or Awarded Vendor has been suspended or debarred in any of the states that Awarded Vendor is providing Products or Services under the terms of the Contract.

V.9 Insurance

The Awarded Vendor is required to purchase and maintain insurance for the protection of claims for damages because of bodily injury, including personal injury, sickness, disease or death of any 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 through the term of any outstanding Purchase Orders with an Eligible Entity](#) a minimum of \$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 is required to purchase 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 Commonwealth of Pennsylvania 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 Contract 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 Pennsylvania Workmen's Compensation Act of 1951, 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.

The Awarded Vendor shall have the option to self-insure so long as Awarded Vendor maintains an audited net worth (Shareholders' Equity) of at least \$100,000,000.

V.19 Rights and Remedies in the Event of Violation

In the event [Awarded Vendor](#) knowingly violates Sections V.10 through V.19, the Agency may terminate the Contract, or an Eligible Entity may cancel a Purchase Order, as applicable. The Agency or Eligible Entity shall provide Awarded Vendor with written notice of the violation and thirty (30) days to cure the violation.

VI.4 New Technology and Product Additions

Products that become available after the start of the Contract may be added to the existing Contract. Pricing shall be in accordance with Awarded Vendor's then-current education [price listing](#). Agency agrees that Awarded Vendor may change Product offerings and base pricing at any time and without notice to Agency or Eligible Entity.

VI.8 Standard Warranty

The sole warranty for [an Apple Products](#) purchased hereunder shall be the Limited Warranty. Except for the Limited Warranty, all [Apple Products](#) are sold "as is" and without additional warranty or support from Awarded Vendor. Any third-party Products, other than Apple Products, are sold "as is" and without warranty or support from Awarded Vendor, but may be accompanied by a third-party manufacturer's warranty, as more particularly provided in the warranty documentation that accompanies such Products. Upon Eligible Entity's request, Awarded Vendor will provide a copy of the manufacturer's warranty accompanying Products offered by Awarded Vendor under this Contract. Nothing in this Contract shall be construed as obligating Awarded Vendor to provide any warranty-related fulfillment or support for any Products, other than [Apple Products](#) ~~it may manufacture~~.

Except for the Limited Warranty, Awarded Vendor makes no warranties, either express or implied, with respect to the Products and to the maximum extent provided by law, Awarded Vendor hereby disclaims such warranties, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

[Apple](#) Products are not intended or suitable for use in situations or environments where [the](#) failure or time delays or errors or inaccuracies in, the content, data, or information provided by [Apple](#) Products could lead to death, personal injury, or severe physical or environmental damage, [including without limitation the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support or weapons systems.](#)

VII.2 Display of Contract Pricing

Awarded Vendors must provide Contract pricing, along with descriptions, keywords, and other relevant data on an approved PEPPM template. The information will be loaded into PEPPM's electronic catalog on PEPPM.org, Epylon.com, and affiliated websites. In displaying contracted line items, PEPPM will:

Make actual prices blind to non-registered users

Display pricing only if relevant to a buyer's geography and profile

Make line items searchable by keyword, by Product Line, or by category

Notwithstanding the foregoing, pricing shall be in accordance with Awarded Vendor's then-current base pricing or education [pricing list](#). Agency agrees that Awarded Vendor may change Product offerings and commercially available base pricing at any time and without notice to Agency or Eligible Entity.

VII.4 Instruments for Orders

Eligible Entity may order Products from Awarded Vendor by either: (i) ordering at an Awarded Vendor Retail Store, (ii) ordering electronically through the online portal managed by Awarded Vendor, (iii) submitting a Purchase Order to Awarded Vendor, as permitted by Awarded Vendor, or (iv) by any other means communicated by Awarded Vendor. All purchases of Products under this Contract shall be made solely for Eligible Entity's end use [and not for resale](#).

VII.11 Delivery

Except for U.S. federal government agencies, title, and risk of loss to all Products will pass to Eligible Entity upon shipment from Awarded Vendor's shipping location. For Products shipped pursuant to Awarded Vendor's standard practices ~~in all but the last week of every Awarded Vendor fiscal quarter during the Term~~, Awarded Vendor will issue credits or replace Products returned due to damage in transit or that are lost in transit. ~~For Products shipped pursuant to Awarded Vendor's standard practices in the last week of every Awarded Vendor fiscal quarter during the Term, Awarded Vendor will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Instead, Awarded Vendor will provide for a policy of insurance under which Eligible Entity may make a claim for any loss.~~ When Products are not shipped pursuant to Awarded Vendor's standard practices but instead via a carrier selected by Eligible Entity, [Apple Awarded Vendor](#) will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Eligible Entity shall insure Products for their full replacement value from delivery to Eligible Entity until Eligible Entity has paid Awarded Vendor in full for such Products and shall name Awarded Vendor as a loss payee on the Eligible Entity's policy. For both government and non-government sales, shipping charges for orders shipped under Eligible Entity's instructions will be added to Awarded Vendor's invoice or shipped freight collect, at Awarded Vendor's option.

For orders picked up by Eligible Entity at the Awarded Vendor Retail Store, title and risk of loss or damage to Products will pass to Eligible Entity upon pick up of the Products from the Awarded Vendor Retail

Store. For U.S. federal government agencies only, title and risk of loss to all Products will pass to Eligible Entity upon delivery to Eligible Entity's delivery point.

VII.12 Shipping Errors

Awarded Vendor agrees that shipping errors directly caused by Awarded Vendor 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 any~~ [pParty](#). Awarded Vendor shall not be held liable for Eligible Entity's refusal to accept delivery of Products specified on a Purchase Order or Product substitutions approved by Eligible Entity.

VIII.10 Pricing for Bundles

Awarded Vendors may submit price lists for posting that provide for bundles that include third-party products related to the branded [Apple](#) Products under Contract. Examples are cases or monitors purchased to accompany a laptop computer. However, all products in the bundle must be ordered from and invoiced by the Bidder under a single Purchase Order in which the third-party products are ordered on a one-for-one basis with the bid-awarded [Apple](#) Products.

Third-party products cannot be offered individually and purchased separately with PEPPM bid protection.

Price for the third-party product must be consistent with the same formula pricing structure corresponding to the contracted [Apple](#) Product. For example, if a computer is sold at a 5 percent discount from a vendor's catalog, then the third-party case must be sold at least 5 percent off the catalog price.

Bid-awarded [Apple](#) Products bundled with third-party products must represent a greater value than the third-party products themselves. For example, a bid-awarded network interface card cannot be bundled with a third-party computer to create a complete computer bundle. Software Bidders are not permitted to bundle hardware with a software offering without permission from the Agency.

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. Registration, use of such software and/or electronic submission shall not be construed as acceptance of any terms or conditions provided by ~~the eCommerce Provider~~ [Epylon](#).

IX.11 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, ~~as modified by Bidder,~~ final pricing and written statements submitted to Agency.

XI.2 Awarded Vendor Violation or Breach of Contract Terms

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils), as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies where contractors violate or breach Contract terms, and provide for such sanctions and penalties as appropriate. Provisions regarding Awarded Vendor default [and administrative, contractual, or legal remedies](#) are included in the Contract Documents. Any Contract award will be subject

to such Contract Documents. ~~The remedies under the Contract are in addition to any other remedies that may be available under law or in equity.~~

XI.3 Termination for Cause or Convenience

For any purchase or contract more than \$10,000 made using federal funds, the Awarded Vendor agrees that the following term and condition shall apply:

~~The Eligible Entity may terminate or cancel any Purchase Order under the Contract at any time, without cause, by providing seven (7) business days advance written notice to the Awarded Vendor. If this Contract is terminated for convenience in accordance with this paragraph, the Eligible Entity shall only be required to pay Awarded Vendor for goods or services delivered to the Eligible Entity before the termination and not otherwise returned in accordance with Awarded Vendor's return policy. If the Eligible Entity has paid the Awarded Vendor for goods or services 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 or without cause pursuant to ~~Section XIII.6~~ Section XIII.3.

XI.4 Equal Employment Opportunity

Agency and Awarded Vendor agree that the Contract does not constitute a ~~Except as otherwise provided under 41 CFR Part 60, all Eligible Entity purchases or contracts that meet the definition of "federally assisted construction Contract" under~~ in 41 CFR Part 60-1.3. Awarded Vendor agrees that it shall not offer any Products or Services under the Contract or any Purchase Order which would result in the Contract or Purchase Order constituting a "federally assisted construction Contract" under 41 CFR Part 60-1.3. Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order constituting a "federally assisted construction Contract" under 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

Agency and Awarded Vendor agree that the Contract is not a construction contract subject to 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") (collectively, "Davis-Bacon Act"). Awarded Vendor agrees that it shall not offer any Products or Services under the Contract or any Purchase Order which would result in the Contract or Purchase Order becoming subject to the Davis-Bacon Act. Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order becoming subject to the Davis-Bacon Act. ~~When required by federal program legislation, the Awarded Vendor agrees that, for all Eligible Entity prime construction Contracts/purchases more than \$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 must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination 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 <http://www.wdol.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

~~Agency and Awarded Vendor agree that the Contract is not a public works contract subject to 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) (the "Hours and Safety Act"). Awarded Vendor agrees that it shall not offer any Products or Services under the Contract or any Purchase Order which would result in the Contract or Purchase Order becoming subject to the Hours and Safety Act. Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order becoming subject to the Hours and Safety Act.Where applicable, for all Eligible Entity Contracts or purchases more than \$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 must compute the wages of every mechanic and laborer based on 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 apply 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.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~~ Eligible Entity 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 practicable, 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.13 Bonding Requirements

Agency and Awarded Vendor agree that the Contract is not a construction contract which would require bid security, performance bonds or payment bonds pursuant to 2 CFR. § 326. Awarded Vendor agrees

~~that it shall not offer any Products or Services under the Contract or any Purchase Order which would result in the Contract or Purchase Order becoming subject to 2 CFR. § 326. Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order becoming subject to 2 CFR. § 326. 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 five 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 ~~Purchase Order~~ **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 CFR. § 200.318(j).

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 action more than \$250,000, including contract modifications. 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 law.

XII.3 Price Lists

Awarded Vendors are required to submit information in a format mutually agreed upon with Agency that allows for obtaining the pricing of Products during the term of the Contract. Notwithstanding the foregoing, Products that become available after the start of the Contract may be added to the existing Contract. Pricing shall be in accordance with Awarded Vendor's then-current education pricing [list](#).

Agency agrees that Awarded Vendor may change Product offerings, ~~discounts~~, and pricing at any time and without notice to Agency or Eligible Entity.

XIII.3 Cancellation of 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 cancel the whole or any part of a Purchase Order for the following reasons:

Termination for Convenience: The Eligible Entity may terminate or cancel any Purchase Order under the Contract at any time, without cause, by providing seven (7) business days advance written notice to the Awarded Vendor.

Termination for Cause: The Eligible Entity may terminate or cancel any Purchase Order upon thirty (30) days prior written notice if the Awarded Vendor has breached the Contract and has failed to cure such breach within thirty (30) days of the date of such notice.

If a Purchase Order is terminated for convenience or cause in accordance with this paragraph as set forth above, the Eligible Entity shall only be required to pay Awarded Vendor for goods or services delivered to the Eligible Entity before the termination (less Eligible Entity's damages in the event of a termination for cause) and not otherwise returned in accordance with Awarded Vendor's return policy. If the Eligible Entity has paid the Awarded Vendor for goods or services not yet provided as of the date of termination, the Awarded Vendor shall immediately refund such payment(s).

Without limiting the foregoing, the Eligible Entity has the right to cancel a Purchase Order for the following reason and the cancellation shall be effective upon written notice to the Awarded Vendor:

Non-Appropriation: In the event that the Eligible Entity purchasing from the Awarded Vendor is a state or local agency under laws of the state applicable to such agency, the agency'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 agency shall have the right to cancel the Purchase Order (including any applicable lease). The Awarded Vendor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Purchase Order. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose. To the extent permitted by law, in the event notice is given cancelling any Purchase Order from any Eligible Entity resulting from this Contract, the due date of all Eligible Entity's invoices shall be accelerated so that all such invoices become due and payable as of the date of notice of cancellation. Eligible Entity will cease placing new orders for Products from Awarded Vendor on the effective date of cancellation. Notwithstanding anything to the contrary, cancellation of any Purchase Order resulting from this Contract due to non-appropriation shall not terminate or relieve the Eligible Entity of its payment obligations under all Purchase Orders that have been accepted by Awarded Vendor.

XIII.4 Remedies

The rights and remedies of the Agency, Eligible Entity, and Awarded Vendor provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or under the Contract.

A pParty's waiver of any breach by the other pParty or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or of a different kind.

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.5 Force Majeure

~~Neither Party~~No party will incur any liability to the other if its performance of any obligation other than payment obligations, 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 pParty. Causes beyond a pParty'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 within a commercially reasonable period of time when Awarded Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance.

In the event of a declared emergency by competent governmental authorities, the Eligible Entity by notice to the Awarded Vendor, may cancel any Purchase Order delayed by more than thirty (30) days from the scheduled ship date.

XIII.6 ~~Termination of Purchase Order~~Not Used ~~Section XIII.3 shall apply.~~

XIII.7 Termination of Contract

Termination for Convenience. This Contract may be terminated by either Party at any time without cause (i.e., for any or no reason), on thirty (30) days' written notice to the other Party.

Termination for Cause. Either Party may terminate this Contract upon thirty (30) days prior written notice if the other Party has breached this Contract and has failed to cure such breach within thirty (30) days of the date of such notice.

Effect of Notice of Termination. If either Party gives a nNotice of ~~T~~ermination of the Contract according to this section: (i) all unpaid invoices issued by Awarded Vendor will be accelerated and become immediately due and payable on the effective date of termination; and (ii) Agency will cease placing new orders for Products from Awarded Vendor on the effective date of termination.

XIII.8 Indemnification

Provided that Agency or Eligible Entity promptly notifies Awarded Vendor in writing, gives Awarded Vendor sole control over the defense and all related settlement negotiations, and does not compromise or settle any claims then, subject to the terms of this paragraph and the exceptions and limitations set forth below, ~~including but not limited to Section XIII.8,~~ Awarded Vendor will defend any proceeding or action brought by a third party against Agency or Eligible Entity to the extent based on a claim that: (i) an Apple Product that ~~Customer~~Eligible Entity has paid to acquire from Awarded Vendor infringes a U.S. patent, copyright, trademark or misappropriates a U.S. trade secret; or (ii) personal injury or tangible property damage suffered by such third party was caused by Awarded Vendor's gross negligence or willful misconduct during the performance of services.

Notwithstanding the foregoing, Awarded Vendor shall not be liable or responsible for, or obligated to defend any claims or damages arising out of or related to: (a) modification of any Apple Product; (b) combination, operation or use of the Apple Product with any other equipment, data, documentation,

items or products; (c) use of Apple Product in a manner or for a purpose, or in a location, for which it was not intended; (d) import or export of any Apple Product in violation of applicable export control requirements, regulations or laws; (e) use or exportation of any Product(s) into any countries identified on any U.S. Government embargoed countries list; (f) use of any Apple Product in a manner or for a purpose not authorized under the applicable license terms; (g) any other products; or (h) Agency or Eligible Entity, its employees, agents, affiliates, subsidiaries or subcontractor's negligent acts or omissions.

Agency or Eligible Entity shall promptly notify Awarded Vendor, in writing, of any claim, demand, proceeding or suit of which Agency or Eligible Entity becomes aware which may give rise to a right of defense under this section ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Awarded Vendor within thirty (30) days of Agency's or Eligible Entity's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Awarded Vendor. Awarded Vendor, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions deemed appropriate by Awarded Vendor in its sole discretion to resolve the Claim by settlement or compromise. Upon Awarded Vendor's acceptance of tender, Agency or Eligible Entity will cooperate with Awarded Vendor with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, no Party will publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

In the event of a Claim, Awarded Vendor may at its sole option (but shall not be obligated to): (i) procure for Eligible Entity the right to continue use of the applicable Apple Product(s); (ii) replace the applicable Apple Product(s); (iii) modify the applicable Apple Product(s); or (iv) refund the amount paid by Eligible Entity to Awarded Vendor for the applicable Apple Product, less depreciation. THE FOREGOING CONSTITUTES ~~CUSTOMER'S~~ ELIGIBLE ENTITY'S SOLE AND EXCLUSIVE REMEDY AND AWARDED VENDOR'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF THIS SECTION.

XIII.9 Limits of ~~Awarded Vendor~~ Liability

~~Awarded Vendor's maximum aggregate liability (including any liability for the acts or omissions of Awarded Vendor's employees, agents and subcontractors) for any and all claims of any kind arising out of or in connection with the Contract, whether in contract, warranty, tort (including negligence), misrepresentation, strict liability, statute, or otherwise, shall not exceed one million dollars (\$1,000,000).~~

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL AWARDED VENDOR OR ELIGIBLE ENTITY BE LIABLE FOR ANY LOSS OF PROFIT OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT LOSSES (INCLUDING LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, UNAVAILABILITY OR INTERRUPTION IN AVAILABILITY OF APPLE PRODUCTS, OR OTHER ECONOMIC ADVANTAGE) OR FOR PUNITIVE OR EXEMPLARY DAMAGES.

THE PARTIES (INCLUDING ELIGIBLE ENTITY) AGREE THAT THE TERMS OF THE CONTRACT, INCLUDING THOSE CONCERNING WARRANTIES, INDEMNITY AND LIMITATIONS OF LIABILITY, REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING ELIGIBLE ENTITY) WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS CONTRACT. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THE CONTRACT FAILS OF ITS ESSENTIAL PURPOSE. IF A REMEDY ~~THE REMEDIES~~ SET FORTH IN THIS CONTRACT IS STATED AS BEING THE SOLE AND EXCLUSIVE REMEDY, IT WILL BE AGENCY'S OR ELIGIBLE ENTITY'S SOLE AND EXCLUSIVE REMEDY ~~IES~~ FOR ~~ANY~~ SUCH CLAIM MADE AGAINST AWARDED VENDOR.