



CENTRAL SUSQUEHANNA INTERMEDIATE UNIT

Request for Bids

PEPPM 2024 Marketplace Bid
Electronic Bid # 540042

Bid Due Date: Thursday, May 9, 2024, 3 p.m. ET

PEPPM, a national cooperative purchasing program administered by the Central Susquehanna Intermediate Unit, seeks bids for a diverse combination of Products useful to and frequently purchased by public agencies and made available for sale through a national online, dynamic Marketplace.

I Introduction and Overview

I.1 Bid Title

PEPPM 2024 Marketplace Bid

I.2 Electronic Bid Number

The applicable electronic bid form is numbered 540042.

I.3 Organization of Terms and Conditions

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I.4 Bid Scope

This is a Request for Bids (“RFB”) for Products within a dynamic Marketplace that contains a minimum of 300,000 Suitable Products, including, without limitation, Core List Products for five-different categories of Products that Eligible Entities frequently purchase.

I.5 Bidding Agency

Central Susquehanna Intermediate Unit (CSIU), #16
90 Lawton Lane
Milton, Pennsylvania 17847
Phone: (570) 523-1155
Fax: (570) 522-0577

I.6 The Cooperative

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

I.7 Bid Due Date and Time

All bids must be received electronically by 3 p.m. Eastern Time (the “Bid Time”), Thursday, May 9, 2024 (the “Bid Due Date”).

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

I.8 Bid Opening

Bids will be opened and publicly read at 3:00 p.m. Eastern Time, Thursday, May 9, 2024, (the “Bid Opening Date”), at CSIU’s offices located at 90 Lawton Lane, Milton, Pennsylvania, 17847; however, in the case of an emergency, or, in the Agency’s discretion, in the interest of public health and safety, and as permitted by applicable law, the Agency may instead broadcast the opening of bids via teleconference or video conference.

I.9 Prebid Meetings

An optional prebid meeting will be held Wednesday, April 3, 2024, at 1:30 p.m. Eastern Time, as described on the website at www.PEPPM.org/bids. The prebid meeting will be held via teleconference or video conference. Any interested vendor must register for the prebid meeting to obtain credentials.

I.10 Other Important Dates

Exceptions Due Date	April 11, 2024
Submission of Questions Due Date	April 18, 2024
Response-to-Exceptions by Amendment, if Any	April 19, 2024
Snapshot Date	April 25, 2024
Tentative Board Award Date	June 19, 2024
Tentative Agency Contract Signing	June 20, 2024
Contract Start Date	July 1, 2024

I.11 Advertising and Legal Notice of the RFB

The Agency’s minimum legal advertising requirements are met by publishing notices in two newspapers of general circulation in the area where the Agency is located, such as the *Harrisburg Patriot-News*, the *Sunbury Daily Item*, and the *Milton Standard Journal*. However, to encourage wider Bidder participation, the Agency is also advertising this RFB in other national and regional newspapers across the United States.

I.12 Contract Term

The initial term of the awarded Contract shall be for three years, beginning on July 1, 2024, and continuing until June 30, 2027, unless otherwise 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 this RFB.

II.3 Use of Pronouns

For the Contract Documents, one gender shall include any other gender, the singular shall include the plural, and all rights granted and received shall be joint and several, as the case may be.

II.4 Provisions Required by Law

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

II.5 *Christian Doctrine*

Any provision or clause required by applicable federal, state or local law, rule or regulation but not included in this RFB, the Contract, or a Purchase Order will be read as if in this RFB, the Contract, or a Purchase Order, as applicable, whether or not physically included.

II.6 Non-Exclusive Contract

The Contract resulting from this RFB 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 any other source.

II.7 Definition of “Agency”

The “Agency” shall mean the Central Susquehanna Intermediate Unit (“CSIU”).

II.8 Definition of “Agreement”

“Agreement” shall mean the Awarded Vendor Agreement between the Agency and the Awarded Vendor.

II.9 Definition of “Authorized Reseller”

The term "Authorized Reseller" shall mean a firm, company, individual, business, partnership, joint venture, or other entity such as, without limitation, manufacturers, dealers, distributors, and value-added resellers that have been authorized by the Awarded Vendor to sell Products in the Marketplace. The Authorized Reseller will be the Seller of Record for any Products that the Authorized Reseller sells in the Marketplace.

II.10 Definition of “Awarded Vendor”

"Awarded Vendor" is the Bidder declared by the Agency to be the Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution, and to whom the Agency's Board of Directors awards the 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 RFB. By responding to this RFB, a Bidder is making an Offer on behalf of itself and all of the Authorized Resellers that Bidder allows in its Marketplace to sell Products.

II.12 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 the minor irregularity, informality, or apparent clerical mistake results in a revision.

II.13 Definition of “Commercially Available Pricing” or “Base Pricing”

A Bidder’s Marketplace must be commercially available and visible to a wide population or sets of businesses across the United States. This is as opposed to being a one-off Marketplace created for the purposes of responding to this RFB or a narrow niche Marketplace targeted to a small geographic location or specific group of business. Sale prices posted on a Bidder’s commercially available, national Marketplace will be considered its “Commercially Available Pricing” or “Base Pricing,” so that a Bidder will not be able to create an artificial Base Price to affect an unfair or corrupt Offer in response to this RFB. All pricing shall be in U.S. Dollars.

II.14 Definitions of “Contract Documents” and “Contract”

As between the Agency and Awarded Vendor, the "Contract Documents" consist of this RFB, which includes the PEPPM Terms and Conditions, all information incorporated into the electronic bid form by the Agency or Awarded Vendor, the Awarded Vendor’s responses to questions, the Awarded Vendor’s PEPPM Bid Quote Sheet(s), the Awarded Vendor’s Core List Products pricing spreadsheet, the Awarded Vendor’s Snapshot Date pricing, including Group 2 Products, the Agreement, all other attachments and exhibits to the RFB, all addenda to the RFB issued before the Bid Opening Date, and all subsequent written amendments to the Agreement. The Contract Documents form the "Contract" between the Agency and the Awarded Vendor during the Contract term and any authorized extensions.

II.15 Definition of “Contracted Items”

Following the determination of the Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution and the award of the Contract, Agency will combine Core List Products and other Group 2 Products that were Offered, and deemed to be Suitable Products by the Agency, into a group of Products eligible to be purchased by Eligible Entities under the Contract. This group of Products will be known as “Contracted Items.” At the discretion of the Agency and consistent with the process described in these Terms and Conditions, the Agency may transfer Products from the Rest-of-Marketplace Products category over to the “Contracted Items” category.

II.16 Definition of “Core List Products”

“Core List Products” represent a subset of Products, identified by the Agency as frequently purchased by Eligible Entities. Products that are part of the Core List Products are specified as part of this RFB. Following an award, the Core List Products may change from time to time based on actual sales and usage history of Eligible Entities as determined by the Agency.

II.17 Definition of “Cooperative Procurement Code”

The term "Cooperative Procurement Code" shall have the meaning outlined in [Section III.2](#) of this RFB.

II.18 Definition of “Effective Date”

The “Effective Date” of a Purchase Order is the date on which the Awarded Vendor receives a Purchase Order executed by the Eligible Entity on the Awarded Vendor’s Marketplace after an Eligible Entity clicks on a “purchase” button or the equivalent in the Awarded Vendor’s Marketplace.

II.19 Definition of “Effective Bid Price”

An “Effective Bid Price” is the final calculation of an Offered price for a Product after a Bidder’s discount formula is applied to its Commercially Available Price. During evaluation, the Effective Bid Price is used to

compare competing bids and in determining the Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution. After an Award, the Effective Bid Price is the price monitored against the sale price and is the new benchmark for the calculation of any allowable price increases during the term of the Contract.

II.20 Definition of “Eligible Entity”

“Eligible Entity” means any “public procurement unit” or “external procurement activity” as those terms are defined in the Cooperative Procurement Code, including, without limitation, school districts, local education agencies, and other tax-exempt, nonprofit educational institutions or organizations; county governments, local municipalities, public authorities, special districts, state agencies, and other political subdivisions; tax-exempt, nonprofit public health institutions or organizations; and other organizations, institutions or entities permitted under applicable law to avail themselves of Agency contracts, and that qualify to be a buyer through the Contract.

II.21 Definition of “eCommerce Consultant”

The "eCommerce Consultant" is a private purchasing services company engaged by the Agency to help facilitate the bid process and provide a multitude of services including bid document development, consulting, eCommerce, marketing, order management, and accounting services. The eCommerce Consultant may change during the course of the Contract.

II.22 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.23 Definition of “Epylon”

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

II.24 Definition of “Group 2 Products”

“Group 2 Products” are a subset of Products and comprise a Bidder’s Offering of other Suitable Products in its Marketplace, consisting of not more than one million (1,000,000) Products. The Group 2 Products are separate and apart from Core List Products. The Effective Bid Prices for Group 2 Products and Core List Products will be combined in evaluating bids and in determining the Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution.

Agency may remove from consideration, evaluation, or Contract any Products deemed, in Agency’s sole discretion, not to be “Suitable Products,” as detailed in Sections [VII.8](#) or [VII.13](#). A Bidder must have a minimum of 300,000 Suitable Products, minus the number of Core List Products Offered, to be considered Responsive.

II.25 Definition of “Marketplace” or “Marketplace Solution”

A “Marketplace” or a “Marketplace Solution” is one in which an Awarded Vendor works alone or gathers together a network of Authorized Resellers to sell Products on a single website, overseen and managed by the Awarded Vendor. The Awarded Vendor must operate the Marketplace Solution, be the coordinator, and serve as the central point for sales. The Awarded Vendor must oversee any network of Authorized Resellers while centralizing invoicing, payments, delivery processes, return instructions, customer calls, and a Product database. The Awarded Vendor must organize any Authorized Reseller model in such a way as to conduct business through a centralized Marketplace website. Though the Awarded Vendor may or may not be the Seller of Record for all Products under the Contract, the Awarded Vendor is the central point of contact for the Agency and the Eligible Entities and must maintain authority over any Authorized Resellers as described in [Section V.8](#).

II.26 Definition of “Non-Responsive”

Any bid that does not substantially conform to the mandatory or essential terms, conditions, or specified requirements of this RFB shall be considered “Non-Responsive.”

II.27 Definition of “Offer”

An “Offer” refers to the response of a Bidder on behalf of itself and its Authorized Resellers regarding Products available for purchase in the Marketplace; Commercially Available Pricing or Base Pricing; Bidder’s discount formula; Effective Bid Prices; any Snapshot Date pricing; conditions related to pricing; or any other arrangement, condition, or configuration of pricing to be paid by Eligible Entities during the term of the Contract. By responding to this RFB, a Bidder is attesting to its authority to respond on behalf of its Authorized Resellers and is making an Offer on behalf of itself and any and all Authorized Resellers it allows in its Marketplace.

II.28 Definition of “PEPPM” and “PEPPM Terms and Conditions”

“PEPPM” (pronounced *PEP-um*) is a national cooperative purchasing program administered by the Agency, and “PEPPM Terms and Conditions” are the terms and conditions set forth in this Request for Bids (“RFB”), which will form the basis of the Contract.

II.29 Definition of “Purchase Order”

A “Purchase Order” is that instrument agreed to between the Eligible Entity and the Awarded Vendor that complies with both the PEPPM Terms and Conditions and the Awarded Vendor’s Terms and Conditions.

The Contract Documents are automatically incorporated into the Purchase Order by reference. The Purchase Order may be in the form of a document, a number reference from the Eligible Entity, or other medium mutually acceptable between the Eligible Entity and the Awarded Vendor.

In the event an Eligible Entity is using a procurement card or credit card, the use of the card shall be considered, for all intents and purposes, the equivalent of a Purchase Order for interpretation of the PEPPM Terms and Conditions.

II.30 Definition of “Product” or “Products”

The terms “Product” and “Products,” mean any items, goods, supplies, equipment, or service available for purchase under the Contract. There are three (3) subsets of Products – Core List Products, Group 2 Products, and Rest-of-Marketplace Products.

II.31 Definition of “Responsible Bidder”

A “Responsible Bidder” is a Bidder that has submitted a Responsive Bid and that Agency has determined possesses the capability and qualifications to perform the Contract in all respects, and which the Agency has determined has the financial strength, integrity, and reliability to assure good-faith performance of the Contract.

II.32 Definition of “Responsive Bid”

A “Responsive Bid” is a bid that substantially conforms to the PEPPM Terms and Conditions and specified requirements for this RFB.

II.33 Definition of “Rest-of-Marketplace Products”

Suitable Products published in the Awarded Vendor’s Marketplace, but which are not included in the approved list of “Contracted Items” shall be considered “Rest-of-Marketplace Products.” Rest-of-Marketplace Products may not be purchased as bid-protected Products by Eligible Entities under this Contract. However, these Rest-of-Marketplace Products are eligible to become designated as replacement Contracted Items — at Agency’s discretion — and posted with their Effective Bid Price, under the process outlined under the PEPPM Terms and Conditions.

II.34 Definition of “Seller of Record”

A “Seller of Record” is the Awarded Vendor or an Authorized Reseller that posts Products for sale in the Marketplace, and ultimately receives remuneration for such Products from the Eligible Entity under a Purchase Order, minus any commissions or fees that may be taken by the Awarded Vendor.

II.35 Definition of “Snapshot Date”

“Snapshot Date” is the date when a Bidder creates a moment-in-time record of its Products and the Commercially Available Price on that date. The Commercially Available Pricing – archived at a given point during the day – is used by the Bidder as its Base Pricing to Offer the Effective Bid Price for Core List Products and Group 2 Products.

II.36 Definition of “Transaction Fee”

“Transaction Fee” is that fee paid by an Awarded Vendor, in U.S. Dollars, to the Agency based on the net dollar amount of invoiced Products sold under the Contract. “Transaction Fee” is more fully defined elsewhere in this RFB.

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III.1 Agency History

The Agency is a political subdivision of the Commonwealth of Pennsylvania created as an educational services agency. The Agency is an intermediate unit established by and existing under

Article IX-A of the Pennsylvania Public School Code of 1949, as amended, 24 P.S. §§9-901-A, *et. seq.* Its principal place of business is in the Borough of Milton, Northumberland County, Pennsylvania, and has a mailing address of 90 Lawton Lane, Milton, PA 17847. The Pennsylvania Legislature created intermediate units under Act 102 of 1970, Section 901-A of the Pennsylvania Public School Code of 1949 (“Act 102”), to provide services to public school districts. There are 29 intermediate units, each serving an assigned number of local school districts. Intermediate units began operation on July 1, 1971.

Intermediate units are governed by boards of directors whose membership comes from representatives from local school districts’ boards of directors. Act 102 provides that intermediate unit services include curriculum development and instructional improvement, research and planning, instructional materials, continuing professional education, pupil personnel, management services, and state and federal agency liaison, as well as contracting for specialized services, and consolidating and letting combined bids for bulk purchases. However, intermediate units are not restricted from providing additional services requested by their local school districts.

Intermediate Units provide quality education services and save taxpayers money by delivering cooperative services that cost each local school district less than had they been produced independently. Intermediate units, unlike public school districts, are not empowered to levy taxes. Revenue comes from a variety of sources, including, *inter alia*, state general operating and capital subsidies, state and federal grants, and fees for services provided to other local education agencies, local governments, and individuals.

III.2 Authority for Bidding and Contracting

The PEPPM cooperative purchasing program was originally established in 1982. It is a national cooperative purchasing program administered by the Agency. The Agency primarily solicits bids for Eligible Entities located in Pennsylvania under Pennsylvania statutes.

The PEPPM cooperative purchasing program is operated by the Agency under Chapter 19, Intergovernmental Relations, of the Pennsylvania Commonwealth Procurement Code, 62 Pa.C.S. §§ 1901, *et. seq.*, as the same may be amended from time to time (the “Cooperative Procurement Code”) and other laws of the

Commonwealth of Pennsylvania. The program is operated for those local school districts assigned to the Agency, as well as other organizations eligible to participate under applicable law, whether such organizations reside inside or outside of the Commonwealth of Pennsylvania.

The Agency intends that the Contract awarded under this RFB be made available for use by Eligible Entities in all U.S. states, U.S. territories, and Washington D.C. (collectively, the “United States” or “U.S.”), to the fullest extent permitted by law, as the same may be amended from time to time.

III.3 Service of Eligible Entities

An Awarded Vendor must agree to serve Eligible Entities throughout the United States who accept the PEPPM Terms and Conditions and the Awarded Vendor’s Terms and Conditions.

III.4 Extending Contract Awards to Other States

The Agency intends to allow for “piggybacking” on the Contract by any Eligible Entity located in the United States that wishes to, provided that:

- The Contract meets the Eligible Entity's bidding requirements; and
- Any Purchase Order issued under the Contract is processed according to PEPPM’s and Awarded Vendor’s ordering procedures.

The Agency makes no representation that its bidding and contracting procedures meet the requirements of Eligible Entities in every jurisdiction. For the purpose of Eligible Entities evaluating the use of the Contract, the Agency lists the following procedures that have been used in the development of the Contract:

- Due diligence leading to a reasonable belief multiple Marketplace vendors possessed the capacity to respond to the RFB;
- Wide advertising of the bid opportunity in local and national publications;
- Free and easy vendor access to bidding documents;
- A prebid meeting open to all interested Bidders;
- No competitive advantage offered to a single Bidder;
- Sealed competitive bids;
- Public opening of bids;
- No acceptance of late bids;
- Evaluation for responsiveness and responsibility;
- Evaluation to find the lowest-cost Marketplace Solution;
- Software assistance to compare hundreds of thousands of prices;
- No subjective point-based evaluations;
- No negotiations;
- Award by the board of a public agency with bidding authority;
- Reports required on Products sold under the Contract;
- PEPPM Terms and Conditions governing and limiting price increases;
- Ongoing, periodic monitoring of prices;
- Mechanisms to restrict Product offerings and Product categories; and
- Transparent publication of Contract documentation.

III.5 Intergovernmental Agreement

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

- It is an Eligible Entity;
- It is bound by the Contract applicable to the Eligible Entity including, without limitation, the PEPPM

Terms and Conditions, Awarded Vendor's Terms and Conditions (if consented to by Eligible Entity), and applicable law;

- Under no circumstances shall any other Eligible Entity or the Agency be responsible for payments on account of another Eligible Entity's purchases, it being the intent that any such purchases shall constitute a separate agreement of the Eligible Entity with the Awarded Vendor and Authorized Reseller;
- The Agency may disclose non-specific aggregate information pertaining to the Eligible Entity (such as, without limitation, the geographic spread of participants and number and types of participants) to third parties; and
- Its purchases may be monitored and reported for purposes of Contract compliance, the maintenance of a list of Core List Products and a list of Contracted Items, and price controls.

The Agency intends that the purchase of Products under the Contract or the entry into a Purchase Order with an Awarded Vendor by the Eligible Entity binds the Eligible Entity to the PEPPM Terms and Conditions, constitutes the necessary intergovernmental agreement between the Eligible Entity and the Agency to satisfy the Cooperative Procurement Code requirements and any requirements for an intergovernmental 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 intergovernmental agreement, the Agency will do so-provided that such intergovernmental agreement is in form and substance acceptable to the Agency.

III.6 Compliance with Laws

Awarded Vendor and its Authorized Resellers shall comply with any and all applicable laws, rules and regulations, whether local, state, federal, or otherwise, in providing any of the Products under the Contract. It shall be the Awarded Vendor's and Authorized Reseller's responsibility to determine the applicability and requirements of any such laws, rules and regulations.

III.7 eCommerce Merchant Agreement

Prior to using bidding and eCommerce software, a Bidder must agree to the Epylon eCommerce Merchant Agreement posted on Agency's website and at www.Epylon.com. There is no charge to use the site. In the event of any conflict, the PEPPM Terms and Conditions shall apply. If the eCommerce Consultant is changed during the course of the Contract, an Awarded Vendor must execute a new eCommerce Merchant Agreement with the new eCommerce Consultant under the process set forth elsewhere in this RFB.

III.8 Agency's Interest in Contracts Resulting from This RFB

TO THE EXTENT THE AGENCY ISSUES THIS RFB AND ANY RESULTING CONTRACT, THE AGENCY'S INTERESTS AND LIABILITY FOR USE OF THE CONTRACT BY ELIGIBLE ENTITIES SHALL BE LIMITED SOLELY TO THE COMPETITIVE BIDDING PROCESS PERFORMED RELATING TO SAID CONTRACT FOR CONTRACTED ITEMS ONLY AND SHALL NOT EXTEND TO ANY PRODUCTS, SERVICES, OR WARRANTIES OF THE AWARDED VENDOR OR AUTHORIZED RESELLERS, NOR THE INTENDED OR UNINTENDED EFFECTS OF THE PRODUCTS AND ANCILLARY SERVICES PROCURED.

IN NO EVENT SHALL THE AGENCY BE LIABLE TO ANY AWARDED VENDOR, AUTHORIZED RESELLER, 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 THE 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, AWARDED VENDORS AND AUTHORIZED RESELLERS ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE PEPPM PROGRAM AND THE

AGENCY WOULD NOT PROVIDE THE PEPPM PROGRAM NOR ENTER INTO THE CONTRACT ABSENT SUCH LIMITATIONS.

III.9 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 for Products ordered and received, if any, through the date of suspension or termination.

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IV.1 PEPPM Bid Evaluation Fee

The Agency requires a non-refundable payment of U.S. \$100 from each Bidder to partially cover the cost of receiving and evaluating bids.

IV.2 PEPPM Bid Award Fee

Following the award of the bid by the Agency's Board of Directors, the Agency will charge the successful Bidder who becomes the Awarded Vendor U.S. \$400 for implementation of the Contract.

IV.3 Payment of Bid Evaluation and Bid Award Fees

Bid evaluation and bid award fees will be collected online by credit card or by electronic debiting of a checking account. A Bidder may use a credit card, corporate debit card, or checking account information for an Automated Clearinghouse (ACH) transfer of funds. No paper checks will be accepted. Bid evaluation fees will be collected at the time of bid opening. The Agency will collect the bid award fee after board approval of the Contract award. The Bidders must provide payment information on the electronic bid form at the time of bid submission, or else their bids may be deemed Non-Responsive.

IV.4 Transaction Fees

The Awarded Vendor is required to pay a Transaction Fee to the Agency for all purchases made by Eligible Entities through the awarded Contract of Core List Products, Group 2 Products and Rest-of-Marketplace Products. This applies to all orders, regardless of the method used to submit the order, the quantity of Products, or the dollar amount of the order.

The Transaction Fee is 1% (one percent) of Net Sales. "Net Sales" means gross sales of Products less returns and canceled orders within 30 days, shipping expenses, and taxes (excluding taxes based on net income).

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

The Transaction Fee described here replaces the eCommerce Consultant Marketing Fee contemplated by Section 7 of the Epsilon eCommerce Merchant Agreement. The Transaction Fee supersedes any requirement for higher fees in the eCommerce Merchant Agreement.

The Awarded Vendor shall be responsible for remitting the Transaction Fee for all sales made by the Awarded Vendor or by any of its Authorized Resellers. Transaction Fees publicly disclosed here shall not be charged to or paid by the Eligible Entities, but instead are an Awarded Vendor's and Authorized Reseller's cost of doing business under this Contract.

No Bidder may include any additional amount corresponding to the Transaction Fee in their bid response, Commercially Available Pricing, Effective Bid Price, prices posted in the Marketplace, nor any other quote provided to the Agency or the Eligible Entities.

Failure to pay a Transaction Fee within 60 days of the later of an order or an invoice based on Awarded Vendor's self-report may result in suspension or termination of the Awarded Vendor's Contract. 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 Contract Conversions

If the Awarded Vendor uses this Contract to obtain a separate California Multiple Awards Schedule ("CMAS") contract from the State of California, it is responsible for paying both the CMAS fee to the State of California and the Transaction Fee for all orders submitted through the CMAS program. The Awarded Vendor is also responsible to pay the Transaction Fee if it leverages the Contract for adoption, conversion, or modification by any other state or jurisdiction.

IV.6 Fees Related to Subscriptions, Ongoing Contracts, Services, and Maintenance

The Awarded Vendor may provide a related service, a maintenance plan, data storage, subscription, voice plan, or other ongoing service, provided that such service meets the requirements described in Section VII.3. Qualifying services are a "Product" and are subject to the Transaction Fee described in Section IV.4.

IV.7 Cost of Bid Preparation

The Agency will not reimburse Bidders for, nor be responsible for, the cost of developing, presenting, or responding to this RFB.

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V.1 Declaration of Non-Collusion

To ensure that prices are arrived at independently and without collusion, this RFB requires the Bidder to answer "Yes" affirmatively and truthfully to the non-collusion question in the Question Section of the electronic bid form. Otherwise, the bid is Non-Responsive.

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

- The prices and amount of the bid have been arrived at independently and without consultation, communication, or agreement with any other contractor, Bidder, or potential Bidder;
- The prices and the amount of the bid have not been disclosed to any other firm or person who is a Bidder or potential Bidder, and will not be disclosed before the Bid Opening Date;
- No attempt has been made, nor will be made, to induce any firm or person (1) to refrain from bidding in response to this RFB, (2) to submit a bid higher than its bid, or (3) to submit any intentionally high, noncompetitive bid, nor any other form of a complementary bid;
- The 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;
- Bidder, its affiliates, subsidiaries, officers, and directors are not 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; and
- Bidder understands and acknowledges these representations are material to the Agency's consideration of any bid and will be relied upon by the Agency in awarding the Contract for which the bid is submitted. Bidder further understands and acknowledges that any material misstatement

is and shall be treated as fraudulent concealment or intentional misrepresentation by the Agency of the facts relating to the bid's submission.

V.2 Suspension or Debarment

By submitting a bid, Bidder certifies for itself and all of its Authorized Resellers that, to Bidder's knowledge, they are not under suspension, debarment, or otherwise lawfully precluded from participating in any public-sector procurement activity.

After Bidder's submission of a bid and during the term of any Contract or Purchase Order, the 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.

Any Authorized Reseller or Awarded Vendor found to be debarred or suspended or otherwise lawfully precluded from participating in any public-sector procurement activity shall be prohibited from selling Products to Eligible Entities from the Awarded Vendor's Marketplace.

V.3 Sole Source of Responsibility

Agency desires a "Sole Source of Responsibility" vendor, meaning the Awarded Vendor will take responsibility for a Marketplace enabling the sale and delivery of the broadest scope of Core List Products and Group 2 Products across the largest possible geographic area, and to the largest possible cross-section of Eligible Entities. An Awarded Vendor may establish relationships with Authorized Resellers to perform its contractual duties.

V.4 Bidder Profiling

By answering the questions in the Question Section of the electronic bid form, Bidders must give satisfactory evidence that they:

- Maintain permanent places of business in the United States;
- Have contractual relationships with all Authorized Resellers;
- Have status as a domestic company in the United States and are certified to do business in the United States;
- Will be the point of contact for customer sales support and service to all Eligible Entities during normal business hours across all U.S. time zones;
- Have current relationships with Eligible Entities for verification of customer satisfaction; and
- Will serve all Eligible Entities that accept the PEPPM Terms and Conditions and Awarded Vendor's Terms and Conditions.

V.5 Insurance

The Awarded Vendor and its Authorized Resellers must 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 or Authorized Reseller'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 or Authorized Reseller is legally liable.

The Awarded Vendor shall provide Agency evidence of sufficient insurance or a Certificate of Insurance indicating the minimum coverage required below before the start of any sales, or provision of any services or work under the Contract and shall provide the Eligible Entity evidence of sufficient insurance or a Certificate of Insurance upon request and agrees to maintain this insurance until the completion of the Contract and throughout the term of any outstanding Purchase Orders with an Eligible Entity. The minimum insurance shall be:

- Commercial General Liability - \$1,000,000 per occurrence with \$2,000,000 general aggregate covering all premises and operations and including personal injury, Completed Operations, Contractual Liability and, where applicable to the Contract (as determined by the Agency), Products and Independent Contractors. The general aggregate limit shall apply to this Contract.
- Automobile Liability – Combined single limit, each accident: \$1,000,000;
- Workers Compensation – State statutory limits.
- Employer's Liability – Each Accident: \$100,000, Disease – Policy Limit: \$500,000, Disease – Each Employee: \$100,000.

V.6 References and Past Performance

- To evaluate a Bidder's qualifications to perform under the Contract, the Agency requires the submission of three signed reference forms. The Agency will also consider the Bidder's performance on any previously awarded PEPPM contracts and Bidder's past conformance to bid terms and conditions, if applicable.

V.7 Vendor Capabilities

For a bid to be a Responsive Bid, a Bidder must:

- Have a single URL directing users to a Marketplace offering the Contracted Items;
- Be a central point for invoicing and payment for the sale of Contracted Items;
- Control who, if anyone, is allowed to act as an Authorized Reseller in the Marketplace;
- Set and enforce terms and conditions for the commercial behavior of any Authorized Resellers on their Marketplace;
- Host necessary communication (phone, email, website) for reasonable customer service during normal business hours in all U.S. time zones;
- Monitor orders to ensure the delivery of Contracted Items;
- Coordinate or provide instructions for the return of any Contracted Items;
- Act as the point of contact with the Agency and its agents;
- Ensure the security of user login credentials and payment data;
- Consummate transactions under industry-standard https protocols;
- Meet California privacy requirements or any higher state or federal standard for data privacy; and
- Have an affirmative program in place to monitor and identify Contracted Items in their Marketplace that may be stolen, counterfeit, illegal, or pirated.

V.8 Oversight of Authorized Resellers

For a bid to be a Responsive Bid, a Bidder must be:

- In control of the Marketplace terms and conditions whereby an Authorized Reseller is added to its Marketplace;
- Able to approve or reject any Authorized Reseller;
- Able to block sales from Authorized Resellers or block certain categories of Products;
- Able to see all Products offered by any Authorized Reseller on the Marketplace (that is, no secret or hidden products for sale and hidden from the Awarded Vendor);
- Able to sanction or take action against an Authorized Reseller by:
 - Canceling its business relationship;
 - Blocking the Authorized Reseller's access to the Marketplace; and
 - Blocking certain categories of Products offered by the Authorized Reseller;
- Able to bring legal action against the Authorized Reseller; and
- Able to force an Authorized Reseller to modify its Product descriptions, specifications, notices, or warnings.

V.9 Historically Underutilized Businesses (HUBs)

To identify businesses owned by minorities, women, or disabled veterans, the Agency requests any minority-owned, women-owned, or disabled-veteran-owned business to identify their status so it can be made known to the Agency and interested Eligible Entities. A HUB may identify itself in its answer to a HUB question in the Question Section and by providing evidence of its status.

V.10 Bidder's Standard Terms and Conditions

In response to an instruction in the Questions Section, a Bidder must attach a PDF document or provide a link to an online document containing the Bidder's standard terms and conditions governing an Eligible Entity's use of the Bidder's Marketplace solution and website.

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

VI.1 An Overview of the Ordering Process

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

- Contracted Items under the Contract will either be labeled by the Awarded Vendor or posted on www.PEPPM.org with a link back to the Awarded Vendor's Marketplace Solution;
- To use the Contract, an Eligible Entity must register with PEPPM and hold a PEPPM account before registering with the Awarded Vendor;
- An Eligible Entity must register and accept, if any, the Awarded Vendor's terms of use for its website to establish an account and use the Awarded Vendor's Marketplace;
- An Eligible Entity may purchase Contracted Items in the Marketplace under the Eligible Entity's account;
- Eligible Entities may search for desired Products and place Products into the Marketplace shopping cart;
- Eligible Entities are responsible for ensuring that employees accessing the Marketplace have requisition authority or buying authority to make purchases using the Eligible Entity's business account;
- Using Awarded Vendor's website functionality, an Eligible Entity may convert a shopping cart into a purchase by way of a Purchase Order (subject to any applicable credit approval process of Awarded Vendor), a Purchase Order number referencing a Purchase Order, a procurement card, or authorities granted under Awarded Vendor's Terms and Conditions (whichever method is applicable);
- The Awarded Vendor will direct the Eligible Entity's order to itself or to the applicable Authorized Resellers to ensure order fulfillment;
- An Eligible Entity will receive an email notice summarizing Products purchased, their prices, any shipping costs, and terms of delivery;
- After the Products are delivered, the Eligible Entity will receive an email notice of delivery;
- After ensuring delivery, the Awarded Vendor will issue an electronic invoice to the Eligible Entity equal to (or lower than), the Commercially Available Price listed in the Marketplace for the purchased Products at the time of the Order, and after the Awarded Vendor's discount formula is applied to the Commercially Available Price.

VI.2 Display of Contracted Items

- In submitting a bid, a Bidder shall indicate whether it can label Products included as part of the Contracted Items list as "Contracted Items" or with alternate language distinguishing them from Rest-of-Marketplace Products.
- If the Awarded Vendor cannot label "Contracted Items," then the Awarded Vendor must cooperate with PEPPM to display Product descriptions of Contracted Items on www.PEPPM.org with a link back to the Marketplace.

VI.3 Display of Contract Pricing

The Awarded Vendor must display the then-Commercially Available Pricing for Products, after application of Awarded Vendor's discount formula, alongside Product descriptions, available pictures, Seller of Record, manufacturer SKU, and any other relevant data (e.g., specifications, unit of measure, keywords, stock availability) for all Contracted Items in their Marketplace.

VI.4 Display of Information Related to Order

Whether at the item level or order page, the Awarded Vendor will display to users (or link to) shipping options, shipping costs, estimated delivery dates, return options, delivery specification fields, billing options, billing-related fields, any recovery or recycling fees, and total Contracted Item costs.

VI.5 Electronic Transmissions

To the maximum extent permitted by law, Awarded Vendor and Authorized Resellers agree to accept an electronic Purchase Order submission executed by an Eligible Entity as representing any necessary "electronic signature" required by law. A Purchase Order may be a reference to a Purchase Order by number or an electronic image of a Purchase Order document.

VI.6 Authority of the Purchase Order

Receipt of a Purchase Order or Purchase Order number, or procurement card number and a click on a "Purchase" button (or equivalent) on the Marketplace constitutes authority to the Awarded Vendor or Authorized Reseller to sell and make delivery of the ordered Contracted Item to the Eligible Entity.

VI.7 Orders Near a Contract Expiration Date

The expiration date of the Contract term is the final date to enter into a valid Purchase Order under the Contract. All Purchase Orders received by the Awarded Vendor up to and through the expiration date of the Contract term must be shipped under the delivery time and terms agreed to at the time of order.

VI.8 Invoice Requirements

Unless otherwise agreed between Eligible Entity and Awarded Vendor, the Awarded Vendor shall send invoices electronically by email to an Eligible Entity's billing contact designated when the Marketplace account was established or thereafter changed through the Marketplace account (i.e., an authorized Eligible Entity user must log in to a Marketplace account to change the designated contact).

VI.9 Payments

Eligible Entities will pay the Awarded Vendor directly after receipt of an invoice and confirmation that Products have been delivered.

VI.10 Shipping and Delivery

Awarded Vendor shall inform Eligible Entities of their shipping and delivery options before a purchase is made. Purchases may be subject to any Awarded Vendor's Terms and Conditions regarding shipping and delivery. Risk of loss in transit and title are subject to any agreements that may be made between the Awarded Vendor and the buying Eligible Entity. Also see [Section VIII.7](#).

VII Product Specifications [Return to Top](#)

VII.1 Products

To be Responsive, a Bidder must have a minimum of 300,000 Suitable Products in its Marketplace. All Core List Products and Group 2 Products in an Awarded Vendor's Marketplace, except those expressly prohibited or disallowed by the Agency, shall automatically become "Contracted Items," based on the rules set forth in the PEPPM Terms and Conditions and provided that such Products are legal, properly priced, described, and published under the PEPPM Terms and Conditions. Products designated Contracted Items shall be sold

and delivered by the Awarded Vendor or its Authorized Resellers to Eligible Entity unless the Products are out of stock, discontinued, or are otherwise no longer commercially available in Awarded Vendor's Marketplace Solution.

VII.2 Division of Products into Three Groups

- *Core List Products:* Products identified by Agency and priced by the Bidder with a discount formula and an Effective Bid Price;
- *Group 2 Products:* Not more than one million (1,000,000) additional Suitable Products, separate from Core List Products, but deemed useful to education and public-sector Eligible Entities – i.e., Suitable Products that have been identified and submitted by the Bidder and priced with a discount formula and an Effective Bid Price; and
- *Rest-of-Marketplace Products:* Other Products that may be present in a Bidder's Marketplace, but they will NOT automatically become Contracted Items.

VII.3 Services

No services deemed to be construction or public works under the laws applicable to Eligible Entities are intended to be included in the approved Contracted Items. For a service to be eligible as a Contracted Item, the service must be:

- Incidental and related to a Contracted Item to make it functional, maintained, or enhanced;
- Identified or associated with a particular Contracted Item SKU or related group of SKUs;
- Covered by a bid discount formula as part of a Bidder's Offer; and
- Described and quantified with a unit of measure (e.g., "hour," "day," "megabyte," "project,") and Effective Bid Price.

Although construction and public works services are not intended to be sold under the Contract, it is intended that a service relating to the deployment of a Contracted Item be allowed, for example, and without limitation, the delivery and assembly of a shed, the assembly of a modular desk, or the attachment of a television to a wall.

VII.4 Required Diversity of Products

For a bid to be a Responsive Bid, a Bidder must operate a Marketplace Solution, within any required legal and policy limitations, which offers a significant number (at least 50%) of the Products as described in the Core List Products and falling within these popular categories:

- A. **Breakroom Supplies**, Foodstuffs, Cafeteria Supplies, and Kitchen Equipment, including coffee, tables, plastic ware, cups, paper plates, snacks, trays, refrigerators, microwaves, utensils, water bottles, tables, and paper towels.
- B. **First Aid and Safety**, including first-aid kits, tapes, gloves, eyewear, helmets, cones, signs, respirators, vests, flashlights, special education supplies, and emergency supplies.
- C. **Instructional, Art, and Craft Supplies**, including construction paper, paint, brushes, media, crayons, clay, easels, pens, colored pencils, frames, newsprint, bulletin-board posters, lesson planners, yarn, tubs, trays, caddies, chalk, whiteboard markers, pocket charts, and manipulatives.
- D. **Maintenance, Repair, and Operations**, including hand and power tools, landscaping equipment and supplies, woodworking equipment, vehicle repair equipment and supplies, custodial supplies and papers, electrical supplies, and plumbing supplies.
- E. **Office Supplies**, including paper, writing instruments, desktop essentials, ink and toner, shipping supplies, dated goods, sticky notes, labels, glues, fasteners, files, folders, binders, organizers, storage equipment, pads, and stamps.

A Bidder must be able to Offer pricing for Core List Products encompassing all five categories. Where representative pricing for any one of the categories is absent, that bid will be deemed Non-Responsive.

VII.5 Core List Products

Within the categories listed in [Section VII.4](#) above, Agency has identified a group of Products frequently purchased by Eligible Entities. These Products represent the Core List Products. These Products must be priced by a Bidder so that Agency can determine the Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution and make a recommendation for an award of a Contract. In addition, during the term of the Contract, Core List Products will be monitored in accordance with the Contract price change policies set forth in more detail below. Core List Products must be labeled by the Awarded Vendor as “Contracted Items” on the Marketplace, or otherwise, the Awarded Vendor must cooperate with PEPPM to publish Contracted Items on PEPPM’s website under [Section VI.2](#).

To be Responsive, a Bidder must Offer an Effective Bid Price for at least fifty percent (50%) of the Products listed by the Agency as Core List Products.

VII.6 Substitutions

The identification of any branded Product as a Core List Product is actually a specification and standard of quality for goods and services to be procured. For each branded Product identified by the Agency, a Bidder may bid an equivalent to the branded Product. Standards for establishing an equivalency are published in [Section VIII.3](#). If the Product being bid is an equivalent and not the actual branded Product specified, the Bidder shall list the manufacturer SKU, Product description, unit of measure, and Effective Bid Price. If Agency cannot determine equivalency based on the description, the Bidder must provide the Agency with a non-returnable sample of the Offered equivalent Product for testing. Any samples of equivalent Products shall be shipped to Agency at Bidder's expense within two days of request by Agency. Decisions on equivalency will be made under published equivalency standards, and the Agency’s decision is final. If Agency cannot determine equivalency based on the description and Bidder cannot provide samples, then Agency will deem the proposed substitution as not equivalent.

VII.7 Core List Product Changes

It is intended that Core List Products represent Products frequently purchased by Eligible Entities. After an award, Agency reserves the right to change Core List Products to reflect the actual usage and sales history of Contracted Items purchased by Eligible Entities on the Marketplace. When Core List Products change, Agency will use the updated list to monitor prices under the Contract price change policies.

VII.8 Group 2 Products – Full Catalog Up to One Million Products

As part of its bid submission, a Bidder must gather, identify, and submit a price Offer for other Products in its Marketplace deemed suitable for education and public-sector buyers, not to exceed one million (1,000,000) Products, or that lesser number of Products that will fit into an Excel (XPSX format) spreadsheet that does not exceed 90 megabytes in size. These Products will be compared with competing Bidders for common SKUs to help identify the Bidder with the lowest-cost Marketplace Solution. After an award of the Contract to the Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution, Products approved by Agency from the Core List Products and this collection of up to one million (1,000,000) Group 2 Products will constitute the group of Contracted Items, which Eligible Entities may purchase under the Contract.

Group 2 Products do not have to specifically pertain to the five Product categories associated with Core List Products and may include broader categories appropriate for education and public-sector Eligible Entities.

The minimum number of Suitable Products to be included in Group 2 is 300,000, minus the number of Core List Products Offered.

Examples of Products that would be deemed suitable for Eligible Entities include Products, not only those categories comprising the Core List Products, but also categories of books, industrial supplies, tools, electronics, athletic supplies, arts and crafts, and agricultural supplies. Examples of categories of Products the Agency deems unsuitable include, but are not limited to, those items described in Section VII.13.

Bidders will use PEPPM's attached Excel spreadsheet to Offer their Group 2 Products, and the Bidders must include, for each item, a Product description, manufacturer, manufacturer number, vendor number, reseller, Base Price, discount formula, and final Effective Bid Price. A template is provided for this purpose.

The size of eligible Marketplaces under terms of this RFB can range from ones hosting 300,000 Products to others hosting millions of Products. PEPPM intends that Bidders Offer not more than one million (1,000,000) Suitable Products from their Marketplace, which will:

- Cover the most popular Products an education or public-sector agency might need to purchase from a Marketplace;
- Encourage employees of Eligible Entities to utilize a competitively bid Marketplace to supply day-to-day needs;
- Offer competitively priced alternatives to Eligible Entities for purchases that would otherwise be below an applicable bidding threshold;
- Reduce buyers' cost of acquisition by allowing them to consolidate purchases on a single Purchase Order;
- Be the number of Products that Agency can reasonably manage and monitor during the term of the Contract;
- Allow for a specific Product-to-Product price comparison to determine the lowest-cost Marketplace Solution; and
- Represent a statistically valid sample to determine the lowest price and best value of a Marketplace as a whole.

VII.9 Rest-of-Marketplace Products

Some Bidders may have more than one million (1,000,000) Suitable Products in their Marketplace. These remainder Suitable Products will constitute Rest-of-Marketplace Products. Rest-of-Marketplace Products are not bid-protected and are not Contracted Items. When posted on the Awarded Vendor's website, these Products, if purchased, represent Products bought at Eligible Entity's own risk and which the Eligible Entity has determined that competitive bidding is not required (e.g. such as a purchase below any applicable monetary threshold for competitive bids).

Agency may move a Rest-of-Marketplace Product to Group 2 Product status in cases where, if in the opinion of the Agency, and in the Agency's sole discretion:

- It replaces a comparable Contracted Item that has exceeded the cap on price increases; or
- It replaces a comparable Contracted Item that is no longer generally commercially available in the Marketplace; or
- It falls into a category where Awarded Vendor's original bid discount formula applies, and its price is at or lower than the price of a comparable Contracted Item; or
- A comparable Contracted Item is in short supply so a substitute must be found, or;
- The demand for an item by the Eligible Entities is significant, and it warrants placement into Group 2 Products, provided a corresponding bid discount formula applies to that product, even if the effect would be that the number of Group 2 Products would exceed 1,000,000 (one million) Products.

VII.10 Returned Goods Policy

For all Products, whether individually or in the aggregate, an Awarded Vendor must describe on its website its policy and any directions (if applicable) regarding how they or Authorized Resellers handle the return of Products.

VII.11 Hazardous Materials Prohibited

The Awarded Vendor and its Authorized Resellers may not sell hazardous materials prohibited by law. Eligible Entities, whether individually or in cooperation with the Awarded Vendor, must be able to block disallowed Products and obtain access to material safety data sheets for applicable Products available for purchase. Neither the Awarded Vendor nor the Authorized Reseller shall employ the use of hazardous materials in shipping materials or otherwise bring hazardous materials onto the property of an Eligible Entity.

VII.12 Products Not Intended for Critical Application

The Products sold under the Contract are not intended 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 significant property damage.

VII.13 Prohibited Products

Even if offered in their Marketplace, an Awarded Vendor must have the capability for itself or for Eligible Entities to block, gray-out, make invisible, remove, or otherwise use means to prohibit orders and purchases in an Eligible Entity's account for the following Products or categories of Products, which Products and categories of Products are deemed not to be Suitable Products:

- Liquor;
- Cigarettes and tobacco products;
- Vaping equipment and supplies;
- Toxic art and craft supplies as described under state and federal law;
- Products deriving from the region of Darfur;
- Used baby equipment and supplies, such as cribs and car seats;
- Products known to contain lead;
- Toys considered choking hazards;
- Uniforms, clothing, or textiles with asbestos;
- Guns;
- Prescription drugs, illegal drugs, and drug paraphernalia;
- Recalled Products;
- Erotica;
- Products banned by state and federal governments;
- Products prohibited by local agency policy;
- Known stolen Products;
- Known counterfeit Products; and
- Other categories of Products later identified by Agency to be antithetical to the purposes or values of public agencies

VIII Pricing Specifications [Return to Top](#)

VIII.1 Pricing Methodology

This RFB requires Bidders to provide their bid Offer in the following manner:

- A Quote Sheet Tab of a spreadsheet containing discount formulas relating to Commercially Available Pricing;
- A Bid Response Tab of a spreadsheet containing Bidder's Offer in response to Agency's pre-identified list of Core List Products as specified;
- A separate spreadsheet containing an Offer for up to one million (1,000,000) other Group 2 Products in its Marketplace suitable for education and public-sector buyers.

VIII.2 The Quote Sheet Tab

Bidders must Offer a discount formula that can be applied to:

- Core List Products listed on the Bid Response Tab
- Bidder's list of Group 2 Products comprising the remainder of its Marketplace suitable for education and public-sector buyers up to one million (1,000,000) Products

Discounts can be variable. Variable discounts must be defined by the Bidder, such as by "category of Products," "manufacturer," or "seller."

If bidding by a single formula for the entire Core List Bidder must enter that percentage in Box "H" of the Quote Sheet Tab. If bidding with variable discounts, the Offer percentages and category definitions should be entered starting with line 29, Box "I" (eye) of the Quote Sheet Tab. If thirty (30) lines are insufficient to list all possible discounts, Bidders should attach a separate spreadsheet to the electronic bid form.

Bidders have the option to Offer the same discounts or other discounts to Group 2 Products.

VIII.3 The Bid Response Tab

The "Bid Response Tab" contains PEPPM's Core List of Products. Bidders must:

- Enter their Marketplace Base Price for Core List Products as priced on the Snapshot Date;
- Enter their discount for each Core List Product, corresponding to the Offer on the Quote Sheet; and
- Inspect the Effective Bid Price to ensure it accurately reflects their Offer.

As it is expected that Marketplace prices will change frequently, Bidders must use their Commercially Available Prices on the Snapshot Date as the basis for their bid and the calculation of any discounts to be applied. Bidders must enter the Commercially Available Price posted on the Snapshot Date and apply any and all discounts when filling out the Quote Sheet. The discount offered by the Bidder will remain firm throughout the term of the Contract and shall be applied to a Core List Product's Commercially Available Pricing as of the date of purchase of the Core List Product by an Eligible Entity.

The formula is:

$[\text{Commercially Available Pricing}] - ([\text{Commercially Available Pricing}] * [\text{Discount Formula}]) = \text{Effective Bid Price}$

Example using a 5% discount formula on Commercially Available Price of \$100: $\$100 - (\$100 * .05) = \$95$

To be a Responsive Bid, the Bidder must give an Effective Bid Price for at least fifty percent (50%) of the Core List Products listed on the Bid Response Tab.

An equivalent substitution may be offered for any Core List Product. If offering an equivalent, a Bidder must list the manufacturer SKU, Product description, unit of measure, and Effective Bid Price, starting at column N, to the right of the specified item.

At Agency's sole discretion, Products may not be considered equivalent if they have or are:

- Packaged in a different unit of measure;

- Sized differently;
- Made of different materials;
- Remanufactured or used;
- Different colors;
- Functionally inferior;
- Different dilution ratios;
- Different weight of paper;
- Different speed;
- Different chemical composition;
- Different shape; or
- Unable to be shipped as quickly.

VIII.4 Importance of Final Effective Bid Price on Core List Products

It is the Bidder's responsibility to look at the final, calculated, Effective Bid Prices on the Bid Response Tab spreadsheet to ensure that they are calculated correctly. These are the official Effective Bid Prices. If they are not correct, then either the Commercially Available Price or the percentage discount entered is incorrect because the spreadsheet automatically calculates the accurate Effective Bid Prices based on Bidder's entries.

VIII.5 Full Catalog Up to One Million Products – Group 2 Products Spreadsheet

In addition to pricing Core List Products, Bidders must fill out a spreadsheet containing an Offer on up to one million (1,000,000) Group 2 Products, suitable for education and public-sector buyers.

On a separate spreadsheet tab titled "Group 2 Products," Bidders must populate the empty spreadsheet tab with their own Offer for up to one million (1,000,000) Group 2 Products with the following information for each Product:

- The Commercially Available Price for each Offered item as priced on the Snapshot Date;
- The discount for each Product, corresponding to the Offer on the Quote Sheet;
- The manufacturer's SKU for each Product;
- The Authorized Reseller for each Product; and
- The Unit of Measure for each Product.

Since it is expected that Marketplace Commercially Available Prices can change frequently, Bidders must use their Marketplace Commercially Available Prices on the Snapshot Date as the basis for their bid and the calculation of any discounts to be applied. Bidders will enter the Commercially Available Price posted on the Snapshot Date and apply any and all discounts when filling out the spreadsheet for Group 2 Products. The discount offered by the Bidder will remain firm throughout the term of the Contract and shall be applied to a Group 2 Product's Commercially Available Pricing as of the date of purchase of the Group 2 Product by an Eligible Entity.

VIII.6 Importance of Final Effective Bid Price on Group 2 Products

It is the Bidder's responsibility to look at their final, calculated, Effective Bid Prices on the spreadsheets to ensure that they are calculated correctly. These are the official Effective Bid Prices. Bidders should beware of a common bid mistake: that is, applying different percentage discounts to individual line items that do not correspond to the discount percentage they Offered on the Quote sheet.

VIII.7 Shipping

A Bidder's Offer on all Products must be exclusive of any shipping charges. Shipping charges will not be a factor in evaluation. To be Responsive, a Bidder must be able to:

- Show the relevant shipping costs on its website for any Product or set of Products before purchase
- Offer any relevant shipping options, such as expedited delivery
- Monitor the shipping charges of its Authorized Resellers

At its option, the Awarded Vendor or Authorized Reseller may provide free shipping or offer options whereby an Eligible Entity may qualify for free shipping or a program of conditional free shipping.

If business practice includes delivering by means of an unmanned mechanical device or an aerial device, the Awarded Vendor must offer the buying Eligible Entity an option for a different means of delivery.

VIII.8 Large-Volume Purchases and Voluntary Price Reductions

Upon request from an Eligible Entity, an Awarded Vendor or Authorized Reseller may offer a further voluntary price reduction or a quotation for a large-volume discount from the Commercially Available Price, after application of the Bidder's firm discount formula. Such reductions are at the sole discretion of the Awarded Vendor or Authorized Reseller.

At its own discretion, Awarded Vendors may offer rebates after the consummation of sales provided they are:

- Universally applied to all participating Eligible Entities, fully disclosed, and compliant with all applicable laws;
- Directed back to an Eligible Entity and not an individual user or Eligible Entity employee.

VIII.9 Price Change Policies

Agency's research into industry and national vendor practices finds that Marketplace prices are dynamic, subject to forces of supply and demand. Therefore, prices may change frequently, often lower. When supply is abundant, market forces work to the advantage of government and education buyers. When supply is weak, Marketplace diversity allows maximum visibility of the apparent supply of Products so buyers can get the best-possible Marketplace price.

Therefore, Agency will permit dynamic price changes of Contracted Items and Rest-of-Marketplace Products, but under a system of price supervision, transparency, limits, and remedy – all to comply with legal and policy expectations of education and government buyers.

Price increases for Contracted Items occurring during the course of the Contract must not exceed the Price Cap, otherwise Agency shall be entitled to remove Products off of the Contracted Items list and move the Contracted Items into the Rest-of-Marketplace Products category, in which case such removed Products will no longer be bid-protected under the Contract-unless such Products are later moved back onto the Contracted Items list under [Section VII.9](#). Agency's right to remove Products from the Contracted Items list shall be in addition to the remedies listed below.

Agency will monitor price increases for Products on the Contracted Items list.

At any time over the course of a Contract year when the price increases for any Contracted Item exceed a designated Agency threshold of three times the annualized increase in the United States Consumer Price Index (the "Price Cap"), PEPPM may take unilateral action or may instruct Awarded Vendor to promptly:

- Remove the designation of a Product as a Contracted Item;
- Substitute a lower-priced brand equivalent as a Contracted Item;
- Substitute an Authorized Reseller for a Product to continue to be on the Contracted Items List;
- Request an Authorized Reseller to lower the price of the Contracted Item;
- Find a lower-priced functional equivalent Product to be on the Contracted Items list;
- Request that a Product be blocked or prohibited for sale;

- Advise Eligible Entities to block Products or categories of Products; or
- Publish a list of Products designated as “Contract Ineligible.”

PEPPM will calculate the Price Cap on the first day of the Contract, which shall apply for twelve (12) months, and then recalculate the Price Cap on subsequent anniversary dates. PEPPM reserves the right to accept and approve a price increase above the Price Cap, if after PEPPM’s research, it determines, in its sole discretion, a price increase above the Price Cap is due to factors out of control of the Awarded Vendor, such as weather, epidemics, tariffs, insufficient supply against demand, or disruptions in the supply chain. In such cases, the price basis for such Products shall be re-indexed and monitored against the new baseline price.

If, in the sole opinion of the Agency, an unreasonable number of Contracted Items exceed the Price Cap, the Contract becomes unmanageable, or if the Agency determines, in its sole discretion, that the Contract is no longer a value to Eligible Entities, Agency reserves the right to terminate the Contract.

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 a prebid meeting, directions, access to help files, a bid checklist, and contacts for technical support in filling out the electronic bid form. This service is available to all potential Bidders.

Bidders must examine the entire bid package, and 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 Bid Due Date and Bid 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, office supplies, art and instructional supplies, or MRO 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 employee has opened the bid form
- The company has divided its employees into geographic territories, and the bid has been directed to employees designated for Pennsylvania
- They have not checked the box to receive RFBs in the categories of technology, office supplies, art and instructional supplies, or MRO.

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

IX.4 Prebid Meeting

A prebid meeting will be held at a time as described or referenced [here](#). In the case of an emergency, or, in the Agency's discretion, in the interest of public health and safety, and as permitted by applicable law, the prebid meeting may be held via teleconference or video conference. Bidders interested in participating should register at www.PEPPM.org/bids. The session will provide a high-level view of contracting policies for Bidders and an overview of procedures for filling out the bid forms.

IX.5 Bidders' Questions

Bidders who have bid questions about the bid or its Terms and Conditions may submit them to BidQuestions@PEPPM.org no later than 4 p.m. ET on the [Questions Due Date](#). Bidders are advised to look on www.PEPPM.org for frequently asked questions.

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

IX.6 Exceptions to PEPPM Terms and Conditions

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

Any exceptions accepted by the Agency will be incorporated into a bid addendum to be published in the electronic bid documents. To ensure a fair and equal bidding process, any addendum will apply to all Bidders and all bids.

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

Following the award of the Contract to an Awarded Vendor, Agency reserves the right to amend the PEPPM Terms and Conditions 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 Bidder before award or the results of the bid evaluation process.

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.
- *Check-Marking the Marketplace bid Category:* Only one type of Marketplace is specified on the bid form. Bidders must check the white box next to "Marketplace Solution" and the Bidder must attach files alongside that particular Marketplace description.
- *Payment Information:* Bidders may pay bid Evaluation Fees and prospective bid Award Fees by credit card or by checking account information.
- *Completion of the Pricing Templates:* The first template is a spreadsheet with three tabs. Bid discount formulas must be entered on the Quote Sheet Tab. Data for calculating bid formulas into effective prices for Core List Products are entered on the Bid Response Tab. On the second template, Bidders must separately attach a completed spreadsheet containing Group 2 Product Offerings.

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.

1. Attachments that go alongside the name of the “Marketplace Solution” bid are:
 - Signed Awarded Vendor Agreement
 - PEPPM Marketplace Pricing Template (includes Core List Products, Quote Sheet, and Group 2 Products Tab)
2. Attachments that go alongside a required question are:
 - Reference Forms (containing at least three references)
 - Public Information Plan
 - Any optional files to expand upon an answer to a question
3. Attachments that can be uploaded to the “Additional Response Information” section are:
 - Any optional files to provide the Agency more information

IX.9 Public Information Plan

The Agency requests that an Awarded Vendor develop a public information program to promote knowledge of the Contract by way of activities and media such as printed materials, web-based information, e-mails, advertising, social media, telemarketing, webinars, tradeshow, and other commercial avenues of communication. This plan may 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 interest of Bidders to submit their bids far enough before the [Bid Due Date](#) to avoid any hindrances out of the control of the Bidder, eCommerce Consultant or the Agency. Such impediments could include 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.

WARNING: Due to the potential size of some required attachments, upload time can take several minutes depending on the originating Internet upload site. Uploads by a user working from a business site usually upload faster than by a user working at home. The bidding software site can accept spreadsheets containing up to one million SKUs, sized 80 megabytes or less. Files of this size can take up to 10 to 30 minutes to transfer, depending on the capabilities of the upload location.

A Bidder should not wait until the last minute to upload its attachments. Bids with files still in process of loading at the bid deadline will be considered late.

IX.11 Submission

When Bidders complete their bids, clicking on the “Continue” button at the bottom of the page enables the Bidder 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 constitutes 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 PEPPM Terms and Conditions, final pricing, statements, and all other commitments submitted to the 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's 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 before a Bidder clicks the "Submit" button and sends it to the Agency. If 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 for at least 90 days, and the Bidder must supply the awarded Products under the Bidder's Offer, consistent with the PEPPM Terms and Conditions.

IX.15 Receipt and Opening of Bids

Electronically sealed bids must be received by the [Bid Due Date](#) and Bid Time. Bids will be electronically unsealed and publicly read at the [Bid Opening Date](#) and time. Opening and public reading will consist of PEPPM staff clicking to open the submitted bids in front of any interested members of the public and staff in a public setting. However, in the case of an emergency, or, in the Agency's discretion, in the interest of public health and safety, and as permitted by applicable law, PEPPM may instead publicly broadcast the opening of bids via teleconference or video conference.

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

IX.16 Late Bids

The Agency will not consider late bids.

IX.17 Firm Offers

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 Offers must remain firm for at least 90 days from 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 this RFB must be received at the Agency before the [Bid Opening Date](#). A protest of a proposed award or actual award must be filed within ten (10) days after the protester knows or should have known the basis of the objection, and in any event within fifteen (15) days after the board awards the Contract at a public meeting.

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 RFB
- 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, give the Agency and Eligible Entities a license to reproduce the material as part of bid documentation with the copyright notice as first provided. The Agency shall have the right to reproduce and publish any and all bid submission information, documents, and files. To the extent allowed by law, it is the 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 Bidder's business.

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

X.1 Qualification for Evaluation

Following applicable Pennsylvania state law and accepted standards for competitive, sealed bidding, the Agency will make an award to the Bidder determined by Agency to be the Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution.

X.2 Creation of Contract

The evaluated bid recommended for award does not become the formal Contract until the Agency's Board of Directors makes the award and an authorized representative of the Agency signs the Contract.

X.3 Bid Evaluation Process

Only bids received on time will be evaluated. A high-level overview of the evaluation process is:

- Bids will be evaluated to determine if the Bidder submitted a Responsive Bid and that all required attachments and documents are present;
- For those Bidders who submitted Responsive Bids, the responses to their questions will be examined to ensure the Responsive Bidder is a Responsible Bidder and capable of providing Products to Eligible Entities under the PEPPM Terms and Conditions;
- For those Bidders determined to have submitted a Responsive Bid and determined to be a Responsible Bidder, their pricing will be compared to competing Responsive Bids from Responsible Bidders to rank pricing from lowest to highest;
- The Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution will be identified; and
- The Responsive and Responsible Bidder offering the lowest-cost Marketplace Solution will be recommended for an award.

X.4 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 may reject:

- Late bids;
- Bids that are Non-Responsive; and
- Bids from Bidders deemed not responsible.

X.5 Ambiguities

If a bid is Responsive, but contains ambiguities, the Agency may engage in Clarification. Bidders should submit any requested supplementary information promptly to Agency. Failure to respond is grounds for rejection of the bid as Non-Responsive.

X.6 Evaluation of Responsiveness

Submissions by Bidders must pass a test for responsiveness before the Bidders will be evaluated for responsibility and before 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
- Banking information for the processing of bids and award fees was present, and funds were properly processed
- PEPPM Terms and Conditions were accepted
- Reference forms for the Bidder were attached
- Attached a signed Awarded Vendor Agreement

Factors related to specifications, pricing, and forms, Agency found evidence the Bidder:

- Has a single URL directing users to a Marketplace offering the Contracted Items
- Offered the type of Marketplace specified
- Has Offered Group 2 Product pricing for at least 300,000 Suitable Products in its Marketplace
- Offered not more than one million (1,000,000) Group 2 Products within the Marketplace that are pertinent to education and public-sector buyers
- Agrees that Eligible Entities must first register with PEPPM before being given buying access to the Awarded Contract
- Filled out a Quote Sheet and indicated pricing formulas
- Priced at least 50% of the Core List Products on the Bid Response Tab and showed all relevant discounts as described on the Quote Sheet
- Was able to show the relevant shipping costs on its website for any Product or set of Products before purchase
- Can offer multiple shipping options, such as expedited delivery
- Can monitor the shipping charges of its Authorized Resellers
- Has status as a domestic company in the United State and is certified to do business in the United States
- Has an affirmative program in place to monitor that sources of supply are legal
- Will be the point of contact for customer sales support and service to all Eligible Entities
- Has current relationships with Eligible Entities for verification of customer satisfaction
- Will serve all Eligible Entities in the United States who accept PEPPM's and Awarded Vendor's Terms and Conditions
- Can be a central point for invoicing and payment for the sale of Products
- Hosts necessary communication (phone, email, website) for reasonable customer service during

- normal business hours in all U.S. time zones
- Ensures the delivery of Products
- Coordinates or provides instructions for any returns
- Acts as the central point of contact with Agency and its agents
- Assures the security of user login credentials, payment data, and consummates transactions under industry standards
- Meets California privacy requirements or any higher state or federal standard for data privacy
- Is in control of the Marketplace terms and conditions whereby an Authorized Reseller is added to its Marketplace
- Can approve or reject any Authorized Reseller
- Is able to block certain categories of Products
- Can see all Products offered by any Authorized Reseller on the Marketplace (that is, no secret or hidden Products for sale and hidden from the Awarded Vendor)
- Has the ability to sanction or take action against any of its Authorized Resellers
- Can force an Authorized Reseller to modify its Product descriptions, specifications, notices, or warnings
- Has provided a document or a link to a document containing Bidder's standard terms and conditions for use of its Marketplace Solution and website.

X.7 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:

- Provided evidence of a permanent place of business in the United States
- Is not insolvent or currently involved in bankruptcy
- Certifies it has not colluded in submitting its bid or developing pricing
- Is not under suspension or debarment or is otherwise lawfully precluded from participating in any public-sector procurement activity
- Deploys system of customer support and service to all chosen Eligible Entities as described on the bid form
- Has provided positive references from buying agencies or has past PEPPM experience
- Has given evidence of previous sales in the public sector
- Complied with any previous or existing PEPPM contracts
- Possesses the capability and qualifications to perform the Contract in all respects, and has the financial strength, integrity, and reliability to assure good-faith performance of the Contract

X.8 Evaluation of Pricing

Effective pricing from Responsive and Responsible Bidders will be compared to identify the Bidder offering the lowest-cost Marketplace Solution. If an award is made, it will be made to a Responsive, Responsible Bidder that the Agency determines offers the lowest-cost Marketplace Solution. In the event of a tie between multiple Bidders, the winning Bidder will be decided by the flip of a coin or another method of chance selected by the Agency.

To determine which Bidder offers the lowest-cost Marketplace Solution, Agency will compare the pricing in the following groups:

- Core List Products pre-identified and specified by Agency
- Comparable SKUs Offered by Bidders of other Group 2 Products, deemed to be Suitable Products

Agency reserves the right to remove from comparison any Products that:

- Have been discontinued by the manufacturer;
- Contain errors in the Agency’s specifications;
- Cannot be fairly compared among Bidders;
- Are substituted by multiple vendors;
- Products that are not for education and public-sector buyers; or
- Result in substitutions deemed inferior.

Agency declares that in comparing any bid to another, it may use a statistically valid sample of comparable Products to determine the lowest Bidder with a comparable Marketplace Solution.

Upon the Agency’s request, any Bidder offering equivalent substitutions to Core List Products must provide samples of any equivalents within two days of the Agency’s request. Samples are to be sent at Bidder’s sole expense. Samples are non-returnable and may be destroyed after testing.

X.9 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.

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

When an Eligible Entity seeks to procure Products through the 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 Guidance,” “UG” or new “EDGAR”) and Elementary and Secondary School Emergency Relief Fund (sometimes referred to as “ESSER I” or “ESSER II” funds). Awarded Vendor and its Authorized Resellers must agree to comply with certain requirements that may be applicable to specific purchases using federal grant funds. 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 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 or Authorized Reseller 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.5 Clean Air Act and Federal Water Pollution Contract 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 and Authorized Reseller agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

XI.6 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 to the Agency 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 and Authorized Reseller further agree to immediately notify the Eligible Entity with pending purchases or seeking to purchase from the Awarded Vendor if the Awarded Vendor or Authorized Reseller is 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.7 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.8 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 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.9 Profit as a Separate Element of Price

For purchases using federal funds over \$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 applicable law, the Awarded Vendor or Authorized Reseller agrees to provide information and negotiate with the Eligible Entity regarding profit as a separate element of the price for a particular purchase.

XI.10 Not-To-Exceed Price

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

XI.11 Contracting with Historically Underutilized Businesses

The Awarded Vendor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring any subcontractor, if subcontracts are to be let, to take the affirmative steps listed in the foregoing bulleted items of this Section.

XI.12 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.

Substitutions for Cause: An Awarded Vendor may only propose substitutions pursuant to a Purchase Order submitted by an Eligible Entity in the event of unavailability of Product, regulatory changes, or unavailability of required warranty terms. The Awarded Vendor must notify the Eligible Entity of all substitutions for cause with full documentation at least 30 days before the commencement of work or delivery. 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.13 Preference for American-Made Materials

Awarded Vendor should, as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, to the greatest extent practicable, in connection with any Products (including qualifying services) purchased by the Eligible Entity with federal grant funds.

XI.14 General Compliance and Cooperation with Eligible Entity

In addition to the foregoing specific requirements, the Awarded Vendor agrees, in accepting any Purchase Order 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 Guidance.

For example, the Eligible Entity must perform a cost or price analysis in connection with every procurement action over \$250,000.00, including contract modifications. This 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 this cost or price analysis to comply with applicable law.

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

XII.1 Reporting

Each calendar quarter, Awarded Vendor shall report all Products sold (including mutually agreeable attributes of the products and sales) under contract during such calendar quarter. Such reports shall be forwarded to PEPPM within thirty (30) days of the end of such calendar quarter.

After award, the Agency and Awarded Vendor will mutually agree on a reporting method and schedule that captures metadata on all Contract transactions. PEPPM may obtain all or parts of the information from the

Awarded Vendor, or from buyer accounts, or third party services , provided that the information is accurate. Reporting methods may change from time to time upon mutual agreement of the Agency and Awarded Vendor. Notwithstanding anything to the contrary set forth above, the Awarded Vendor must meet one or more of the following reporting criteria:

- Monthly reporting by Excel files (or other mutually agreeable method) with fields to be mutually defined by PEPPM and the Awarded Vendor, or
- Quarterly reporting by Excel files (or other mutually agreeable method) with fields to be mutually defined by PEPPM and the Awarded Vendor.

PEPPM will study all transactions reported utilizing data from Awarded Vendor Reports, reports consented to by Buyers directly to PEPPM, or from third party tools or websites that allow PEPPM to determine data such as the attributes listed below:

- Manufacturer SKU
- Awarded Vendor SKU
- Product Name
- Product Description
- Unit of Measure
- Quantity Ordered
- Buyer's Name
- Eligible Entity Name
- Eligible Entity's City
- Eligible Entity's State

Agency acknowledges that obtaining sales price data for a particular Eligible Entity may require obtaining the pricing from the Eligible Entity or consent from the Eligible Entity for Awarded Vendor to release the price information. As a report, Agency will use statistically representative reports to determine pricing compliance during the Term of the Agreement. The Agency reserves the right to change, amend, or add data reporting fields and reporting periods with the mutual consent of the Awarded Vendor. The consent of the Awarded Vendor will not be unreasonably withheld, conditioned, or delayed.

XII.2 Quarterly Snapshot Reports

Each calendar quarter, Awarded Vendor shall report all Products sold (including mutually agreeable attributes of the products and sales) under contract during such calendar quarter. Such reports shall be forwarded to PEPPM within thirty (30) days of the end of such calendar quarter.

XII.3 Pricing Compliance

Agency requires a periodic pricing report of Marketplace pricing to verify prices and price changes. These pricing reports may be obtained from Awarded Vendor, from a review of Awarded Vendor's Marketplace Solution, or from a third-party information provider that offers reliable information about Marketplace pricing.

Occasionally, the Agency may conduct spot checks or hire a third-party accounting firm to statistically sample records to verify the integrity of bid pricing and invoiced sales.

XII.4 Contact and Ordering Instructions

Awarded Vendor will cooperate with PEPPM in the development of ordering instructions necessary for Eligible Entities' use of the Contract.

XII.5 Contract Promotion, Advertising, and Marketing

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

The Agency must give prior approval before an Awarded Vendor issues a press release about the Contract.

The Agency extends a license to the Awarded Vendor, for the term of the Contract, to use the PEPPM logo on the Awarded Vendor's website and in marketing collateral. Advance permission and review are required. The Agency may cause the Awarded Vendor to recall any collateral or any use of the PEPPM logo not in conformance with guidelines, untruthful, or inaccurate.

XII.6 Contract Extension

Agency reserves the right to offer and extend the length of term of the Contract, but no more than twice and in separate one-year increments. At no time shall the ability to sell under the Contract be in force for more than a two-year period. The extension of the Contract will be optional upon the agreement of the Agency and the Awarded Vendor.

Notwithstanding the foregoing, in the event of emergencies, and as allowed by law, Agency reserves the right to offer month-by-month extensions until a new Contract is awarded. Any month-by-month extension of the awarded Contract will be optional upon the agreement of the Agency and the Awarded Vendor.

Agency requires an extension fee of \$100 for a one-year extension.

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

XIII.1 Awarded Vendor Terms and Conditions

As between Awarded Vendor and all Eligible Entities who purchase Products from Awarded Vendor's Marketplace, the Awarded Vendor may require an Eligible Entity's agreement to the Awarded Vendor's standard commercial terms and conditions applicable to use of Awarded Vendor's Marketplace website, and Awarded Vendor's standard commercial terms and conditions applicable to the purchase of Products from the Awarded Vendor's Marketplace (collectively, "Awarded Vendor's Terms and Conditions"). After an Award, the Awarded Vendor shall designate a URL that sets forth Awarded Vendor's Terms and Conditions, and those Awarded Vendor Terms and Conditions, in conjunction with the PEPPM Terms and Conditions, shall govern the sale of Products to Eligible Entities in the Marketplace.

Awarded Vendor may decline to sell Contracted Items to Eligible Entities that do not consent to the Awarded Vendor's Terms and Conditions. The Awarded Vendor's Terms and Conditions may change occasionally, provided any changes are applied uniformly to all Eligible Entities and are applied prospectively to future Purchase Orders and not retroactively to any existing Purchase Orders.

Such Awarded Vendor Terms and Conditions shall be solely between the Awarded Vendor and the consenting Eligible Entity. The Awarded Vendor's Terms and Conditions do not govern or modify the relationship between the Awarded Vendor and Agency, acting as the purchasing cooperative administrator, such as the amount of the Transaction Fees, the amount of the Bid Evaluation and Award Fees, central reporting obligations, the requirement of references and other matters covered by the PEPPM Terms and Conditions and the Contract.

As between the Awarded Vendor and an Eligible Entity, in the event of any conflict or inconsistency among the PEPPM Terms and Conditions and the Awarded Vendor's Terms and Conditions consented to by the Eligible Entity, the Awarded Vendor Terms and Conditions shall control.

It is the Agency's intention to give Eligible Entities and the Awarded Vendor flexibility to establish additional, separate terms and conditions as they may mutually agree, if, and only if, such terms are not:

- Prohibited by applicable procurement laws or regulations;
- Used to circumvent requirements for competitive bidding;
- In conflict with the PEPPM Terms and Conditions or the Contract; or
- Otherwise prohibited by law, regulation, or local policy.

XIII.2 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, modifications, 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).

XIII.3 Default Related to the Contract

The Agency or Eligible Entity may, subject to the provisions of force majeure, and in addition to its other rights under the Contract or Purchase Order, at law, or in equity, declare the Awarded Vendor in default by delivering 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 or for one or more Products or categories of Products) or Purchase Order for any of the following reasons:

- Breach of, violation of, or non-compliance with any provision, term or condition of the Contract or Purchase Order, or failure to perform any obligation, requirement, covenant or condition of the Contract or Purchase Order if such breach, violation, non-compliance, or failure of performance is not cured within thirty (30) days of receipt of written notice thereof;
- Failure to make progress in the performance of the Contract or Purchase Order and/or giving Agency or Eligible Entity reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Contract or Purchase Order, if such failure is not cured or reasonable assurances of performance acceptable to Agency or Eligible Entity are not provided within thirty (30) days of receipt of written notice thereof;
- Failure to pay Transaction Fees when due;
- Failure to maintain its baseline website online;
- Awarded Vendor or any Authorized Reseller is debarred or suspended or otherwise lawfully precluded from participating in any public-sector procurement activity; or
- The Awarded Vendor has been identified by the U.S. Government as posing a national security threat.

XIII.4 Remedies

The rights and remedies of the Agency or Eligible Entity provided in the PEPPM 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.

XIII.5 Force Majeure

Neither party to the Contract or a Purchase Order will incur any liability to the other if its performance of any obligation under 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, pandemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Awarded Vendor shall notify the Agency regarding obligations under the Contract, or the Eligible Entity regarding obligations under the Purchase Order, orally within five business days and in writing within ten 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. This notification shall:

- Describe fully this 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 this estimation.

The Awarded Vendor shall have the burden of proving that this cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce within ten business days of Agency's or Eligible Entity's written request such supporting documentation as the Agency or Eligible Entity may reasonably request. After receipt of 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.

XIII.6 Termination of Contract

In addition to the other rights of termination expressly set forth in this RFB, the Agency shall have the right to terminate the Contract, in whole or in part, without penalty, for Agency's convenience upon thirty (30) days written notice to the Awarded Vendor, and upon receipt of said notice, the parties shall have no further obligations to each other (except for those obligations that expressly survive the termination of this Contract).

In the event of termination of the Awarded Vendor Contract by Agency, each Purchase Order then in effect shall remain in full force and effect until the end of its scheduled term and shall be governed by PEPPM Terms and Conditions 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.7 Assignment

The Contract shall be binding upon the parties and their respective successors and permitted assigns. The Awarded Vendor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities thereunder without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned, or delayed.

For the purposes of the Contract, 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 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 PEPPM Terms and Conditions, the Contract, as applicable, and to assume the duties, obligations, and responsibilities being assigned. Unless the Agency has consented to an assignment and agreed in writing to release the assignor

from liability under the Contract, no assignment shall release the Awarded Vendor from liability under the Contract.

A change of name by the Awarded Vendor, following 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 change of name.

Notwithstanding the foregoing, the Awarded Vendor may, without the consent of the Agency, assign the Contract 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 the Contract and agrees in writing to be bound by the PEPPI Terms and Conditions and the Contract.

XIII.8 Intellectual Property Indemnity

Awarded Vendor shall defend, indemnify and hold harmless the Agency and Eligible Entity (collectively, "Indemnitees") from and against all claims, damages, losses, and expenses, including without limitation reasonable attorney's fees and legal costs, that Indemnitees 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 the Marketplace 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 prepaid 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 and the obligations of Awarded Vendor hereunder shall survive termination of the Contract or Purchase Order.

XIII.9 Indemnification

To the fullest extent allowed by law, the Awarded Vendor shall indemnify and hold harmless the Agency and Eligible Entity from and against any and 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 or Authorized Reseller'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 Agency or Eligible Entity, its agents or employees as set forth in Pennsylvania's Political Subdivision Torts Claims Act 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.

The obligations of the Awarded Vendor under this Section shall survive termination of the Contract or Purchase Order.

XIII.10 Governing Law; Jurisdiction and Venue, and Severability

This RFB, the Agreement, and the Contract shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to its conflict-of-laws provisions. Claimants submit to the exclusive jurisdiction of the courts the Court of Common Pleas of Union County or the United States District Court for the Middle District of Pennsylvania for purposes of any and all litigation arising out of or relating to this RFB, the Agreement, the Contract, or the use of the PEPPM website, or any other action arising hereunder to which the Agency is made a party. The Awarded Vendor, or any other claimant, hereby waives any objections, lack of venue, *forum non-conveniens*, or any other jurisdictional ground.

Claims, disputes, or other matters that arise between an Eligible Entity and an Awarded Vendor or Authorized Reseller shall be resolved under procedures established between the Eligible Entity and the Awarded Vendor, or in the absence thereof, under applicable law.

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 this invalidity shall be caused by the length of any period set forth in any part of the Contract or Purchase Order, this period of time shall be considered to be reduced or increased, as necessary, to a period which would cure this invalidity.

XIII.11 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.12 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 permitted assigns. It is understood and agreed, whether or not specifically provided herein, 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.13 eCommerce Consultant Contract Termination

If the contract between Agency and the eCommerce Consultant is terminated by either Agency or the eCommerce Consultant, the Agency may engage a new eCommerce Consultant. The Agency will notify the Awarded Vendors and Eligible Entities of any change in the eCommerce Consultant and eCommerce system, including, without limitation, website addresses, email addresses, changes in eCommerce system software, and changes in any eCommerce processes and procedures.

The Awarded Vendor will need to execute a new eCommerce Merchant Agreement and Nondisclosure Agreement (if applicable) with the new eCommerce Consultant (whether a third party or Agency), provided such agreements are reasonably acceptable to Awarded Vendor. The Awarded Vendor shall have 20 workdays after receipt of the new agreements to sign and return the agreements in order to continue the Contract and shall cause its Authorized Resellers to do the same. If the Awarded Vendor does not sign and return the agreements within the 20-day period, the Agency may terminate the Contract upon at least 10 days' prior written notice.

There will be no increase in the Transaction Fee as a result of the change in the eCommerce Consultant (whether a third party or Agency). If Agency establishes a contract with another eCommerce Consultant or develops its own ecommerce system, Agency reserves the right to collect the original Transaction Fee.

XIII.14 Copyright

This RFB, the PEPPM Terms and Conditions, the electronic bid form, and all attachments are copyrighted by Agency and the Epylon Corporation, 2024 (©2024, CSIU & Epylon).

[END]