

Board Office Use: Legislative File Info.	
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Introduction Date	December 9, 2020
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Enactment Date	December 9, 2020 er



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Susan Beltz, Chief Technology Officer

Board Meeting Date December 9, 2020

Subject Approval for End User Information Form and Customer Service Order Form between District, Cisco and CDW-Government LLC for Cisco Flex license purchase
Contractor: CDW-Government LLC
Services For: December 15, 2020 - December 14, 2025

Action Requested and Recommendation Approval by the Board of Education of the Cisco End User Information Form and CDW-G Customer Service Information Form between Oakland Unified School District and CDW-Government LLC utilizing the CalSAVE Stretch Agreement approved under File ID 20-1290 (Enactment # 20-0978), for CDW-Government LLC to provide Cisco Flex licenses for virtual phone systems to facilitate school site and teacher communication with families, for the period December 15, 2020 through December 14, 2025 for an amount not to exceed ~~\$649,532~~ \$648,960.00.

Background
(Why do we need these services? Why have you selected this vendor)

This purchase of Cisco Flex licenses will provide a districtwide virtual phone system for school sites and teachers to more easily communicate with our families. Employees will be able to use the Cisco Jabber feature which avoids routing of calls to personal cell phone numbers and supports enhanced features such as routing inbound calls to a pool of numbers. The license period is 5 years from December 15, 2020 through December 14, 2025. This purchase will further the objectives set forth in the MOU signed with OEA under File ID 20-1854.

Competitively Bid No. This contract is being entered pursuant to the CalSAVE Stretch Agreement between Oakland Unified School District and CDW-Government LLC, effective June 24, 2019 through December 31, 2022, which the Board approved under File ID 20-1290 (Enactment # 20-0978), to allow the District to piggyback on the Monterey County Office

of Education (MCOE)/CalSAVE Bid No. 530067 Technology Catalog Bid 2019 for Computer Supplies in an estimated amount of \$1,110,000.00 annually.

Fiscal Impact

\$648.960 from Funding Resource 010-7420-0-1110-1000-5846-986-9030-6350-9999-99999: Learning Loss Mitigation Fund GF, Instruction, Licence Agreements, Technology Services, Academic Office (commonly referred to as CARES Funding)

Attachments

- Cisco End User Information Form
 - CDWG Customer Order Form for Cisco Services
 - Legistar File ID 20-1290 per original approval on June 24, 2020
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End User Information Form

For End Users of the Cisco Flex Plans

To purchase the Cisco Collaboration Flex Plan or Cisco Spark Flex Plan under the Enterprise Agreement (“EA”) buying model for you and your Participating Affiliate(s), an authorized representative of the End User must complete this form in its entirety and sign it. This form will be used for provisioning and entitlement under the Flex Plan, as well as to ensure that you understand the terms of use that apply to your Flex Plan. Cisco will provide a quote to your reseller for the selected buying model, based upon the information that you provide in this form. Your reseller will in turn provide a quote to you. **Your signature is required on this form prior to receiving access to the program.**

End User Overview

Defined Terms Used in This Section

“**Participating Affiliates**” means Your Affiliates whose Meter counts are included on the EUIF.

“**Affiliate**” means, with respect to a party, any entity that directly or indirectly Controls, or is Controlled by, or is under common Control with such party. “**Control**” means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

“**End User**”, “**You**” or “**Your**” mean the final purchasing entity as identified on the EUIF.

End User Information	
End User’s full legal name	Oakland Unified School District
Address of End User’s principal place of business	900 HIGH ST OAKLAND , CA , 94601 US

Participating Affiliates
Cisco requires any Participating Affiliate(s) for which you are purchasing coverage to be included in this End User Information Form. Cisco relies on this list to define the scope of the agreement, ensure accurate pricing, as well as effective provisioning and support.
Participating Affiliate(s)
<input checked="" type="checkbox"/> None <input type="checkbox"/> Only listed Participating Affiliates (to be recorded immediately below)
Participating Affiliates

Cisco Collaboration

Additional Defined Terms Used in This Section

“**Employees**” means full or part-time employees of You and Your Participating Affiliates.

“**Contractors**” means non-Employees who (i) work on Your or Your Participating Affiliates’ behalf, (ii) whose work is under Your or Your Participating Affiliates’ control or supervision pursuant to a consulting, staffing or other similar written contract, and (iii) have access to Your or Your Participating Affiliates’ systems or networks in the ordinary course of providing their services to You or Your Participating Affiliates.

“**Knowledge Workers**” means You and Your Participating Affiliates’ Employees and Contractors who utilize devices capable of running the Software, Cloud Services, or related browser plug-ins as part of their job duties.

Your Suite(s) purchased under the Flex Plan

Cisco requires customers purchasing Enterprise Agreement to complete and sign this End User Information form. You will have access to the Software and/or Services in the Suite(s) you purchase and which are identified on your EUIF.

- Meetings Enterprise Agreement
 Calling Enterprise Agreement

Knowledge Worker Count Worksheet



Cisco Flex Plan EA Offers	Value
Total quantity of Employees of the End User and Participating Affiliates	a. 3,200
+ Total quantity of Contractors of the End User and Participating Affiliates	b.
= Total Employees and Contractors (add a. and b.)	c. 3,200
Knowledge Worker count	d. 3,200

Cisco Collaboration Flex Plan Education EA only	Value
Total quantity of faculty/staff (Knowledge Workers) at educational institution	a.
Knowledge Worker faculty/staff count	b.
Total quantity of students at educational institution (expected to have access to Meetings) - These are not part of the Knowledge Worker count.	

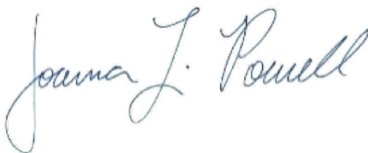
End User Information Form Acceptance

THE UNDERSIGNED REPRESENTS THAT THEY ARE AUTHORIZED TO SIGN THIS FORM ON THE END USER'S BEHALF AND THAT THE INFORMATION PROVIDED, INCLUDING METER COUNTS FOR THE END USER AND ITS PARTICIPATING AFFILIATES, IS ACCURATE AS OF THE DATE OF SIGNATURE. THE UNDERSIGNED UNDERSTANDS THAT THE APPROVED SOURCE RELIES UPON THE INFORMATION PROVIDED IN THIS FORM TO ESTABLISH THE PRICE QUOTE FOR THE END USER'S PURCHASE.

FOR FLEX PLAN EA: I HAVE READ THE ENTERPRISE AGREEMENT PROGRAM TERMS ("PROGRAM TERMS") INCLUDED BELOW, AND UNDERSTAND THAT IN THE EVENT OF AN EA PURCHASE, THESE PROGRAM TERMS APPLY TO THE SOFTWARE AND SERVICES AS DESCRIBED IN THE PROGRAM TERMS.

Full Legal Name of the End User Organization (e.g., company, government entity) You Represent	
Last Name, First Name 	
Title Jody London, President, Board of Education	
Date 12/10/2020	
End User Authorized Representative Signature	
 Kyla Johnson Trammell, Secretary, Board of Education 12/10/2020	

Approved as to form by OUSD Staff Attorney Joanna Powell on 11/19/2020.



Cisco Enterprise Agreement Program Terms and Conditions for End Users

These terms and conditions together with the applicable Enrollment Descriptions and EUIF (collectively, “**EA Program Terms**”) govern any Suites that You order under the Cisco Enterprise Agreement Program (“**Purchased Suites**”). The EA Program Terms do not modify the terms of any Cisco products or services You purchase outside of the Cisco Enterprise Agreement Program.

By signing these terms and conditions You agree to the EA Program Terms and the Licensing Documents. If You do not agree to the EA Program Terms or Licensing Documents, You may not Consume the Software or Cloud Services. Notwithstanding the foregoing, You are not obligated to make a purchase by entering into the EA Program Terms, and neither the EA Program Terms nor the Licensing Documents will apply until You place an order as further described in section 1, below.

1. **Orders.** To purchase Suites under the EA Program Terms, You must first submit the applicable EUIF and Enrollment Description signed by Your authorized representative to the Approved Source. The EUIF must list: (a) Your Participating Affiliates; (b) the Purchased Suites; (c) the Suite Term; and (d) accurate Meter counts for You and all Participating Affiliates. You will then be required to place an order for the Purchased Suites according to the process set forth in Your purchasing agreement with the Approved Source.
2. **Access To Purchased Suites.** Subject to Your payment of the applicable fees to the Approved Source, Cisco will grant You and all Participating Affiliates the right to Consume the Purchased Suites during the Suite Term via the EA Workspace or as otherwise set forth in the applicable Enrollment Description. You must pay for all Software and Cloud Services Consumed. You are responsible for keeping all login credentials to the EA Workspace secure and for the actions of any individual You or a Participating Affiliate authorize to access the EA Workspace, including payment for any Software or Cloud Services Consumed by such individuals.
3. **Enterprise-wide Commitment.** The Approved Source relies on the information You provide in the EUIF to establish the Enterprise-wide Commitment. During the Suite Term, Your payment obligation related to the Enterprise-wide Commitment may increase as a result of any of the following: (a) You exceed the Initial Growth Cap (as described in section 5); (b) You exceed the Initial Entitlement or the previous year’s Entitlement subject to a True Forward (as described in section 6); or (c) You purchase an additional Suite (as described in section 9).
4. **Term & Termination.**
 - a. **Term.** The Term of the EA Program Terms will commence on the date of signature below and continue so long as there is an active Purchased Suite, unless earlier terminated in accordance with section 4(c)(i), below.
 - b. **Suite Term.** The Suite Term for each Purchased Suite will commence on the Suite Start Date and last for the period set forth in the EUIF, unless terminated in accordance with section 4(c)(i), below.
 - c. **Termination.**
 - i. Either party may terminate the EA Program Terms or a Purchased Suite if the other party materially breaches the EA Program Terms and does not cure the breach within 30 days of written notice of the breach.

- ii. In the event of Your uncured material breach of the EA Program Terms for non-payment of fees to the Approved Source, Cisco may, in lieu of termination of the Program Terms pursuant to section 4(c)(i), suspend Your right to Consume the Software and Cloud Services in the Purchased Suite and suspend Your access to the EA Workspace, until Your breach has been cured.
 - iii. In the event of Your termination for Cisco's uncured material breach of the EA Program Terms, Cisco will refund to the Approved Source (or You, if You purchased directly from Cisco) any fees You paid covering the period after the effective date of termination.
 - iv. Other than as provided in this section 4 and to the extent permitted by law, the EA Program Terms and any orders placed thereunder are non-cancellable and may not be terminated.
- d. **Effect of Termination; End of Suite Term.** Upon termination or at the end of the Suite Term:
- i. The following rights will terminate with respect to the Purchased Suites: (1) Your right to Consume Cloud Services and Software; (2) Your right to access the EA Workspace; (3) Your right to receive Support Services; and
 - ii. You must destroy the product activation keys (PAKs) provided in connection with the Purchased Suites.
5. **Initial Growth Cap.** If You exceed the Initial Growth Cap during the first six months of the Suite Term, the Approved Source may charge You for such Consumption above the Initial Growth Cap. If the Purchased Suite includes a Growth Allowance (described in the applicable Enrollment Description), the Growth Allowance cannot be used to offset fees for exceeding the Initial Growth Cap.
6. **True Forward.**
- a. Cisco performs a True Forward for the Purchased Suites on each anniversary of the Suite Start Date. On the first anniversary of the Suite Start Date, if You have exceeded the Initial Entitlement, the Approved Source will charge You for the Consumption above the Initial Entitlement through the remainder of the Suite Term. On each subsequent anniversary of the Suite Start Date, the Approved Source will charge You for any Consumption above the previous year's Entitlement through the remainder of the Suite Term.
 - b. Your True Forward payment obligation for each Purchased Suite will be calculated by comparing Your Consumption of Software and Cloud Services to Your Entitlement for the previous year. Any payment owed to the Approved Source will be determined as follows and reflected in the price quote from the Approved source: the unit price less any applicable discount or incentive multiplied by the quantity by which You exceeded Your then-current Entitlement. The price used to calculate any True Forward fees will be established when You place the order for each Purchased Suite.
 - c. For some Suites, a portion of Your True Forward payment obligation may be offset by the residual value remaining in Software or Cloud Services in the same Suite. This process is called value shift, and the applicable Enrollment Description indicates whether and to the extent value shift applies to a given Suite.
 - d. There is no fee for exceeding the Entitlement in the final year of the Suite Term.
7. **Updates to Purchased Suites.** Cisco may enhance or refine the Purchased Suites at no additional cost to You. Such updates will not materially reduce the core functionality of the Purchased Suites.

8. **End of Life.** Notwithstanding anything in the EA Program Terms to the contrary, Cisco reserves the right to discontinue a Suite with at least three years' prior notice. If a Purchased Suite is discontinued, Cisco will either: (a) provide You a substantially similar replacement Suite for the remainder of the Suite Term; or (b) issue a credit to the Approved Source (or You, if You purchased directly from Cisco) for any fees You paid for the Purchased Suite covering the period after the last date such Purchased Suite is available for You to Consume. Such credit can be applied towards the future purchase of Cisco products and services.
9. **Purchasing Additional Suites.** You may purchase additional Suites by submitting a new EUIF and order to the Approved Source. Additional Suites may co-terminate with a pre-existing Purchased Suite provided there are at least 12 months remaining in the Suite Term of such pre-existing Purchased Suite. Otherwise, additional Purchased Suites will be given a new Suite Term and will be subject to the then-current EA Program Terms in accordance with section 10, below.
10. **Modifications.** As our business evolves, Cisco may modify the EA Program Terms. Updated EA Program Terms do not apply to pre-existing Purchased Suites or to future orders that co-terminate to a pre-existing Purchased Suite, which will be governed by the version of the EA Program Terms already in effect for the pre-existing Purchased Suite.
11. **Participating Affiliates.** You are responsible for Your Participating Affiliates' compliance with the EA Program Terms.
12. **Support Services.** Basic Support Services are included in the price of the Purchased Suite and described in the applicable Enrollment Description and Licensing Documents. Higher levels of Support Services may be available for You to purchase and, if You elect to do so, will be described in documentation provided to You at the time of purchase.
13. **Importation Fee for Embedded Software.** For Purchased Suites that include Embedded Software, the value of Embedded Software will be deducted from the purchase price of the related Cisco hardware. If You are required to pay an Importation Fee, Your jurisdiction may use the value of both the hardware and Embedded Software to calculate the Importation Fee. Accordingly, the Importation Fee on the value of the combined products may be higher than if calculated solely using the price of the hardware.
14. **Delivery of Embedded Software.** Embedded Software is delivered pre-installed on Cisco hardware to the address provided on the purchase order for the Cisco hardware. Your use of the smart licensing account Cisco designates for the Embedded Software will ensure accurate pricing of the Embedded Software.
15. **No Assignment & Transfer.** Neither the EA Program Terms, nor any right or obligation herein may be assigned or transferred by a party (including under Cisco's Software Transfer and Relicensing Policy) without the other party's prior written consent, which may not be unreasonably conditioned, withheld, or delayed. Any attempted assignment without the other party's consent shall be void and of no effect. Notwithstanding the foregoing, Cisco may assign the EA Program Terms and any right or obligation herein to a Cisco Affiliate without Your consent.
16. **Verification.** Upon reasonable request from Cisco, You will assist Cisco in verifying the quantity of Software and Cloud Services that You have Consumed. If the verification discloses Consumption above Your then-current Entitlement, the Approved Source will charge You for the excess Consumption in accordance with the EA Program Terms.

17. **Combined Discounts.** The pricing, discounts, and other incentives offered in connection with a Purchased Suite may not be combined with any other price reductions, discounts, promotional pricing, rebates, credits, trade-in, or other pricing programs or incentives offered by Cisco unless expressly agreed by Cisco in writing.
18. **Entire Agreement.** The EA Program Terms constitute the entire agreement between the parties concerning the Cisco Enterprise Agreement Program and supersede all prior oral or written communications between the parties concerning the program.
19. **Order of Precedence.** The documents comprising the EA Program Terms are complimentary, and to the extent possible, construed and interpreted consistently. In the event of an inconsistency, conflict, or ambiguity between the EA Program Terms, the order of precedence for any Purchased Suite is first the EUIF, then the Enrollment Description, and then these terms and conditions. The EA Program Terms take precedent over the applicable Licensing Documents.
20. **Definitions.**
- a. **"Affiliate"** means, with respect to a party, any entity that directly or indirectly Controls, or is Controlled by, or is under common Control with such party. **"Control"** means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).
 - b. **"Approved Source"** means Cisco or a Cisco authorized reseller, distributor, or systems integrator.
 - c. **"Cisco"** means Cisco Systems, Inc. or its applicable Affiliate delivering the EA Program Terms.
 - d. **"Cloud Service"** means the Cisco hosted software-as-a-service listed in the applicable Enrollment Description.
 - e. **"Consume"** or **"Consumption"** means to download, install, activate, provision, enable, or otherwise access Software or Cloud Services.
 - f. **"EA Program"** has the meaning given to it in the introductory paragraph.
 - g. **"EA Program Terms"** has the meaning given to it in the introductory paragraph.
 - h. **"EA Workspace"** means the portal from where You Consume Software and Cloud Services and view and manage Your Entitlement.
 - i. **"Embedded Software"** means Software that is delivered on newly purchased Cisco hardware.
 - j. **"End User," "You,"** or **"Your"** means the final purchasing entity as identified on the EUIF.
 - k. **"Enterprise-wide Commitment"** means Your purchase commitment in the Purchased Suite for You and all Participating Affiliates, as reflected on the EUIF.
 - l. **"Entitlement"** means, at any point in time during the Suite Term, the type and quantity of Software and Services as determined by the Meter counts for which You have already paid the applicable fees to the Approved Source.
 - m. **"Enrollment"** means a combination of Suites belonging to the same Cisco product family. Cisco DNA, Cisco Data Center, Cisco Security Choice, Cisco Meraki, and Cisco Collaboration Flex Plan each represent an Enrollment.

- n. **“Enrollment Description”** means the supplemental program terms and description governing an Enrollment.
- o. **“EUIF”** means the End User Information Form for the Purchased Suite.
- p. **“EULA”** mean’s Cisco End User License Agreement, available at cisco.com/go/eula.
- q. **“Growth Allowance”** means the right to exceed the Initial Entitlement without incurring additional fees as set forth in the applicable Enrollment Description.
- r. **“Importation Fee”** means an import duty or tax on the purchase of Cisco hardware.
- s. **“Initial Entitlement”** means Your Entitlement at the start of the Suite Term as determined by the Meter counts for You and all Participating Affiliates provided on the EUIF.
- t. **“Initial Growth Cap”** means 105% of the Initial Entitlement.
- u. **“Licensing Documents”** means the EULA and SEULAs for the Software and the EULA and ODs for the Cloud Services in the Purchased Suites (or similar terms existing between You and Cisco). The applicable Licensing Documents are listed in the Enrollment Description for each Purchased Suite.
- v. **“Meter”** means the unit of measurement for Software or Cloud Services Consumption.
- w. **“OD”** means the offer description and supplemental licensing terms governing Cloud Services.
- x. **“Participating Affiliates”** means Your Affiliates whose Meter counts are included on the EUIF.
- y. **“Purchased Suites”** has the meaning given to it in the introductory paragraph.
- z. **“Services”** means both Cloud Services and Support Services.
- aa. **“SEULA”** means the supplemental licensing terms governing Software.
- bb. **“Software”** means the Cisco software listed in the applicable Enrollment Description.
- cc. **“Suite”** means a combination of Software and Services in an Enrollment.
- dd. **“Suite Start Date”** means, with respect to each Purchased Suite, the earliest date any Software or Cloud Service in the Purchased Suite is made available for You to Consume.
- ee. **“Suite Term”** means, with respect to each Purchased Suite, the duration of the Purchased Suite.
- ff. **“Support Services”** means maintenance, technical assistance, or other support provided for the Software and Cloud Services in a Purchased Suite.
- gg. **“Term”** means the duration of the EA Program Terms.
- hh. **“True Forward”** means an annual adjustment to account for exceeding the previous year’s Entitlement.

Cisco Collaboration Flex Plan Enrollment Description & Supplemental EA Program Terms

This Enrollment Description lists the available Suites and additional terms and conditions that apply to the Cisco Collaboration Flex Plan Enrollment. You may purchase any or all of the Suites available under the Cisco Collaboration Flex Plan Enrollment, but the collection of Software and Cloud Services that comprise a Suite may not be modified.

Suite	Included Licenses	License Type	Licensing Documents	Meter
Cisco Collaboration Flex Plan Meetings Enterprise Agreement	Cisco Meeting Server	Software	Cisco Collaboration Flex Plan OD; EULA	Deployed Knowledge Worker
	Cisco Webex Meetings	Cloud Service		
	Cisco Webex Teams	Cloud Service		

Suite	Included Licenses	License Type	Licensing Documents	Meter
Cisco Collaboration Flex Plan Calling Enterprise Agreement	Cisco Webex Teams	Cloud Service	Cisco Collaboration Flex Plan OD; EULA	Deployed Knowledge Worker
	Cisco Webex Calling; or Cisco Webex Calling for SP; or Cisco Webex Calling (formerly Cisco Spark Call)	Cloud Service		
	UCM Cloud Calling	Cloud Service		
	Partner-Hosted Unified Communications Calling	Software		
	On-Premises Unified Communications Manager Calling	Software		

Suite	Included Licenses	License Type	Licensing Documents	Meter
Cisco Collaboration Flex Plan for Education Meetings Enterprise Agreement	Cisco Meeting Server	Software	Cisco Collaboration Flex Plan OD; EULA	Deployed Knowledge Worker; Student
	Cisco Webex Meetings	Cloud Service		
	Cisco Webex Teams	Cloud Service		

Suite	Included Licenses	License Type	Licensing Documents	Meter
Cisco Collaboration Flex Plan for Education Calling Enterprise Agreement	Cisco Webex Calling (formerly Cisco Spark Call)	Cloud Service	Cisco Collaboration Flex Plan OD; EULA	Deployed Knowledge Worker
	On-Premises Unified Communications Manager Calling	Software		

Suite	Included Licenses	License Type	Licensing Documents	Meter
Cisco Collaboration Flex Plan Enterprise Agreement for Public Sector	Cisco FedRAMP Webex Meetings	Cloud Service	Cisco Collaboration Flex Plan OD; EULA	Deployed Knowledge Worker
	Unified Communications Manager Cloud for Government	Cloud Service		

Supplemental Terms and Conditions

Applicable Meters

The Meter for the Cisco Collaboration Flex Plan Enrollment is the number of Deployed Knowledge Workers.

“**Deployed Knowledge Worker**” means a Knowledge Worker who has a profile configured within the Software or Cloud Service provisioning platform and associates that profile with the applicable desk phone, Jabber client, Webex Teams client, mobile phone, video device, or personal computing device. You must assign each Knowledge Worker a cloud, on-premises, or hosted account to be treated as a single Deployed Knowledge Worker. A Knowledge Worker who is assigned more than one configuration (cloud, on-premises, or hosted) will be counted as multiple Deployed Knowledge Workers. If at any time during the Term You change a Deployed Knowledge Worker’s deployment type, You may be required to pay additional applicable fees immediately upon such change. “**Knowledge Worker**” means an employee or contractor who utilizes devices capable of running the Software, Cloud Services, or related browser plug-ins as part of their job duties.

If You purchase the Cisco Collaboration Flex Plan for Education Meetings Enterprise Agreement Suite, Your Students may Consume the Purchased Suite free of charge. “**Student**” means an individual who is currently enrolled or registered at Your institution for academic study on a full- or part-time basis. Employees, contractors, alumni, former students, prospective students, and students on an extended leave or indefinite absence are not considered Students. You will be required to provide a Student count on the EUIF. Thirty days prior to the True Forward event, you or your Reseller must update your order to reflect the number of Students provisioned at that time, which will be used to determine if you have exceeded your Growth Allowance. Failure to update your subscription will result in the additional Students being counted as Deployed Knowledge Workers for purposes of the True Forward.

Access to Purchased Suites

The Cisco Collaboration Flex Plan Enrollment does not utilize the EA Workspace. Subject to Your payment of the applicable fees to the Approved Source, Cisco will grant You and all Participating Affiliates access to the Purchased Suites via automated integrated electronic delivery tools and email notification to the point of contact designated in the order.

Purchasing Additional Suites

During the Suite Term, You may add another Cisco Collaboration Flex Plan Suite without submitting a new EUIF.

Common Area Licenses

Common area licenses are calling licenses not associated with Knowledge Workers that are intended to be used in lobbies, conference rooms, and other public spaces. If Your Consumption of common area licenses exceeds 50% of Your then-current Deployed Knowledge Worker count, the Approved Source may charge You for such excess Consumption.

Term and Termination

At the end of the Suite Term, the Purchased Suite will automatically renew for one year (a “**Renewal Suite Term**”) unless: (a) You elect on the order not to auto-renew; or (b) at least 30 days before the end of then-current Suite Term, You notify the Approved Source of Your intention not to renew the Purchased Suite. If the Growth Allowance has not been exceeded, the Purchased Suite will renew for the Knowledge Worker count on the EUIF. If the Growth Allowance has been exceeded, the Purchased Suite will renew for the Deployed Knowledge Worker count at the end of the then-current Suite Term.

Notwithstanding the foregoing, the Approved Source will notify You of any fee changes reasonably in advance of the Renewal Term. The new fees will apply for the upcoming Renewal Term unless You notify the Approved Source that You do not accept the fee changes before the next Suite Start Date.

Growth Allowance

The Growth Allowance for the Cisco Collaboration Flex Plan Enrollment is 20%. During the Suite Term, You may Consume up to 120% of the Initial Entitlement without incurring any additional charges. The True Forward is calculated once You exceed the Growth Allowance. For clarity, if You exceed the Initial Entitlement but do not exceed the Growth Allowance, You will not incur any True Forward charges.

Support Services

The basic Support Services are set forth in the Cisco Collaboration Flex Plan OD.



CDW Customer Service Order Form

Cisco Services

Seller: CDW Direct, LLC		
Seller Address: 200 N. Milwaukee Avenue, Vernon Hills, IL 60061		
Customer: OAKLAND UNIFIED SCHOOL DISTRICT		
Subscription Term Start Date: Align with Cisco Start Date		
Subscription Term: 60.00 months *	Subscription Payment: Full-term Prepay	Auto Renew: No

Cloud Services Description	Unit Quantity	Prepaid Unit Fee	UOM	Prepaid Total Services Fee	Initial Subscription Term Total Service Fee
EntW On-Premises Calling	3200	\$ 202.80	Each	\$ 648,960.00	\$ 648,960.00
Total Service Fees		\$ 202.80		\$ 648,960.00	\$ 648,960.00

Initial Subscription Term Total : \$ 648,960.00 □

Terms:

- TERMS AND CONDITIONS** - Customer's obligations under this Customer Service Order Form, including its payment obligations are subject to the current Third Party Cloud Services Terms and Conditions on Seller's website at [Third Party Cloud Services Terms and Conditions](#) unless Customer has entered into a written agreement with Seller covering Customer's purchase of products and services from Seller ("Existing Customer Agreement"), in which case Customer's obligations shall be subject to the terms of such Existing Customer Agreement.
- PAYMENT** – Customer will pay all Fees (as defined herein) for the use of the Cloud Services as set forth in Seller's invoice, within 30 days after the date of the invoice, or in accordance with such other payment terms that may have been negotiated between Customer and Seller. In addition to the Service Fee, for the Cloud Services, Customer will also be responsible for all additional fees for any subscription renewals and extensions, metered usage components consumed by Customer, including any overage fees, audio fees, and other subscriptions, features, products, services, or add-ons that Customer uses within the Cloud Services. Seller will invoice Customer in advance for the monthly or prepaid charges due for the Cloud Services purchased. Seller will invoice Customer in arrears for any metered usage or overage components (e.g., capacity overages, third party content, etc.). The Service Fee for the Cloud Services and all additional fees due hereunder are collectively referred to as "Fees".
- ADD-ON ORDERS** - Any orders submitted by Customer to Seller for Cisco Cloud Services over the next twelve (12) months (the "Add-On Order(s)") will be governed by the terms and conditions of this Customer Service Order Form. All Add-On Order(s) must include the name of the applicable Cisco Cloud Service, the Licensed Unit Quantity and the corresponding Licensed Unit Fee. The Initial Subscription Term for any Add-On Order(s) will commence on the date Seller provisions the new Cisco Cloud Services on behalf of Customer and will coterminate with the initial Licensed Units.
- NON-CANCELLABLE/NON-REFUNDABLE** - The Cloud Services purchased under this Customer Service Order Form are non-cancellable and all Fees paid to Seller are non-refundable.

5. **SERVICE SUSPENSION** – In addition to any other rights Seller may have, Seller may suspend or terminate the Cloud Services if Customer fails to pay any Fees within ten (10) business days after the applicable due date.

BY SIGNING BELOW, Customer acknowledges and agrees that it is receiving the Cloud Services directly from either Cisco Systems, Inc. or its applicable Affiliate (including, but not limited to, Cisco WebEx LLC) (“Cisco”) pursuant to the Cisco Universal Cloud Terms, which can be found at https://www.cisco.com/c/dam/en_us/about/doing_business/legal/docs/universal-cloud-terms.pdf, and the applicable Offer Description(s) located at <http://www.cisco.com/go/terms> (“Terms of Service”). Customer further acknowledges: (1) that it has agreed to the applicable Terms of Service, and (2) that Cisco and not Seller will be responsible for performance of the Cloud Services.

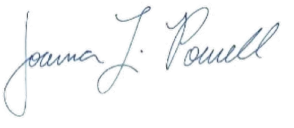
CUSTOMER AUTHORIZED REPRESENTATIVE

Signature: 

Name: Jody London, President, Board of Education  Kyla Johnson-Trammell, Secretary, Board of Education

Title: December 10, 2020 December 10, 2020

Date: -----

Approved as to form by OUSD Staff Attorney Joanna Powell on 11/19/2020. 

Board Office Use: Legislative File Info.	
File ID Number	20-1290
Introduction Date	June 24, 2020
Enactment Number	20-0978
Enactment Date	6/24/2020 If



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Lisa Grant-Dawson, Chief Business Officer
Kimberly Raney, Executive Director

Board Meeting Date June 24, 2020

Subject Utilization of Monterey County Office of Education (MCOE)/CalSAVE Bid No. 530067 Technology Catalog Bid 2019 awarded to CDW-Government LLC

Action Requested and Recommendation **Approval** by the Board finding that it is in the best interest of the District to utilize the Monterey County Office of Education (MCOE)/CalSAVE Bid No. 530067 Technology Catalog Bid 2019 awarded to CDW-Government LLC, with an expiration of December 31, 2022, for Computer Supplies.

Board approval of the CalSAVE Stretch Agreement between Oakland Unified School District and CDW-Government LLC to utilize the Monterey County Office of Education (MCOE)/CalSAVE Bid No. 530067 Technology Catalog Bid 2019 for Computer Supplies, effective June 24, 2019 through December 31, 2022.

Background

(Why do we need these services? Why have you selected this vendor?)

Public Contract Code section 20118 authorizes districts to lease data processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, or other personal property without advertising for bids by utilizing another public agency's contract. This is commonly referred to as "piggybacking." In order to utilize this process, the original bidding agency's bid must contain a provision authorizing piggybacking. In addition, the governing board of the district desiring to use the bid must determine that it is in the best interest of the district to enter into the contract, lease, requisition, or purchase order for the personal property based upon a "piggybacking" process.

The Monterey County Office of Education (MCOE) in conjunction with CalSAVE cooperative purchasing program, publicly advertised Bid No. 530067 Technology Catalog Bid 2019, and awarded a contract to CDW-Government LLC, with an expiration of December 31, 2022, with a possible one-year extension. The bid is piggybackable. It is a cost and time savings to the district to utilize piggybackable bids when available and appropriate, rather than issuing bids directly. OUSD has a history of successful use of the CDW-Government LLC customized OUSD online catalogue and utilizing this contract will provide seamless continued use and reduced training timelines.

Competitively Bid Was this contract competitively bid? Yes
If no, exception:



Fiscal Impact	Funding resource(s): Funds budgeted in various accounts district-wide - \$1,110,000 estimated annual expenditures.
Attachments	<ul style="list-style-type: none">• CalSA VE CDWG-Tech-bid-docs-2019-1.pdf• CA K12 Oakland USD CalSA VE Stretch• CDW-G Extension of Agreememnt.pdf

CalSAVE Stretch Agreement

CalSAVE Stretch Agreement between CDW Government LLC and Oakland Unified School District
(CalSAVE Technology Contract # 530067 with effective date 1/1/2020 executed by parties Monterey County
Office of Education and CDW Government, LLC) ("CalSAVE Contract")

This agreement ("Agreement") entered into on June 20, 2020 (Effective Date) by and between CDW Government LLC (CDW-G or Seller) located at 230 N. Milwaukee Ave, Vernon Hills, IL 60061 and Oakland Unified School District having place of business at 1000 Broadway, Oakland, CA 94607.

The Agreement is as follows:

1. Term. The term of the Agreement shall commence as of the Effective Date and continue in full force and effect until December 31, 2022, or the end date of CalSAVE Contract and any future extensions, whichever comes later. Either party may terminate this Agreement without cause upon thirty (30) days prior written notice. Either party may terminate this Agreement for cause if the other party fails to cure a material default in the time period specified herein. Any material default must be specifically identified in a written notice of termination. After written notice, the notified party will have thirty (30) days to remedy its performance, except that it will only have ten (10) days to remedy any monetary default. Failure to remedy any material default within the applicable time period provided for herein will give cause for immediate termination, unless such default is incapable of being cured within the time period in which case the defaulting party will not be in breach (except for Eligible Purchasers' payment obligations) if it used its reasonable efforts to cure the default.

2. Eligible Customer. Oakland Unified School District is eligible to use this Agreement.

3. Pricing Program. For clarification, CDW-G will report sales under this agreement to Monterey County Office of Education under the CalSAVE Contract. Pricing shall be in accordance with that CalSAVE Contract.

5. Balance of Terms. Other than the items specifically contemplated herein, the balance of the terms of sale shall be consistent with the CalSAVE Contract.

In WITNESS WHEREOF, the parties have executed and delivered this Agreement as a document under seal as of the Effective Date.

CDW Government LLC

By: 
(Authorized signature)

Anup Sreedharan

Printed Name

Title: Manager, Program Management

Date: 6/15/2020

Oakland Unified School District

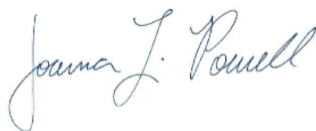
By: 
Jody London, President, Board of Education 6/25/2020
(Authorized Signature)

Printed Name


Title: Kyla Johnson Trammell, Secretary, Board of Education 6/25/2020

Date: _____

Approved as to form by OUSD Staff Attorney Joanna Powell on 5/22/2020.



ATTACHMENT 1

Piggyback Contract Between Vendor and Monterey County Office of

Education [ATTACHED]

MONTEREY COUNTY OFFICE OF EDUCATION
Technology Catalog Bid 2019

530067

Proof of Publication

(2015.5 C.C.P.)

Salinas Newspapers, Inc.
1093 S Main ST STE 101
Salinas CA 93901
831-424-2222/Fax: 831-754-7156

State Of California ss:
County of Monterey

EPYLON CORP
630 SAN RAMON VALLEY BLVD STE 210

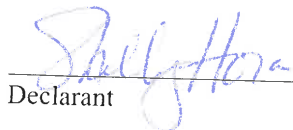
DANVILLE CA 94526

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I hereby certify that the attached advertisement appeared in said newspaper on the following dates:

Newspaper: **The Salinas Californian**
10/25/19, 11/01/19

I acknowledge that I am a principal clerk of the printer of said paper, which is published in the City of Salinas, County of Monterey, State of California. The Salinas Californian is printed and published daily, except Sunday and has been adjudged a newspaper of general circulation by the Superior Court of the County of Monterey, State of California. El Sol is printed and published weekly on Saturday and has been adjudged a newspaper of general circulation by the Superior Court of Monterey, State of California.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on this
1st of November 2019.


Declarant

Ad#:0003858377
P O :
of Affidavits :0.00

This is not an invoice

MONTEREY COUNTY OFFICE OF EDUCATION
Invitation to Bid # 530067
Technology Catalog Bid
Deadline, 3:00 p.m. Tuesday, November 19, 2019

Notice is hereby given that the Superintendent of Schools of the Monterey County Office of Education, hereinafter referred to as MCOE, will receive up to, but no later than 3 p.m. Friday, Tuesday, November 19, 2019, sealed bids for the award of a contract for a Technology Catalog bid.

The Monterey County Office of Education is seeking bids for use of a comprehensive technology catalog for one-stop shopping by the Monterey County Office of Education and other eligible California agencies. MCOE is cooperating with CalSave, a cooperative purchasing program, and intends that items authorized under this bid and contract be piggybackable for purchase by other agencies throughout California and that items under contract be part of a Standard School Supply and Equipment List as described in bid documents.

Bids will be submitted electronically. Interested suppliers must register at www.epylon.com, if not already a member of the Epylon supplier network, to obtain bid documents and submit bids. There is no fee to register or to bid using the Epylon bid system. Each bid must conform and be responsive to the bid documents.

Electronic bids shall be opened and read publicly at 3 p.m. Tuesday, November 19, as described in bid documents. MCOE reserves the right to reject all bids, and/or to waive any irregularity in a bid.

Bidders may not withdraw their bids for a period of ninety (90) days after the date set for opening of bids.

Garry P. Bousum
Associate Superintendent
Administration and Business Services
Monterey County Office of Education

Oct 25, Nov 1, 2019 (3858377)

CONTRACT SIGNATURE PAGE

**MONTEREY COUNTY OFFICE OF EDUCATION
Invitation to Bid # 530067**

Technology Catalog Bid

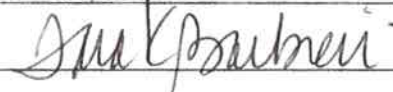
1. Pursuant to and in compliance with Invitation for Bid #530067, its Terms and Conditions, and the other documents relating thereto, the undersigned Bidder, having familiarized himself with the terms of the bid and the conditions affecting the performance of the bid, hereby proposes and agrees to perform, within the time stipulated, everything required by this agreement at the service levels offered and at the discounts or mark-ups offered and any resulting effective prices herein set forth.
2. Awarded Vendor agrees to comply with the Monterey County Office of Education Terms and Conditions as written in the Invitation to Bid #530067.
4. Bidder certifies, by affixing his/her signature below, that all of the products being offered or to be offered under this bid solicitation are legally valid licenses and products free of any copyright violation and that all items offered are in full compliance with specifications and Terms and Conditions of the Invitation to Bid and applicable California law.
5. It is understood that the Monterey County Office of Education reserves the right to reject this bid as specified in the Invitation to Bid and that the bid shall remain open and not be withdrawn for a period of ninety (90) days.
6. By signing below and if countersigned by MCOE, Bidder enters into an agreement with Monterey County Office of Education, obligating his/her company to this Contract and all Terms and Conditions of Invitation to Bid #530067.

Bidder

CDW Government LLC

230 N. Milwaukee Ave.

Vernon Hills, IL 60061

By: 

Name: Tara K. Barbieri

Title: VP Services Orchestration

Date: 11/15/2019

MCOE

Monterey County Office of Education

901 Blanco Circle

Salinas, California 95912-0851

By: 

Name: _____

Title: _____

Date: 12-10-19

*For Dr. Deneen Guss
County Superintendent of Schools*



MONTEREY COUNTY OFFICE OF EDUCATION

Invitation to Bid # 530067 Technology Catalog Bid

Deadline, Tuesday, November 19, 2019, 3 p.m.

I. Bid Overview & Authorities

I.1 BID TITLE

Technology Catalog Bid

I.2 BID NUMBER

Invitation to Bid Number 530067

I.3 ORGANIZATION OF BID TERMS AND CONDITIONS

Section and paragraph headings are provided for description and ease of reference only. They are not intended to be binding or to be used in the interpretation of the Contract. Any hyperlinks shown will carry the reader to related material. This bid is organized under the following topical areas:

- I. [Bid Overview & Authorities](#)
- II. [Definitions](#)
- III. [Bidder Status & Qualifications](#)
- IV. [Bid Procedures and Instructions](#)
- V. [Specifications](#)
- VI. [Pricing](#)
- VII. [Ordering, Shipping and Delivery](#)
- VIII. [Evaluation and Awards](#)
- IX. [Fees](#)
- X. [Post-Award Requirements](#)
- XI. [Contract Length & Termination Rights](#)
- XII. [Other Terms and Conditions](#)
- XIII. [Code Citations](#)

I.4 BID SCOPE

The Monterey County Office of Education is seeking bids for use of a comprehensive technology catalog for one-stop shopping by the Monterey County Office of Education and other eligible agencies in California or elsewhere as allowed by law. The right to purchase from the Contract will be made available to all public school districts, K-12 private schools, charter schools, colleges, universities, municipalities, and other public agencies as allowed by law.

I.5 AGENCY ISSUING INVITATION FOR BID AND THE RESULTING CONTRACT

Monterey County Office of Education
Superintendent of Schools
901 Blanco Circle
P.O. Box 8081
Salinas, California 93912-0851

I.6 CALSAVE PROGRAM

The Monterey County Office of Education is issuing this bid in cooperation with the CalSave program, the purchasing cooperative founded by the Monterey County Office of Education and administered by the Epylon Corporation. CalSave serves all education agencies in California and other eligible buying agencies.

I.7 BID DUE DATE

The bid response is due no later than 3 p.m. Pacific, Tuesday, November 19, 2019.

I.8 METHOD OF SUBMISSION

As authorized by [Public Contract Code Section 20112](#), bids will be submitted electronically, and all responses **must be** completed through the electronic sealed bidding system described within these bid documents.

I.9 CONTRACT TERM OF DURATION

The length of term of the awarded Contract will be from the award date, through December 31, 2022, and may be extended as allowed by law in accordance with [Sections XI.2](#) of these Terms and Conditions.

I.10 ELIGIBLE BUYING AGENCIES

This bid is being solicited for authorized buyers by the Monterey County Office of Education, lead agency under the authority of the California Public Contracts Code and Education Code, for school districts in California, as well as other eligible purchasers in other states, to be known collectively as LEAs.

Examples of eligible agencies include, not only all California County Offices of Education and California public school districts, but also California joint powers authorities related to education, cities and counties, special districts, charter schools, non-public schools, private schools, agency staff, foundations and parent-teacher organizations buying on behalf of their beneficiaries, and any new schools, school districts, or charter schools established during the term of the Contract.

To be absolutely clear and for further clarification, the electronic bid form contains an attachment partially listing as eligible buyers the specific and individual names of:

- Public school districts and education agencies
- Charter schools
- County Offices of Education
- Community Colleges

In states outside of California, other public agencies may use the contract, with permission of the Awarded Vendor, under the authority of [Government Code 6500 and 6502](#).

I.11 PIGGYBACKABLE CLAUSE

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

In any jurisdiction, where a County Office of Education, board, or other authority prohibits payments directly to a vendor, an LEA may petition the Monterey County Office of Education for special ordering and payment arrangements through the Monterey County Office of Education or its agents. In these unique cases, the Monterey County Office of Education reserves the right to charge an administrative fee to the LEAs to offset banking and administrative costs for this service.

I.12 STANDARD SCHOOL SUPPLY & EQUIPMENT LIST AND COOPERATIVES

Monterey County Office of Education declares that items and licenses under Contract as a result of this Invitation to Bid will qualify as items to be included within its Standard School Supply and Equipment List. Because many County Offices of Education have banded together to create both a Standard School Supply & Equipment List and cooperative contracts, the items solicited and awarded through this bid may also constitute a portion of an official Standard School Supply and Equipment List for other participating County Offices of Education and County Superintendents of Schools. Purchases by other County Offices of Education and LEAs may be made, not only in accordance with Public Contracts Code [20118](#) and [20652](#),

but also in accordance with Education Code [38110](#) and [38112](#) dealing with cooperatives and Standard School Supplies & Equipment.

I.13 LEASE-BACK AUTHORITY ALLOWED BY LAW

This Contract is for the purchase of the items covered by this Contract. However, another LEA may, exercise

its authority under Education Code section [17597](#) or [81645](#) or other legal authority to sell and lease back any item owned by, or to be owned by it, pursuant to any Separate Contract. The awarded Vendor agrees to take any and all actions requested by any Other Agency that are necessary to effect any such transfer, by way of example only, accepting payment under the Separate Contract from any third party to whom any such transfer is made.

1.14. LEASING AUTHORITY

With Vendor approval, the right to use a product in the catalog for a defined period of time or a lease of a contracted item may be procured under this contract at bid rates.

II. Definitions

[\[Click to Go Back to Beginning of Document\]](#)

II.1 MONTEREY COUNTY OFFICE OF EDUCATION

The terms “*Monterey County Office of Education*” and “*MCOE*” as used in this bid document shall be construed to include the Monterey County Office of Education, its employees, officers, and agents. The Monterey County Office of Education, located at 901 Blanco Circle, Salinas California, 93912, is administered by the elected county Superintendent of Schools and is a *bona fide* government agency, established by Article IX of the California Constitution and serving as an educational intermediate unit that operates its own schools and programs and that offers services to school districts.

II.2 AGENCY

The term “*Agency*” shall be construed to include the Monterey County Office of Education, its employees, officers, and agents.

II.3 CALSAVE

CalSave is the cooperative purchasing program founded by the Monterey County Office of Education and administered by the Epylon Corporation.

II.4 LEA

The term “*LEAs*” shall be construed to mean Local Education Agencies – all those agencies authorized by law to buy from this bid and resulting Contract and allowed to submit purchase orders to the Awarded Vendor in conformance with bid terms and conditions.

II.5 EPYLON CORPORATION®

Epylon Corporation, also referred to as “*Epylon*,” is the private corporation located at 630 San Ramon Valley Boulevard, Suite 210, Danville, California, 94526, that has been hired by the Monterey County Office of Education to administer the CalSave cooperative, to work with lead agencies and County Offices of Education to provide technology and services necessary for MCOE to issue bids and run the CalSave cooperative. The name *Epylon* is a registered trademark of the Epylon Corporation in the United States.

II.6 VENDOR

The term “*Vendor*” is that firm, company, individual, business, partnership, joint venture corporation or other bidding entity which has completed the response to the Invitation to Bid and/or been awarded a Contract by the Agency. The contractor/Bidder is named as such in the Contract/bid documents and is referred to in generic terms as if the contractor/Bidder were of singular number and masculine or feminine gender.

II.7 BIDDER

The term “*Bidder*” refers to that firm, company, individual, business, partnership, joint venture, corporation or other bidding entity which has registered on the Epylon® system to receive bids and has worked on or completed the response to the Invitation to Bid.

II.8

II.9 QUOTE SHEET

The “*Quote Sheet*” is that electronic worksheet to be filled out by the Bidder with the official bid discount(s) percentage necessary to calculate the effective price for all items under Contract. It is located in a worksheet tab in an Excel® spreadsheet file identified elsewhere as “SKU Template” or “MCOE Catalog Template.”

II.10 BID REPOSE WORKSHEET

The “*Bid Response Worksheet*” is that worksheet that is to be filled out by the Bidder with line-items reflecting a large sampling of the effective prices after a bid discount is applied. It is located in a worksheet tab in an Excel® spreadsheet file identified as “SKU Template” or “MCOE Catalog Template.”

II.11 CONTRACT

References to the term “*Contract*,” where not precisely referencing another specific third-party agreement, refers to the binding agreement entered into between MCOE and the Awarded Vendor as a result of a bid award by MCOE. The full “Contract” document consists of the Contract Signature Page, this Invitation to Bid, a Vendor’s electronic bid responses, any published bid amendments, any extension agreements, all electronic bid attachments, and subsequent any memoranda of understanding interpreting or clarifying the Contract.

II.12 AWARD DATE

The award date is the date upon which MCOE countersigns the Contract Signature Page and enters into an agreement with the successful bidder, granting authority to sell under the award from this solicitation.

III. BIDDER STATUS AND QUALIFICATIONS

[\[Click to Go Back to Beginning of Document\]](#)

III.1 ANSWERING QUESTIONS ON THE BID FORM

By answering questions in the Questions Section of the electronic bid form, Bidders help establish their qualifications as a vendor. In answering the questions, they must give satisfactory evidence that they:

- Maintain permanent places of business
- Have the capability to furnish the items offered satisfactorily and expeditiously
- Have provided satisfactory school customer sales support and service to all LEAs in California
- Have at least five years’ experience serving all LEAs in California
- Have current relationships with LEAs for verification of customer satisfaction
- Can demonstrate an active network or other acceptable method of service and support that will serve all LEAs.

If a question within the bid form indicates that a response is mandatory, an answer must be provided, or else a Bidder cannot continue to save or submit the electronic bid form.

III.2 COMPANY EXPERIENCE

To qualify as a responsive Vendor, a Bidding company must have five years’ direct K-12 public school experience in California executing other technology contracts.

III.3 STAFF EXPERIENCE

Bidder must identify at least one person on staff who will be the dedicated leader in administering this bid and Contract. The identified person must have experience administering a technology catalog bid.

III.4 PROOF OF PROGRAM VOLUME

Because of the difficulty and volume of work associated with the large potential volume of this contract, Bidders, to qualify as a responsible Vendor, must have experience selling a minimum of \$5 million of product in California within the last 12 months from a technology catalog bidcontract.

III.5 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to submit more than one response to this Invitation for Bids. A person, firm, or corporation may submit a sub-proposal to another Bidder and/or Bidders and also submit a bid in the name of his firm.

Companies who have multiple users on the Epylon system may receive multiple invitations to bid and have access to the same bid form. Only one representative from the bidding company may submit a bid. Any Epylon user that opens the Monterey County Office of Education bid form, declines the bid, or submits a bid, thereby prevents any other user from that same company from taking further action on this bid for his or her company.

III.6 DECLARATION OF NON-COLLUSION

Assuring that prices are arrived at independently and without collusion is so important that this bid requires the Bidder to attest under the penalty of perjury that no collusion has taken place.

The Bidder must affirmatively answer “Yes” to the non-collusion question in the Question Section or else by default the bid may not be submitted to Agency. By answering “Yes” to the non-collusion question, the Bidder affirms the following:

- (1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.
- (2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- (4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- (5) Neither he/she, the company, nor any of the company's affiliates, subsidiaries, officers, directors and employees are currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- (6) All representations are material and important and will be relied on by the Monterey County Office of Education in awarding the Contract(s) for which this bid is submitted.
- (7) Any misstatement is and shall be treated as fraudulent concealment from Monterey County Office of Education of the true facts relating to the submission of bids for this Contract.

If a Bidder cannot answer yes to Question 47, he/she will not be able to complete the bid form and will not be able to submit a bid.

III.7 SUSPENSION AND DEBARMENT

The Bidder certifies, for itself and all its designated partners, that neither the Bidder, nor any designated partners are under suspension or debarment by the LEA or any other governmental entity, instrumentality, or authority and, if the Bidder cannot so certify, then it agrees to submit a written explanation as an attachment to this bid form of why such certification cannot be made. A Bidder must verify its suspension or debarment status in the Question Section of the bid form.

III.8 ABILITY TO FOLLOW DIRECTIONS

The Bidder's ability to follow the bid preparation instructions set forth in this solicitation will also be considered to be an indicator of the Bidder's ability to follow instructions should they receive an award as a result of this solicitation. Any contract between the Agency and a vendor requires the delivery of information and data. The quality of organization and writing reflected in the proposal will be considered to be an indication of the quality of organization and writing which would be prevalent if a contract was awarded. As a result, a bid may be rejected if directions are not followed.

III.9 HISTORICALLY UNDER-UTILIZED BUSINESSES (HUBS)

Some eligible LEAs may have policies, programs or goals related to contracts with businesses owned by minorities, women or disabled veterans. Although the bid will not be evaluated on whether a Bidder is a historically under utilized business, Agency can make other LEAs aware of a Vendor's HUB status. Accordingly, the Agency requests any women-owned, minority-owned or disabled-veteran-owned business to volunteer their status as such so that it can be made known to interested LEAs. A HUB may identify itself in its answers in the Question Section. No preference is given in bid evaluation to HUBs, and no penalty is applied for not answering the question.

IV. Bid Procedures and Instructions

[\[Click to Go Back to Beginning of Document\]](#)

IV.1. BID DUE DATE

The bid is due no later than 3 p.m. Pacific, Tuesday, November 19, 2019. It is the Bidder's sole responsibility to ensure that its bid is received prior to the scheduled date and time for receipt of bids.

IV.2 PRUDENCE AND FORETHOUGHT IN SUBMISSION

It is in the best interests of Bidders to submit their bids well enough in advance to avoid any hindrances out of the control of Monterey County Office of Education, CalSave, the Bidder, or Epylon. Such hindrances could include extremely heavy Internet traffic, disruptions in phone lines, busy circuits, unexpected computer outages or weather-related obstacles. Agency assumes no responsibility for hindrances out of its control. It admonishes Bidders to submit early to identify problems and to avoid any possibility their bids may be late. It is advisable to submit bids at least a day early. Warning, the pricing spreadsheet for this bid may exceed 20 megabytes and will take a long time to load.

IV. 3 BID SUBMISSION ADDRESSES

Bids will be sent through each Bidder's electronic account accessed at www.epylon.com. Bidders must have registered and obtained accounts on the Epylon system to bid. After opening and completing the bid form, a Bidder who clicks on the "Submit" button officially sends its bid to the Monterey County Office of Education and delivers the bid to the MCOE in-box. MCOE will not be able to open or view the bid until the bid opening date and time.

IV.4 BID OPENING

At 3 p.m., Tuesday, November 19, 2019, the sealed bids will be opened electronically on a computer and publicly read at CalSave administrative offices located at 630 San Ramon Valley Boulevard, Suite 210, Danville, California, 94526.

IV.5 PRELIMINARY REGISTRATION PROCEDURES FOR ELECTRONIC BIDDING

- 1) If not already registered, companies that want to bid must register as an Epylon supplier by clicking on the Supplier Registration button at the top of the page at www.epylon.com.
- 2) When registering, new suppliers interested in the bid should select the category of "Information Technology, Broadcasting and Telecommunications" to ensure they will receive the Monterey County Office of Education bid form and all future bids related to software and technology.
- 3) Once registered and logged in at www.epylon.com, click the e-Bid tab, view the in-box to see the Monterey County Office of Education bid form ready to be opened.
- 4) For assistance, or if not seeing the bid form, call the Epylon Customer Service Number at (888) 211-7438

IV.6 ON-LINE BIDDING

The general procedures for completing the electronic bid form are as follows:

- 1) Review name and description of the catalog to be bid.
- 2) Download the attached spreadsheet template found in attachment section titled "MCOE Catalog Template" or a similar title. There will be two worksheet tabs in the spreadsheet to fill out.
- 3) The first worksheet requires you to enter the percent discounts you are offering as your bid. This discount can be variable by any self-defined category of products within the catalog.
- 4) The second worksheet requires you to price approximately 30,000 actual products by indicating the discount percentage and the list price. The Excel® software will automatically calculate the effective unit price.
- 5) Save the file; name it with your company or catalog name.
- 6) Upload the file alongside the appropriate product line by clicking the white box to the left of Product Line Specifications column.
- 7) Click "Browse" to locate the template on your hard drive.
- 8) Click "Open," then click "Attach File" to upload template to bid form.
- 9) Designate the uploaded spreadsheet as the pricing template by clicking in the small white box next to the name of the template, then clicking the red "Identify SKU Attachment" button located at the

- bottom of the Product Line Specification section. This has the effect of distinguishing your pricing from any other attachment you choose to upload. A red asterisk will appear next to your file.
- 10) Click the white box in Bid Column for the catalog type being bid to signify you are bidding for the MCOE Technology Catalog Bid.
 - 11) Answer all questions listed in the Question Section. You can add attachments to answers as necessary.
 - 12) Provide a handwritten signature to the Contract Signature page. Scan it and attach it as a PDF file to the bid form as requested in the Question Section.
 - 13) Click on "Save as Draft" at any time while working on the bid form.
 - 14) When ready to submit, click Continue at bottom of first page.
 - 15) Review your bid, making sure you are satisfied with your answers, attachments and pricing.
 - 16) Click on the "Submit" button to send the sealed electronic bid to Monterey County Office of Education.

IV.7 ELECTRONIC SIGNATURE

In submitting this bid, the person named as the Bidder's representative on the electronic bid form declares the understanding that the use of his/her Username and Password constitute his/her electronic signature and that he/she is solely liable for full control and access to the password. Neither Agency nor Epylon have access to the User's password. By submitting this form, he/she declares that he/she has the authority to submit this bid to the Agency and to bind his/her company to the Terms and Conditions, final pricing, statements and all commitments submitted to Agency.

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

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

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

IV.8 HOW TO GET HELP

Technical questions on how to fill out the bid form, upload or download attachments, or maintain your Epylon account can be directed to the Epylon customer service line at (888) 211-7438. Also questions can be e-mailed to service@epylon.com.

IV.9 MODIFICATIONS

Changes in or additions to the bid form, recapitulations of the service bid upon, alternative proposals, or any other modification of the bid form from the electronic submission or other documents in this bid that are not specifically called for by Monterey County Office of Education may result in rejection of the bid as not being responsive. No oral or telephonic modification of any bid submitted will be considered. Bids or modifications received by facsimile (fax) will not be accepted.

IV.10 EXAMINATION OF BID AND CONTRACT DOCUMENTS

Bidders shall thoroughly examine and be familiar with the bid documents and specifications. The failure or omission of any Bidder to receive or examine any bid document, form, instrument, addendum, electronic attachment or other documents, shall in no way relieve any Bidder from any obligation with respect to his bid or to the Contract. The submission of the bid shall be taken as *prima facie* evidence of compliance with this section. All addenda issued during the time of bidding shall be incorporated into the bid automatically. A Bidder should review the External Notes section of the bid form for any notice of bid amendments or bid changes.

IV.11 WITHDRAWAL OF BID

After reviewing a bid document and clicking on the "Submit" button, the electronic bid form is officially submitted to the Agency. If a Bidder wants to withdraw his or her bid, he or she may do so by clicking the "Retract" button within the Epylon software any time prior to the bid deadline. After the deadline, the bid may not be withdrawn.

V. Specifications

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V.1 QUANTITIES

This is an indefinite quantity bid for which there shall be no limit to the number of orders placed, in any quantity, by MCOE, or any participating public agency, for the term of the Contract, at the prices resulting from award of an Agreement.

V.2 CATALOG TYPE & PRODUCT TYPES

This Invitation to Bid seeks pricing on all available products contained within a commercially available technology catalog. This may be a paper or a website catalog. Products deemed ineligible by a manufacturer to be sold to education agencies in California may be excluded. All of the offerings in the catalog shall be available for purchase provided there is a corresponding discount formula and effective price applicable to the catalog item.

The catalog must contain a minimum of 100,000 items. The catalog must offer products from at least 100 different manufacturers. At a minimum, the catalog must encompass products in the categories of computers, laptops, tablets, networking, printers, software, and accessories. The catalog must represent at least 50 percent of the products listed (or an equivalent) on the Bid Response tab of the MCOE Catalog Template to be submitted for evaluation by MCOE.

Items listed on the Bid Response tab of the Pricing Template are gleaned from a C-Net database of technology products known to have descriptions and manufacturer SKU numbers that are current as of September 1, 2019.

Where any item specified on the Bid Response tab is specified as a specific brand make and model, MCOE will consider a functional equivalent. Equivalentents related to software licenses must be equal in length of term as well as scope.

V3. INSTALLATION AND SERVICES

To become operative and functional, many items in the catalog may require installation, set-up, other related services, or professional consultation. Bidder must provide a rate card with a unit cost for all services that may be required or utilized in conjunction with items purchased from the catalog. Attach the rate card alongside the appropriate section in the Question Section. A rate card may be in the form of document file, a PDF, or a spreadsheet.

V.4 STAFFNG

The Awarded Vendor will execute and promote the contract within California. Minimally, a company must identify personnel that would carry out many of the administrative tasks for the Contract, including jobs to:

- Devote time to California sales
- Supervise sales, set sales goals, and be accountable for sales growth or under performance
- Deliver customer service phone support and have intimate familiarity with the Contract
- Deal with day-to-day Contract management issues including processing of reports and payment of fees
- Handle marketing, collateral materials, and web-site responsibilities
- Executive leadership and oversight of the Contract and project

The identification of personnel for these tasks must be detailed in response to questions in the Question section.

V.5 PHONE SUPPORT

A successful Bidder shall provide a California toll-free support phone number for LEAs using this Contract. The support number and customer service shall be provided for order placement, pricing reference, sales support, and general assistance. Bidders must describe their phone support plan in response to a question in the Question Section.

V.6 USE OF FEDERAL FUNDS

When an Eligible Entity seeks to procure goods and services through this MCOE Contract using funds from a federal grant or contract, specific federal laws, regulations, and requirements may apply. If accepting a purchase order where the use of federal funds is designated, an Awarded Vendor must comply with federal requirements. These requirements are spelled out in laws and regulations known collectively as the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (2 CFR 200). Other terms used to describe these requirements are "Uniform Grant Guidance," "UGG" and "EDGAR".

These requirements include provisions for:

- Vendor's breach of contract terms related to purchases currently indexed at \$150,000 as authorized by 41 USC 1908.
- Termination for Cause or Convenience: For any purchase or contract in excess of \$10,000 made using federal funds with seven days notice, but with a requirement for a buyer to pay the Awarded Vendor for goods or services delivered.
- Federally assisted construction contracts being subject to Equal Employment Opportunity provisions.
- Computing wages based on a 40-hour work week as described in 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), related to purchases over \$100,000.
- Labor Standards Provisions applicable to contracts covering federally financed and assisted construction as described in 40 USC 3141-3144, and 3146-3148 and as supplemented by Department of Labor regulations 29 CFR Part 5.
- Certain rights to inventions under 37 CFR 401.2(a).
- Compliance with Clean Air Act standards for purchases over \$150,000, pursuant to 42 USC 7401-7671q. and 33 USC 1251- 1387.
- Exclusions if the Awarded Vendor is ever debarred according to Executive Orders 12549 and 12689.
- Compliance with the Byrd Anti-Lobbying Amendment under 31 USC 1352, if the Contract award exceeds \$100,000.
- Compliance with the Solid Waste Disposal Act as described in Section 6002 and 40 CFR Part 247.
- Ability to negotiate profit as a separate element of the price for purchases exceeding \$150,000, as described in 2 CFR 200.323.
- Ability to request ceiling prices for a purchase based on time and materials, as spelled out in C.F.R. § 200.318(j).
- Bonding requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold currently set at \$150,000, under 2 C.F.R. § 325.
- Cooperation with buyers to provide information they need to comply with federal rules, including access to relevant recordkeeping, record retention requirements, and contract cost analysis.

V.7 NEWLY PUBLISHED OR NEWLY MANUFACTURED ITEMS

Newly published software titles, newly manufactured items introduced by manufacturers, or newly added catalog items during the course of this Contract may be added to the Contract at the same discount pricing structure as bid -- or a more favorable structure -- to MCOE as those discounts or prices for similar categories of products.

VI. Pricing

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VI.1 FORMULA PRICING

By bidding, Bidder commits to formula pricing by way of a formal bid of a fixed percentage discount off a specified price list of a commercially available catalog.

When applied to the identified catalog price list or cost basis, the respective discount shall create an effective price, which is the price to be paid by Agency and all participating LEAs. Effective prices will be used in the determination who is the low Bidder for price in the evaluation process. Vendors will be bound to the fixed discount(s) for the term of the Contract and all extensions, but the published prices contained within the specified catalog may change as catalog prices or cost bases change.

Contract prices will always be list price minus the discount, rounded to the nearest whole cent.

Bidder must ensure that the specified catalog for each quoted discount exists and continues to be published for the term of the contract and all extensions, so that effective pricing can be calculated and audited by MCOE at any time. However, MCOE will allow for new versions of a commercially available catalog to be published.

Accordingly prices based on the bid formula would change to match the Vendor's new catalog, provided that the new catalog is commercially available to all schools districts throughout the United States.

VI.2 PREPARATION OF THE QUOTE SHEET

Bidder must formally bid the discount(s) offered by specifying the discounts on the Quote Sheet of the Excel bidding SKU Template, which is attached to the bid form.

Bidder must download the MCOE Catalog Template, and on the Quote Sheet, identify the discounts either by entire catalog, by product line or by subcategory, alongside the name of the price list from which the discount will be calculated. The Quote Sheet limits Bidders to thirty (30) categories of variable discounts. If thirty (30) lines are insufficient, subcategories with the same discount may be grouped together or another Excel attachment can be provided separately.

VI.3 PREPARATION OF THE BID RESPONSE WORKSHEET

On the Bid Response Worksheet, Bidder must price the products listed by providing the price before discount and the percentage discount bid being bid. A set of about 30,000 representative product SKUs is listed. Discounts listed are to be consistent with percentages offered on the Quote Sheet tab.

The spreadsheet is locked, but configured so that the 30,000 items may be copied by a vendor for convenience in conducting v-look ups or comparison to data in their own systems. Then the Bidder's corresponding base prices and discount percentage can be pasted into the pink section of the Bid Response Tab alongside the proper corresponding product SKU and description.

The purpose of seeing individual products SKUs and effective pricing is to evaluate a Bidder's bid discount and to ensure that a bidder has the required range of products to be purchased by LEAs. The effective price will reveal the sufficiency or comparative value of the discount(s) being quoted.

The list of individual SKUs will be used for evaluation of lowest-price bidders. MCOE's omission of any SKU does not prevent that respective SKU from being offered under the Contract, because this bid seeks all products listed in a Vendor's commercially available catalog.

Once completed, the spreadsheet file must be electronically attached alongside the name of the corresponding catalog type listed within the Epsilon-hosted software.

If any product on the Bid Response Worksheet is discontinued, the Bidder may offer a substitute product of similar form and function and use the notes column to indicate the item is no longer in production. Bidders will use the same procedure to indicate equivalent substitutes to a specified item. To be responsive, a Bidder must provide pricing for at least 50 percent of the 30,000 items specified.

VI.4 VOLUNTARY DISCOUNTS

Agency reserves the right for itself, CALSAVE and all eligible LEAs to request voluntary price reductions or additional volume price reductions from the awarded Vendor. Granting an additional discount is at the sole discretion of the awarded Vendor. The LEA shall obtain a written quotation from the Awarded Vendor indicating the volume or voluntary discount pricing and stating that it is a CALSAVE Discount Price Quote. In no case, shall any line-item price charged be higher than the effective bid price.

VII. Ordering, Shipping and Delivery

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VII.1 ORDERING

Another LEA electing to use this Contract will enter into a separate contract ("Separate Contract") with the Awarded Vendor. This Separate Contract may be by means of a purchase order. By default, this Separate Contract includes and/or incorporates all applicable terms of this Contract and a specific requirement that the contractor/Vendor comply with the provisions set forth regarding payment of the two percent (2%) participation fee. MCOE will not be a party to any Separate Contract, but will be considered a third party beneficiary of such Separate Contract as to payment of that participation fee.

To obtain bid pricing, districts shall reference the applicable MCOE Agreement and list relevant product SKUs and product descriptions on an LEA purchase order. An LEA's submittal of a purchase order shall be deemed a commitment to purchase from the awarded Vendor.

VII.2 ACCEPTANCE OF PURCHASE ORDERS

If an award is made, the Awarded Vendor may receive a Purchase Order to furnish the awarded item(s) in accordance with these Standard Purchase Order Terms and Conditions:

- 1) Any LEA or authorized buyer may issue purchase orders against this agreement. These constitute the vendor's authority to make delivery. All purchase orders received by the Awarded Vendor up to and including the expiration date of the agreement are acceptable and must be shipped in accordance with the delivery time specified in the agreement.
- 2) As stated in Section IX.4, Awarded Vendors shall be required to pay the Transaction Fee for all purchases by entities made through the awarded Contract. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.
- 3) LEAs may order directly from the awarded Vendor by submitting a purchase order by mail, by email, by ecommerce, by fax, or by the Epylon eCommerce system.
- 4) Purchase Orders may be issued by LEAs to Awarded Vendors through Epylon accounts at www.epylon.com. Any purchase orders submitted by Epylon eCommerce will arrive in the Vendor's Order inbox, accessed at www.epylon.com through a previously established login with a user name and password. Receipt of the electronic or facsimile transmission of the purchase order shall constitute receipt of an order.

VII.3 PAYMENT

LEAs will order the items, receive the items from the Vendor and directly pay the Vendor upon receipt of invoices.

VII.4 INVOICING

All invoices are to be sent directly to the purchasing LEA. LEAs will normally pay invoices within thirty (30) days of receipt of order, or in compliance with their board policy on bill payment. The Agency will encourage LEAs to arrange for prompt payment where possible and for payments of partial shipments.

The LEA shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Purchase Order; or (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address, and the Purchase Order items invoiced are received and accepted by the LEA. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the purchase order and the items actually received.

Payment should not be construed by the Vendor as acceptance of the items furnished by the Vendor. The LEA reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the item(s) if such post payment testing or inspection discloses a defect or a failure to meet specifications.

VII.5 PURCHASE CARDS AT DISCRETION OF VENDOR

At the discretion of the Vendor, LEAs or other authorized buyers may use a purchasing card or credit card to pay for the items purchased under the Purchase Order. In no case will the LEA(s) allow increases in prices to offset credit card fees paid by the Vendor or any other charges incurred by the Vendor, unless specifically stated in the terms of the Purchase Order.

VII.6 DELIVERY REQUIREMENTS

Deliveries shall be delivered to the destination as specified on an individual purchase order.

VII.7 SHIPPING

Orders must be shipped F.O.B. Destination, Freight Prepaid.

VII.8 DELIVERY TIMES

Deliveries must be made within five working days of receipt of order, unless alternative arrangements have been made with an LEA.

VII.9 INSPECTION AND ACCEPTANCE

Awarded Vendor agrees that it will comply with all California and federal laws. All items provided under the Agreement shall meet or exceed the bid specifications and shall comply with all Federal and California State laws governing their production, handling, processing and labeling. Inspection and acceptance of all items shall be at destination. Items found to be defective or not in accordance with the bid specifications shall be

replaced by the Bidder at no cost to MCOE or any participating public agency. Failure to replace said items shall be considered sufficient cause for default action under the DEFAULT provision of the Agreement.

VIII. Evaluation and Awards

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VIII.1 AWARD OF BID/CONTRACT

MCOE reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or the bidding, and to make its selection of awards based upon its best judgment as to which items and services substantially comply with the specifications, or which are most economical and/or best suited for the purpose for which they are intended.

VIII.2 AWARD BY COMPLETE CATALOG ONLY

MCOE intends to make an award for use of a single catalog. However, MCOE reserves the right to make a multiple award to the lowest-priced, responsive, responsible bidders in the case where bidders' catalogs, compared to each other, have a 50 percent difference in the number of product lines and manufacturers offered. A notice of award will serve as evidence of an executed, binding agreement between MCOE and the Awarded Vendor to begin effective on the Award Date. A copy of the Contract Signature Page will be returned to the awarded Vendor and will be signed by MCOE.

VIII.3 RESPONSIVE TEST

Bids will be judged first on whether they are responsive. A bid will be considered responsive if:

- The electronic bid has been received on time
- All required questions have been answered
- All required attachments are present
- Discounts have been identified on the Quote Sheet
- The Bid Response Worksheet contains pricing for at least 50 percent of the line-item SKUs
- Bidders meets required experience
- Terms and Conditions are accepted without any exceptions that would give the bidder a competitive advantage.

VIII.4 RESPONSIBLE TEST

A Bidder will be considered responsible if he or she, in answering questions, meets requirements in Section III and shows the ability to execute the service component of the Contract, including proper and efficient execution of:

- A Marketing plan
- Staffing Plan
- Customer Service Plan

VIII.5 EFFECTIVE PRICE EVALUATION

Where two or more Bidders have bid, the determination of lowest price shall be based on a comparison of each Bidder's effective discounted prices. Notwithstanding this evaluation, MCOE reserves the right to award, when applicable, in accordance with [Education Code 1276](#).

VIII.6 BIDS VALID FOR 90 DAYS

All bids shall remain open and valid and subject to acceptance for ninety (90) days after the bid opening date.

IX. Fees & Costs

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IX.1 BID FEES

There are no fees to submit a bid.

IX.2 NO FEE FOR ELECTRONIC BIDDING

There is no cost to register for or use the Epylon bidding system. Any legitimate company or Bidder may have access to the system for the purpose of bidding. The bidding process involves answering questions, selecting which product lines will be bid, adding necessary explanatory attachments in electronic form, and filling out a

bid form with pricing.

IX.3 BID COSTS

Monterey County Office of Education will not pay the Bidder or agents for any costs incurred by the Bidder in the preparation, presentation, or demonstration of this bid.

IX.4 TRANSACTION FEES

Transaction Fees are the funding source for the operation of the CalSave cooperative purchasing program. As allowed by Public Contract Code 20118, Awarded Vendors shall be required to pay a Transaction Fee ("Transaction Fee") for all purchases by entities made through the awarded Contract. For the purpose of this bid through Monterey County Office of Education and all Contracts awarded using this document, the Transaction Fee shall be two percent (2%) of "Net Sales," which means gross sales less returns and cancelled orders within thirty (30) days, shipping and sales and other taxes (excluding taxes based on net income).

When a sale is made through the federal e-Rate program, the vendor transaction fee is due on 100 percent of the net sale, that is, the combined total of the amount paid by the local agency and the amount paid by the federal government's e-Rate program.

Transaction Fees will not be charged to or paid by the buyers themselves. Awarded Vendor or its designated authorized reseller(s) shall not include any additional amount corresponding to the Transaction Fees in the bid responses or awarded Contract prices. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order. Epylon will collect the Transaction Fee on behalf of the CalSave program. By submitting a bid, an awarded Vendor:

- Verifies that it already has an Epylon Merchant agreement in force for California, or
- If not, it agrees to Epylon's Terms and Conditions for vendors in the Epylon Merchant Agreement, which is hereby attached here to Section IV.4 by reference, and will be bound to the Epylon Merchant Agreement as a part of the Terms and Conditions of the Bid and Contract between the Awarded Vendor and Agency.

For clarification purposes, the Transaction Fee stated in here in Section IX.4 is the agreed-upon Epylon Marketing Fee contemplated by Section 7 of the Epylon Merchant Agreement, attached.

IX.5 PAYMENT DATES AND PAYEE

Based on required Vendor reports, the Awarded Vendor will make all Transaction Fee payments, at a minimum, on a quarterly basis, by the 15th of the succeeding month of the end of the quarter. All checks are to be made payable to the cooperative's program administrator, that is:

Epylon Corporation
630 San Ramon Valley Blvd, Suite 210
Danville, CA 94526

IX.6 Fees in Non-Conforming Jurisdictions

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

X. Post Award Requirements

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X.1 WEB SITE CONFIGURATION

Each Bidder agrees that if they are awarded an Agreement under this bid, they will cooperate in the development of or access to a web site, linked to CalSave and its affiliate web sites, wherein Contract items will be visible to eligible LEAs and whereby LEAs will be able to have sufficient information to create a purchase order to be submitted in accordance with ordering instructions contained in this bid document.

X.2 PUNCHOUT

It is Monterey County Office of Education's preference, but not a requirement, that the Awarded Vendor

have a punchout and e-order relationship with Epylon for the electronic transmission of orders.

X.3 SUBMISSION OF CATALOG ITEMS

In order to satisfy local County Office of Education rules regarding a Standard School Supply and Equipment List, an awarded Vendor may be required to provide a full electronic spreadsheet listing, with prices, of all catalog items under Contract and to update the list as often as each quarter.

X.4 REPORTING

Awarded Vendor will compile quarterly reports listing each purchase made by MCOE and other participating agencies or LEAs under this Contract. Reports must be sent by the 15th of the succeeding month after the end of the quarter as e-mail attachments to the CalSave program administrator. Addresses for the delivery of reports will be: rlandolf@epylon.com. CalSave will notify Awarded Vendor if there is any change of e-mail addresses during the course of the Contract. Reports shall be provided in Microsoft® Excel format, shall have file names that identify the contractor/Vendor and the months being reported, shall include the fields listed below, and shall allow for sorting on any of these fields:

- Date of Order
- Name of Participating Agency or Buyer
- Manufacturer SKU number
- Vendor SKU Number
- Description of Item Purchased
- Quantity
- Unit Price
- Extended Price

X.5 MARKETING

Awarded Vendor will be responsible for carrying out a marketing plan as mutually agreed to by CalSave and Awarded Vendor. Any marketing plan submitted for consideration as part of this bid must minimally include a combination of mailings, phone solicitations, California trade show appearances, print advertising, and web site advertising. In addition to, or in concert with, marketing activities and plans described in a Bidder's bid submission, Vendor will:

- Include the approved CalSave logo, web address, and toll free number in print, electronic mail, and other advertising and promotion intended for release to California K-12 schools
- Ensure that the CalSave logo and associated CalSave information be of a clearly readable size and in appropriate proportion to other elements in the print material
- Provide CalSave with a copy of any advertisement or promotional material
- Provide CalSave with date of release and name of publication, journal, etc., wherein promotional materials will be published
- Place a CalSave vendor sign on booths, tables, etc. at exhibits for which the Vendor displays/participates at California tradeshow conventions and the like
- Notify CalSave in advance of any scheduled exhibits where the Vendor intends to participate in California
- Make available at any of its California exhibits CalSave supplied brochures or other promotion materials
- Insert the approved CalSave logo, web address, toll free number on the Awarded Vendor's California education web site, promoting and providing a link to the CalSave website

MCOE and CalSave affirm that their logos are original and free of any copyright violations and will indemnify an Awarded Vendor against any damages suffered from any successful claim of a copyright violation.

XI. Contract Length and Termination Rights

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XI.1 TERM OF AGREEMENT

The Agreement period is for three years: from January 1, 2020 through December 31, 2022. Awards are valid throughout the Agreement period.

XI.2 EXTENSIONS OF CONTRACT TERM

MCOE at its sole discretion may elect to extend the term of this Contract for up to two (2) additional one- (1)-year periods, but in no case shall a contract be in force for more than three years at one time.

MCOE shall give such notice to the contractor before December 31, 2022. If an extension is granted after

the initial term, the extended term shall be from the January 1, 2023 to December 31, 2023.

To achieve a second extension, MCOE shall give such notice to the contractor before expiration of the extended term, which is December 31, 2023. If an extension is granted after the first extended term, the second extended term shall be from January 1, 2024 to December 31, 2024.

MCOE reserves the right to offer an Awarded Vendor month-to-month extensions for a period of up to six months, if legal or administrative circumstances so require.

XI.3 DEFAULT

In the event the Bidder to whom a Contract is awarded fails to perform in accordance with the terms and conditions of the bid or the Contract, MCOE may terminate this Contract and their orders, in whole or in part, in accordance with the TERMINATION FOR DEFAULT provision of this bid.

XI.4 TERMINATION FOR DEFAULT

MCOE may, by written Notice of Default to the successful Bidder, terminate the Contract issued in whole or in part if:

- A. The successful Bidder fails or neglects to perform any of the services listed herein in the manner and time specified, or if, in the opinion of the MCOE, the items(s) provided fail to perform satisfactorily;

OR

- B. The successful Bidder fails to perform any of the other provisions of the bid, Contract, or purchase order, and does not cure such failure within a period of ten (10) days (or such longer period as MCOE may authorize in writing) after receipt of notice from MCOE specifying such failure.

In the event MCOE terminates the Contract for default, in whole or in part, MCOE, or any participating public agency, may acquire goods, similar to those terminated, from another source and the successful Bidder shall be liable for any excess costs of acquisitions of such similar goods.

XI.5 TERMINATION FOR CLOSURE, RE-ORGANIZATION

MCOE does not guarantee that any or all services will be requested for the duration of the Contract period. MCOE reserve the right to cancel this Contract if MCOE ever faces closure or legislative reorganization.

XI.6 BAIT AND SWITCH PROHIBITED

MCOE reserves the right to terminate for default or to suspend this contract, if evidence shows that the awarded vendor has baited an LEA with marketing or with prices based on this contract, and then has advised the LEA to use another contract at a lower price to avoid payment of Transaction Fees.

XII. Other Terms and Conditions

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XII.1 EPYLON TERMS AND CONDITIONS

Vendor will be bound to an Epylon Merchant Agreement -- either an existing one a Vendor has in force with Epylon in California or, alternatively, the standard Merchant Agreement, which is attached.

XII.2 ACCEPTANCE OF TERMS AND CONDITIONS

Bidder must answer in response to the question in the Question Section whether he or she accepts MCOE's terms and conditions of this Invitation to Bid. A Bidder's failure to accept the terms and conditions or a Bidder notation of exceptions to any of MCOE's terms and conditions may result, in MCOE's sole discretion, a bid being deemed non-responsive.

XII.3 FORCE MAJEURE

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

The Vendor shall notify the Agency (LEA) orally within five (5) business days and in writing within ten (10) business days of the date on which the Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Agreement (Purchase Order) is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay, if the nature of the *force majeure* event does not prevent Vendor from reasonably making such estimation. The Vendor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce within ten (10) business days of LEA's written request such supporting documentation as the Agency (LEA) may reasonably request. After receipt of such notification, the LEA may elect either to cancel the Purchase Order or to extend the time for performance as reasonably necessary to compensate for the Vendor's delay.

In the event of a declared emergency by competent governmental authorities, the LEA by notice to the Vendor, may suspend all or a portion of the Purchase Order.

XII.4 RIGHT TO WAIVE INFORMALITIES IN BIDDING

The right is reserved to waive any informality in bids, to reject any or all bids, and to accept or reject any item or combination of items, as determined to be in the best interest of MCOE.

XII.5 ASSIGNMENT OF THE CONTRACT

The Contract awarded under this bid shall not be assigned without the prior written approval of MCOE's chief business official or designated agent.

XII.6 INDEMNIFICATION AND LIABILITY

As it pertains to each LEA using this contract and the Awarded Vendor, each party ("indemnifying party") shall indemnify and hold harmless the other party ("indemnified party") for any damages or losses to the indemnified party arising from claims. "claims" are defined as (i) claims brought by a third party for death or personal injury to a third party, or (ii) damage to tangible personal property suffered or incurred by the indemnified party allegedly resulting from the grossly negligent or willful misconduct of the indemnifying party, its employees, agents, contractors, representatives or affiliates. However, notwithstanding the prior sentence, a claim for death or personal injury to a third party or damage to tangible personal property shall not be a claim if such claim or damage was caused in whole or in part by the actions of the indemnified party, its employees, agents, contractors or representatives. Claims also do not include any damages or liability excluded in this agreement. In addition, neither MCOE nor Awarded Vendor will be liable, through indemnification or otherwise, for any loss, damage, expense, liability, action, suit or proceeding allegedly arising out of loss or damage to software or the data processed by such software or hardware, or loss of use of hardware. The obligation of the indemnifying party to indemnify and hold the indemnified party harmless is contingent upon the indemnified party providing the indemnifying party with (i) prompt written notice of and description of each claim, (ii) sole authority to defend or settle any such action, suit or proceeding, and (iii) all reasonable assistance in any such defense.

Neither MCOE nor the Awarded Vendor shall be liable for lost profits, loss of business or other consequential, special, indirect or punitive damages, even if advised of the possibility of such damages, or for any claim by any third party. The Awarded Vendor will not be held liable or responsible for any amount of damages in excess of the lesser of: (i) the dollar amount paid by any purchaser for the product(s) giving rise to the claim; or (ii) \$50,000.00.

XII.7 PUBLIC RECORDS

All documents received by MCOE, as a public agency, in connection with this bid are subject to the requirements of the California Public Records Act, Government Code 6250-6270. Bidder shall identify information contained in the bid, which the Bidder deems to be confidential or proprietary and wishes to be withheld from disclosure to others under the state Public Records Act. Note: A blanket statement that all contents of the bid are confidential or proprietary will not be honored by MCOE.

XII.8 RIGHTS OF LEAS

Unless otherwise agreed in this Contract, the rights and remedies of the LEA provided above shall not be exclusive and are in addition to any other rights and remedies provided by law and under the Contract.

XII.9 GOVERNING LAW AND VENUE

The laws of the State of California govern the Contract. Each and every provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included,

or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. Venue for any litigation arising out of or related to the Contract shall be with either the Superior Court in and for the County of Monterey, State of California or the Federal District Court for the Northern District of California, San Jose Division.

XII.10 SEVERABILITY:

The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract that may remain in effect without the invalid provision or application.

XII.11 TERMINATION FOR NON-PAYMENT

The Awarded Vendor understands and agrees that failure or refusal to comply with the provisions set forth in [Section IX.4](#) and [IX.5](#) regarding reports and the payment of the two percent 2% Transaction Fee in conjunction with any use of this Contract by MCOE or any other LEA is grounds for cancellation of the Contract as described in [Sections XI.3](#) and [XI.4](#)

XII.12 SALES TAX

Awarded Vendors must be authorized to sell in California and must collect and remit all required sales taxes associated with sales to LEAs within California. Sales tax rates for LEAs are different for each agency, depending upon their location within a taxing jurisdiction. Proper collection must be made from each participating LEA.

XII.13 LOCAL LEA COUNSEL

Both the Awarded Vendor and any LEA using this Contract agree that the MCOE makes no representation that use of this Contract by any Other Agency is, in fact, authorized by law. In this regard, the MCOE suggests that, at a minimum, Awarded Vendor and LEAs consult with their own legal counsels before consummating a purchase under this Contract.

XII.14 AWARDED VENDOR TERMS OF SALE

An Awarded Vendor's terms and conditions as published on its ordering website may be incorporated into the terms of any purchase order fulfilled. In case of conflict, the order of precedence is as follows 1) California and Federal law, 2) the Terms and Conditions of Invitation to Bid #530067, 3) Epylon's Merchant Agreement, 4) the Awarded Vendor's published terms and conditions.

XII.15 COPYRIGHT

These bid documents and all attachments are copyrighted in 2019 by the Epylon Corporation and the Monterey County Office of Education (©2019, Epylon and Monterey County Office of Education).

XIII. Code Citations

[\[Click to Go Back to Beginning of Document\]](#)

XIII.1 PUBLIC CONTRACT CODES

Public Contract Code 20112. For the purpose of securing bids the governing board of a school district shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post on the district's Web site or through an electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the Web site where bids will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. The governing board of the district may accept a bid that was submitted either electronically or on paper.

Public Contract Code 20118. Notwithstanding Sections 20111 and 20112, the governing board of any school district without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by **contract**, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, **lease**, requisition, or purchase order, the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the

services incidental to the lease or purchase of the personal property.

Public Contract Code 20652. Notwithstanding any other provisions of Sections 81640 to 81654, inclusive, of the Education Code, or of Sections 20651 to 20659, inclusive, of this code, the governing board of any community college district without advertising for bids, and when that board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the community college district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property.

XIII.2 EDUCATION CODES

Education Code 1276. The county superintendent of schools may contract with an acceptable party who is one of the three lowest responsible bidders for the lease, purchase, or maintenance of electronic data-processing systems and for the lease, purchase, or maintenance of supporting software.

Education Code 17597. In addition to utilizing the procedures specified in Article 14 (commencing with Section 17545) of Chapter 4, any school district or any county board of education may, by direct sale or otherwise, sell to a purchaser any electronic data processing equipment, other major items of equipment, or any relocatable building owned by, or to be owned by, the school district or county board, if the purchaser agrees to lease the equipment or building back to the school district or county for use by the school district or county following the sale.

The approval by the governing board of the school district or of the county superintendent of schools of the sale and leaseback shall be given only if the governing board of the school district or the county superintendent of schools finds, by resolution, that the equipment is data processing equipment, another major item of equipment, or a relocatable building within the meaning of this section and that the sale and leaseback is the most economical means for providing the electronic data processing equipment, other major items of equipment, or relocatable building to the school district or county. For purposes of determining the area of existing adequate school construction under the Leroy F. Greene State School Building Lease-Purchase Law of 1976, any portable relocatable classroom acquired under this section and used for classroom purposes shall be considered owned by the district.

Education Code 38110. The county board of education shall on or before the first day of February of each year establish rules and regulations under which any school district in the county shall, except as provided in Section 40002, purchase standard school supplies and equipment through the county superintendent of schools, or when so directed by him or her, through a county purchasing agent.

When the county superintendent of schools purchases standard school supplies without directing their purchase through the county purchasing agent or other county, city, or school district agent or agency, he or she shall make such purchase from the lowest responsible bidder who shall give such security as the county superintendent of schools requires, or else reject all bids. For the purpose of securing bids, the county superintendent of schools shall publish at least once a week for two weeks in a newspaper of general circulation published in the county, a notice calling for bids stating where the list and specifications of standard school supplies and equipment to be furnished may be obtained and the time when, and the place where bids will be opened.

The county board of education shall list as standard school supplies and equipment such supplies and equipment as can be advantageously purchased in quantity. The list of standard school supplies shall be accompanied by a table of specifications giving the minimum grade, quality, substance, or other standard required for the purchase of each item listed.

The cost of advertising for bids and the cost of preparation of a table of specifications shall be paid from the county general fund. The provisions of this section shall not apply to counties of the first or second class containing no more than three districts with an average daily attendance of less than 2,500.

Education Code 38112. (a) Except as provided in subdivision (b), the governing board of any school district may purchase any necessary school supplies and equipment, including standard school supplies and equipment listed by the county board of education, in the manner provided in this chapter, or the governing

board of any school district may purchase such supplies and equipment directly from the vendor. Such direct purchase may be as a single district or two or more districts acting as a cooperative.

(b) An elementary school district having an average daily attendance of less than 2,500 during the preceding fiscal year may purchase standard school supplies and equipment directly from a vendor only by means of a purchasing cooperative representing a total average daily attendance in excess of 2,500 and then only if the county superintendent of schools has on file a document certifying the school district's membership in such a cooperative.

Education Code 81645.5. In addition to utilizing the procedures specified in Article 9 (commencing with Section 81450) of Chapter 2, any community college district may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment or other major items of equipment owned by, or to be owned by, the district, if the purchaser agrees to lease the equipment back to the district for use by the district following the sale.

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

XIII.3 GOVERNMENT CODES

Government Code 6500 As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies

Government Code 6502 If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax, even though one or more of the contracting agencies may be located outside this state.

It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised. For purposes of this section, two or more public agencies having the power to conduct agricultural, livestock, industrial, cultural, or other fairs or exhibitions shall be deemed to have common power with respect to any such fair or exhibition conducted by any one or more of such public agencies or by an entity created pursuant to a joint powers agreement entered into by such public agencies.

[END]

ATTACHMENT 1

Piggyback Contract Between Vendor and Monterey County Office of

Education [ATTACHED]

MONTEREY COUNTY OFFICE OF EDUCATION
Technology Catalog Bid 2019

530067

Proof of Publication

(2015.5 C.C.P.)

Salinas Newspapers, Inc.
1093 S Main ST STE 101
Salinas CA 93901
831-424-2222/Fax: 831-754-7156

State Of California ss:
County of Monterey

EPYLON CORP
630 SAN RAMON VALLEY BLVD STE 210

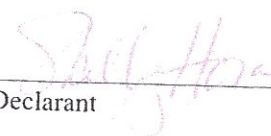
DANVILLE CA 94526

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I hereby certify that the attached advertisement appeared in said newspaper on the following dates:

Newspaper: The Salinas Californian
10/25/19, 11/01/19

I acknowledge that I am a principal clerk of the printer of said paper, which is published in the City of Salinas, County of Monterey, State of California. The Salinas Californian is printed and published daily, except Sunday and has been adjudged a newspaper of general circulation by the Superior Court of the County of Monterey, State of California. El Sol is printed and published weekly on Saturday and has been adjudged a newspaper of general circulation by the Superior Court of Monterey, State of California.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on this
1st of November 2019.



Declarant

Ad#:0003858377
P O:
of Affidavits :0.00

This is not an invoice

MONTEREY COUNTY OFFICE OF EDUCATION

Invitation to Bid # 530067
Technology Catalog Bid

Deadline, 3:00 p.m. Tuesday, November 19, 2019

Notice is hereby given that the Superintendent of Schools of the Monterey County Office of Education, hereinafter referred to as MCOE, will receive up to, but no later than 3 p.m. Friday, Tuesday, November 19, 2019, sealed bids for the award of a contract for a Technology Catalog bid.

The Monterey County Office of Education is seeking bids for use of a comprehensive technology catalog for one-stop shopping by the Monterey County Office of Education and other eligible California agencies. MCOE is cooperating with CalSave, a cooperative purchasing program, and intends that items authorized under this bid and contract be piggybackable for purchase by other agencies throughout California and that items under contract be part of a Standard School Supply and Equipment List as described in bid documents.

Bids will be submitted electronically. Interested suppliers must register at www.epylon.com, if not already a member of the Epsilon supplier network, to obtain bid documents and submit bids. There is no fee to register or to bid using the Epsilon bid system. Each bid must conform and be responsive to the bid documents.

Electronic bids shall be opened and read publicly at 3 p.m. Tuesday, November 19, as described in bid documents. MCOE reserves the right to reject all bids, and/or to waive any irregularity in a bid.

Bidders may not withdraw their bids for a period of ninety (90) days after the date set for opening of bids.

Garry P. Bousum
Associate Superintendent
Administration and Business Services
Monterey County Office of Education

Oct 25, Nov 1, 2019 (3858377)

CONTRACT SIGNATURE PAGE

**MONTEREY COUNTY OFFICE OF EDUCATION
Invitation to Bid # 530067**

Technology Catalog Bid

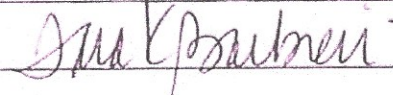
1. Pursuant to and in compliance with Invitation for Bid #530067, its Terms and Conditions, and the other documents relating thereto, the undersigned Bidder, having familiarized himself with the terms of the bid and the conditions affecting the performance of the bid, hereby proposes and agrees to perform, within the time stipulated, everything required by this agreement at the service levels offered and at the discounts or mark-ups offered and any resulting effective prices herein set forth.
2. Awarded Vendor agrees to comply with the Monterey County Office of Education Terms and Conditions as written in the Invitation to Bid #530067.
4. Bidder certifies, by affixing his/her signature below, that all of the products being offered or to be offered under this bid solicitation are legally valid licenses and products free of any copyright violation and that all items offered are in full compliance with specifications and Terms and Conditions of the Invitation to Bid and applicable California law.
5. It is understood that the Monterey County Office of Education reserves the right to reject this bid as specified in the Invitation to Bid and that the bid shall remain open and not be withdrawn for a period of ninety (90) days.
6. By signing below and if countersigned by MCOE, Bidder enters into an agreement with Monterey County Office of Education, obligating his/her company to this Contract and all Terms and Conditions of Invitation to Bid #530067.

Bidder

CDW Government LLC

230 N. Milwaukee Ave.

Vernon Hills, IL 60061

By: 

Name: Tara K. Barbieri

Title: VP Services Orchestration

Date: 11/15/2019

MCOE

Monterey County Office of Education

901 Blanco Circle

Salinas, California 93912-0851

By: 

Name: _____

Title: _____

Date: 12-10-19

*For Dr. Deneen Guss
County Superintendent of Schools*



MONTEREY COUNTY OFFICE OF EDUCATION

Invitation to Bid # 530067 Technology Catalog Bid

Deadline, Tuesday, November 19, 2019, 3 p.m.

I. Bid Overview & Authorities

I.1 BID TITLE

Technology Catalog Bid

I.2 BID NUMBER

Invitation to Bid Number 530067

I.3 ORGANIZATION OF BID TERMS AND CONDITIONS

Section and paragraph headings are provided for description and ease of reference only. They are not intended to be binding or to be used in the interpretation of the Contract. Any hyperlinks shown will carry the reader to related material. This bid is organized under the following topical areas:

- I. [Bid Overview & Authorities](#)
- II. [Definitions](#)
- III. [Bidder Status & Qualifications](#)
- IV. [Bid Procedures and Instructions](#)
- V. [Specifications](#)
- VI. [Pricing](#)
- VII. [Ordering, Shipping and Delivery](#)
- VIII. [Evaluation and Awards](#)
- IX. [Fees](#)
- X. [Post-Award Requirements](#)
- XI. [Contract Length & Termination Rights](#)
- XII. [Other Terms and Conditions](#)
- XIII. [Code Citations](#)

I.4 BID SCOPE

The Monterey County Office of Education is seeking bids for use of a comprehensive technology catalog for one-stop shopping by the Monterey County Office of Education and other eligible agencies in California or elsewhere as allowed by law. The right to purchase from the Contract will be made available to all public school districts, K-12 private schools, charter schools, colleges, universities, municipalities, and other public agencies as allowed by law.

I.5 AGENCY ISSUING INVITATION FOR BID AND THE RESULTING CONTRACT

Monterey County Office of Education
Superintendent of Schools
901 Blanco Circle
P.O. Box 8081
Salinas, California 93912-0851

I.6 CALSAVE PROGRAM

The Monterey County Office of Education is issuing this bid in cooperation with the CalSave program, the purchasing cooperative founded by the Monterey County Office of Education and administered by the Epylon Corporation. CalSave serves all education agencies in California and other eligible buying agencies.

I.7 BID DUE DATE

The bid response is due no later than 3 p.m. Pacific, Tuesday, November 19, 2019.

I.8 METHOD OF SUBMISSION

As authorized by [Public Contract Code Section 20112](#), bids will be submitted electronically, and all responses *must be* completed through the electronic sealed bidding system described within these bid documents.

I.9 CONTRACT TERM OF DURATION

The length of term of the awarded Contract will be from the award date, through December 31, 2022, and may be extended as allowed by law in accordance with [Sections XI.2](#) of these Terms and Conditions.

I.10 ELIGIBLE BUYING AGENCIES

This bid is being solicited for authorized buyers by the Monterey County Office of Education, lead agency under the authority of the California Public Contracts Code and Education Code, for school districts in California, as well as other eligible purchasers in other states, to be known collectively as LEAs.

Examples of eligible agencies include, not only all California County Offices of Education and California public school districts, but also California joint powers authorities related to education, cities and counties, special districts, charter schools, non-public schools, private schools, agency staff, foundations and parent-teacher organizations buying on behalf of their beneficiaries, and any new schools, school districts, or charter schools established during the term of the Contract.

To be absolutely clear and for further clarification, the electronic bid form contains an attachment partially listing as eligible buyers the specific and individual names of:

- Public school districts and education agencies
- Charter schools
- County Offices of Education
- Community Colleges

In states outside of California, other public agencies may use the contract, with permission of the Awarded Vendor, under the authority of [Government Code 6500 and 6502](#).

I.11 PIGGYBACKABLE CLAUSE

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

In any jurisdiction, where a County Office of Education, board, or other authority prohibits payments directly to a vendor, an LEA may petition the Monterey County Office of Education for special ordering and payment arrangements through the Monterey County Office of Education or its agents. In these unique cases, the Monterey County Office of Education reserves the right to charge an administrative fee to the LEAs to offset banking and administrative costs for this service.

I.12 STANDARD SCHOOL SUPPLY & EQUIPMENT LIST AND COOPERATIVES

Monterey County Office of Education declares that items and licenses under Contract as a result of this Invitation to Bid will qualify as items to be included within its Standard School Supply and Equipment List. Because many County Offices of Education have banded together to create both a Standard School Supply & Equipment List and cooperative contracts, the items solicited and awarded through this bid may also constitute a portion of an official Standard School Supply and Equipment List for other participating County Offices of Education and County Superintendents of Schools. Purchases by other County Offices of Education and LEAs may be made, not only in accordance with Public Contracts Code [20118](#) and [20652](#),

but also in accordance with Education Code [38110](#) and [38112](#) dealing with cooperatives and Standard School Supplies & Equipment.

I.13 LEASE-BACK AUTHORITY ALLOWED BY LAW

This Contract is for the purchase of the items covered by this Contract. However, another LEA may, exercise

its authority under Education Code section [17597](#) or [81645](#) or other legal authority to sell and lease back any item owned by, or to be owned by it, pursuant to any Separate Contract. The awarded Vendor agrees to take any and all actions requested by any Other Agency that are necessary to effect any such transfer, by way of example only, accepting payment under the Separate Contract from any third party to whom any such transfer is made.

1.14. LEASING AUTHORITY

With Vendor approval, the right to use a product in the catalog for a defined period of time or a lease of a contracted item may be procured under this contract at bid rates.

II. Definitions

[\[Click to Go Back to Beginning of Document\]](#)

II.1 MONTEREY COUNTY OFFICE OF EDUCATION

The terms "*Monterey County Office of Education*" and "*MCOE*" as used in this bid document shall be construed to include the Monterey County Office of Education, its employees, officers, and agents. The Monterey County Office of Education, located at 901 Blanco Circle, Salinas California, 93912, is administered by the elected county Superintendent of Schools and is a *bona fide* government agency, established by Article IX of the California Constitution and serving as an educational intermediate unit that operates its own schools and programs and that offers services to school districts.

II.2 AGENCY

The term "*Agency*" shall be construed to include the Monterey County Office of Education, its employees, officers, and agents.

II.3 CALSAVE

CalSave is the cooperative purchasing program founded by the Monterey County Office of Education and administered by the Epylon Corporation.

II.4 LEA

The term "*LEAs*" shall be construed to mean Local Education Agencies – all those agencies authorized by law to buy from this bid and resulting Contract and allowed to submit purchase orders to the Awarded Vendor in conformance with bid terms and conditions.

II.5 EPYLON CORPORATION®

Epylon Corporation, also referred to as "*Epylon*," is the private corporation located at 630 San Ramon Valley Boulevard, Suite 210, Danville, California, 94526, that has been hired by the Monterey County Office of Education to administer the CalSave cooperative, to work with lead agencies and County Offices of Education to provide technology and services necessary for MCOE to issue bids and run the CalSave cooperative. The name *Epylon* is a registered trademark of the Epylon Corporation in the United States.

II.6 VENDOR

The term "*Vendor*" is that firm, company, individual, business, partnership, joint venture corporation or other bidding entity which has completed the response to the Invitation to Bid and/or been awarded a Contract by the Agency. The contractor/Bidder is named as such in the Contract/bid documents and is referred to in generic terms as if the contractor/Bidder were of singular number and masculine or feminine gender.

II.7 BIDDER

The term "*Bidder*" refers to that firm, company, individual, business, partnership, joint venture, corporation or other bidding entity which has registered on the Epylon® system to receive bids and has worked on or completed the response to the Invitation to Bid.

II.8

II.9 QUOTE SHEET

The "*Quote Sheet*" is that electronic worksheet to be filled out by the Bidder with the officially bid discount(s) percentage necessary to calculate the effective price for all items under Contract. It is located in a worksheet tab in an Excel® spreadsheet file identified elsewhere as "SKU Template" or "MCOE Catalog Template."

II.10 BID RESPONSE WORKSHEET

The "Bid Response Worksheet" is that worksheet that is to be filled out by the Bidder with line-items reflecting a large sampling of the effective prices after a bid discount is applied. It is located in a worksheet tab in an Excel® spreadsheet file identified as "SKU Template" or "MCOE Catalog Template."

II.11 CONTRACT

References to the term "Contract," where not precisely referencing another specific third-party agreement, refers to the binding agreement entered into between MCOE and the Awarded Vendor as a result of a bid award by MCOE. The full "Contract" document consists of the Contract Signature Page, this Invitation to Bid, a Vendor's electronic bid responses, any published bid amendments, any extension agreements, all electronic bid attachments, and subsequent any memoranda of understanding interpreting or clarifying the Contract.

II.12 AWARD DATE

The award date is the date upon which MCOE countersigns the Contract Signature Page and enters into an agreement with the successful bidder, granting authority to sell under the award from this solicitation.

III. BIDDER STATUS AND QUALIFICATIONS

[\[Click to Go Back to Beginning of Document\]](#)

III.1 ANSWERING QUESTIONS ON THE BID FORM

By answering questions in the Questions Section of the electronic bid form, Bidders help establish their qualifications as a vendor. In answering the questions, they must give satisfactory evidence that they:

- Maintain permanent places of business
- Have the capability to furnish the items offered satisfactorily and expeditiously
- Have provided satisfactory school customer sales support and service to all LEAs in California
- Have at least five years' experience serving all LEAs in California
- Have current relationships with LEAs for verification of customer satisfaction
- Can demonstrate an active network or other acceptable method of service and support that will serve all LEAs.

If a question within the bid form indicates that a response is mandatory, an answer must be provided, or else a Bidder cannot continue to save or submit the electronic bid form.

III.2 COMPANY EXPERIENCE

To qualify as a responsive Vendor, a Bidding company must have five years' direct K-12 public school experience in California executing other technology contracts.

III.3 STAFF EXPERIENCE

Bidder must identify at least one person on staff who will be the dedicated leader in administering this bid and Contract. The identified person must have experience administering a technology catalog bid.

III.4 PROOF OF PROGRAM VOLUME

Because of the difficulty and volume of work associated with the large potential volume of this contract, Bidders, to qualify as a responsible Vendor, must have experience selling a minimum of \$5 million of product in California within the last 12 months from a technology catalog bidcontract.

III.5 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to submit more than one response to this Invitation for Bids. A person, firm, or corporation may submit a sub-proposal to another Bidder and/or Bidders and also submit a bid in the name of his firm.

Companies who have multiple users on the Epylon system may receive multiple invitations to bid and have access to the same bid form. Only one representative from the bidding company may submit a bid. Any Epylon user that opens the Monterey County Office of Education bid form, declines the bid, or submits a bid, thereby prevents any other user from that same company from taking further action on this bid for his or her company.

III.6 DECLARATION OF NON-COLLUSION

Assuring that prices are arrived at independently and without collusion is so important that this bid requires the Bidder to attest under the penalty of perjury that no collusion has taken place.

The Bidder must affirmatively answer "Yes" to the non-collusion question in the Question Section or else by default the bid may not be submitted to Agency. By answering "Yes" to the non-collusion question, the Bidder affirms the following:

- (1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.
- (2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- (4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- (5) Neither he/she, the company, nor any of the company's affiliates, subsidiaries, officers, directors and employees are currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- (6) All representations are material and important and will be relied on by the Monterey County Office of Education in awarding the Contract(s) for which this bid is submitted.
- (7) Any misstatement is and shall be treated as fraudulent concealment from Monterey County Office of Education of the true facts relating to the submission of bids for this Contract.

If a Bidder cannot answer yes to Question 47, he/she will not be able to complete the bid form and will not be able to submit a bid.

III.7 SUSPENSION AND DEBARMENT

The Bidder certifies, for itself and all its designated partners, that neither the Bidder, nor any designated partners are under suspension or debarment by the LEA or any other governmental entity, instrumentality, or authority and, if the Bidder cannot so certify, then it agrees to submit a written explanation as an attachment to this bid form of why such certification cannot be made. A Bidder must verify its suspension or debarment status in the Question Section of the bid form.

III.8 ABILITY TO FOLLOW DIRECTIONS

The Bidder's ability to follow the bid preparation instructions set forth in this solicitation will also be considered to be an indicator of the Bidder's ability to follow instructions should they receive an award as a result of this solicitation. Any contract between the Agency and a vendor requires the delivery of information and data. The quality of organization and writing reflected in the proposal will be considered to be an indication of the quality of organization and writing which would be prevalent if a contract was awarded. As a result, a bid may be rejected if directions are not followed.

III.9 HISTORICALLY UNDER-UTILIZED BUSINESSES (HUBS)

Some eligible LEAs may have policies, programs or goals related to contracts with businesses owned by minorities, women or disabled veterans. Although the bid will not be evaluated on whether a Bidder is a historically under utilized business, Agency can make other LEAs aware of a Vendor's HUB status. Accordingly, the Agency requests any women-owned, minority-owned or disabled-veteran-owned business to volunteer their status as such so that it can be made known to interested LEAs. A HUB may identify itself in its answers in the Question Section. No preference is given in bid evaluation to HUBs, and no penalty is applied for not answering the question.

IV. Bid Procedures and Instructions

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IV.1. BID DUE DATE

The bid is due no later than 3 p.m. Pacific, Tuesday, November 19, 2019. It is the Bidder's sole responsibility to ensure that its bid is received prior to the scheduled date and time for receipt of bids.

IV.2 PRUDENCE AND FORETHOUGHT IN SUBMISSION

It is in the best interests of Bidders to submit their bids well enough in advance to avoid any hindrances out of the control of Monterey County Office of Education, CalSave, the Bidder, or Epylon. Such hindrances could include extremely heavy Internet traffic, disruptions in phone lines, busy circuits, unexpected computer outages or weather-related obstacles. Agency assumes no responsibility for hindrances out of its control. It admonishes Bidders to submit early to identify problems and to avoid any possibility their bids may be late. It is advisable to submit bids at least a day early. Warning, the pricing spreadsheet for this bid may exceed 20 megabytes and will take a long time to load.

IV.3 BID SUBMISSION ADDRESSES

Bids will be sent through each Bidder's electronic account accessed at www.epylon.com. Bidders must have registered and obtained accounts on the Epylon system to bid. After opening and completing the bid form, a Bidder who clicks on the "Submit" button officially sends its bid to the Monterey County Office of Education and delivers the bid to the MCOE in-box. MCOE will not be able to open or view the bid until the bid opening date and time.

IV.4 BID OPENING

At 3 p.m., Tuesday, November 19, 2019, the sealed bids will be opened electronically on a computer and publicly read at CalSave administrative offices located at 630 San Ramon Valley Boulevard, Suite 210, Danville, California, 94526.

IV.5 PRELIMINARY REGISTRATION PROCEDURES FOR ELECTRONIC BIDDING

- 1) If not already registered, companies that want to bid must register as an Epylon supplier by clicking on the Supplier Registration button at the top of the page at www.epylon.com.
- 2) When registering, new suppliers interested in the bid should select the category of "Information Technology, Broadcasting and Telecommunications" to ensure they will receive the Monterey County Office of Education bid form and all future bids related to software and technology.
- 3) Once registered and logged in at www.epylon.com, click the e-Bid tab, view the in-box to see the Monterey County Office of Education bid form ready to be opened.
- 4) For assistance, or if not seeing the bid form, call the Epylon Customer Service Number at (888) 211-7438

IV.6 ON-LINE BIDDING

The general procedures for completing the electronic bid form are as follows:

- 1) Review name and description of the catalog to be bid.
- 2) Download the attached spreadsheet template found in attachment section titled "MCOE Catalog Template" or a similar title. There will be two worksheet tabs in the spreadsheet to fill out.
- 3) The first worksheet requires you to enter the percent discounts you are offering as your bid. This discount can be variable by any self-defined category of products within the catalog.
- 4) The second worksheet requires you to price approximately 30,000 actual products by indicating the discount percentage and the list price. The Excel® software will automatically calculate the effective unit price.
- 5) Save the file; name it with your company or catalog name.
- 6) Upload the file alongside the appropriate product line by clicking the white box to the left of Product Line Specifications column.
- 7) Click "Browse" to locate the template on your hard drive.
- 8) Click "Open," then click "Attach File" to upload template to bid form.
- 9) Designate the uploaded spreadsheet as the pricing template by clicking in the small white box next to the name of the template, then clicking the red "Identify SKU Attachment" button located at the

- bottom of the Product Line Specification section. This has the effect of distinguishing your pricing from any other attachment you choose to upload. A red asterisk will appear next to your file.
- 10) Click the white box in Bid Column for the catalog type being bid to signify you are bidding for the MCOE Technology Catalog Bid.
 - 11) Answer all questions listed in the Question Section. You can add attachments to answers as necessary.
 - 12) Provide a handwritten signature to the Contract Signature page. Scan it and attach it as a PDF file to the bid form as requested in the Question Section.
 - 13) Click on "Save as Draft" at any time while working on the bid form.
 - 14) When ready to submit, click Continue at bottom of first page.
 - 15) Review your bid, making sure you are satisfied with your answers, attachments and pricing.
 - 16) Click on the "Submit" button to send the sealed electronic bid to Monterey County Office of Education.

IV.7 ELECTRONIC SIGNATURE

In submitting this bid, the person named as the Bidder's representative on the electronic bid form declares the understanding that the use of his/her Username and Password constitute his/her electronic signature and that he/she is solely liable for full control and access to the password. Neither Agency nor Epylon have access to the User's password. By submitting this form, he/she declares that he/she has the authority to submit this bid to the Agency and to bind his/her company to the Terms and Conditions, final pricing, statements and all commitments submitted to Agency.

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

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

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

IV.8 HOW TO GET HELP

Technical questions on how to fill out the bid form, upload or download attachments, or maintain your Epylon account can be directed to the Epylon customer service line at (888) 211-7438. Also questions can be e-mailed to service@epylon.com.

IV.9 MODIFICATIONS

Changes in or additions to the bid form, recapitulations of the service bid upon, alternative proposals, or any other modification of the bid form from the electronic submission or other documents in this bid that are not specifically called for by Monterey County Office of Education may result in rejection of the bid as not being responsive. No oral or telephonic modification of any bid submitted will be considered. Bids or modifications received by facsimile (fax) will not be accepted.

IV.10 EXAMINATION OF BID AND CONTRACT DOCUMENTS

Bidders shall thoroughly examine and be familiar with the bid documents and specifications. The failure or omission of any Bidder to receive or examine any bid document, form, instrument, addendum, electronic attachment or other documents, shall in no way relieve any Bidder from any obligation with respect to his bid or to the Contract. The submission of the bid shall be taken as *prima facie* evidence of compliance with this section. All addenda issued during the time of bidding shall be incorporated into the bid automatically. A Bidder should review the External Notes section of the bid form for any notice of bid amendments or bid changes.

IV.11 WITHDRAWAL OF BID

After reviewing a bid document and clicking on the "Submit" button, the electronic bid form is officially submitted to the Agency. If a Bidder wants to withdraw his or her bid, he or she may do so by clicking the "Retract" button within the Epylon software any time prior to the bid deadline. After the deadline, the bid may not be withdrawn.

V. Specifications

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V.1 QUANTITIES

This is an indefinite quantity bid for which there shall be no limit to the number of orders placed, in any quantity, by MCOE, or any participating public agency, for the term of the Contract, at the prices resulting from award of an Agreement.

V.2 CATALOG TYPE & PRODUCT TYPES

This Invitation to Bid seeks pricing on all available products contained within a commercially available technology catalog. This may be a paper or a website catalog. Products deemed ineligible by a manufacturer to be sold to education agencies in California may be excluded. All of the offerings in the catalog shall be available for purchase provided there is a corresponding discount formula and effective price applicable to the catalog item.

The catalog must contain a minimum of 100,000 items. The catalog must offer products from at least 100 different manufacturers. At a minimum, the catalog must encompass products in the categories of computers, laptops, tablets, networking, printers, software, and accessories. The catalog must represent at least 50 percent of the products listed (or an equivalent) on the Bid Response tab of the MCOE Catalog Template to be submitted for evaluation by MCOE.

Items listed on the Bid Response tab of the Pricing Template are gleaned from a C-Net database of technology products known to have descriptions and manufacturer SKU numbers that are current as of September 1, 2019.

Where any item specified on the Bid Response tab is specified as a specific brand make and model, MCOE will consider a functional equivalent. Equivalents related to software licenses must be equal in length of term as well as scope.

V.3. INSTALLATION AND SERVICES

To become operative and functional, many items in the catalog may require installation, set-up, other related services, or professional consultation. Bidder must provide a rate card with a unit cost for all services that may be required or utilized in conjunction with items purchased from the catalog. Attach the rate card alongside the appropriate section in the Question Section. A rate card may be in the form of document file, a PDF, or a spreadsheet.

V.4 STAFFING

The Awarded Vendor will execute and promote the contract within California. Minimally, a company must identify personnel that would carry out many of the administrative tasks for the Contract, including jobs to:

- Devote time to California sales
- Supervise sales, set sales goals, and be accountable for sales growth or under performance
- Deliver customer service phone support and have intimate familiarity with the Contract
- Deal with day-to-day Contract management issues including processing of reports and payment of fees
- Handle marketing, collateral materials, and web-site responsibilities
- Executive leadership and oversight of the Contract and project

The identification of personnel for these tasks must be detailed in response to questions in the Question section.

V.5 PHONE SUPPORT

A successful Bidder shall provide a California toll-free support phone number for LEAs using this Contract. The support number and customer service shall be provided for order placement, pricing reference, sales support, and general assistance. Bidders must describe their phone support plan in response to a question in the Question Section.

V.6 USE OF FEDERAL FUNDS

When an Eligible Entity seeks to procure goods and services through this MCOE Contract using funds from a federal grant or contract, specific federal laws, regulations, and requirements may apply. If accepting a purchase order where the use of federal funds is designated, an Awarded Vendor must comply with federal requirements. These requirements are spelled out in laws and regulations known collectively as the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (2 CFR 200). Other terms used to describe these requirements are "Uniform Grant Guidance," "UGG" and "EDGAR". These requirements include provisions for:

- Vendor's breach of contract terms related to purchases currently indexed at \$150,000 as authorized by 41 USC 1908.
- Termination for Cause or Convenience: For any purchase or contract in excess of \$10,000 made using federal funds with seven days notice, but with a requirement for a buyer to pay the Awarded Vendor for goods or services delivered.
- Federally assisted construction contracts being subject to Equal Employment Opportunity provisions.
- Computing wages based on a 40-hour work week as described in 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), related to purchases over \$100,000.
- Labor Standards Provisions applicable to contracts covering federally financed and assisted construction as described in 40 USC 3141-3144, and 3146-3148 and as supplemented by Department of Labor regulations 29 CFR Part 5.
- Certain rights to inventions under 37 CFR 401.2(a).
- Compliance with Clean Air Act standards for purchases over \$150,000, pursuant to 42 USC 7401-7671q. and 33 USC 1251- 1387.
- Exclusions if the Awarded Vendor is ever debarred according to Executive Orders 12549 and 12689.
- Compliance with the Byrd Anti-Lobbying Amendment under 31 USC 1352, if the Contract award exceeds \$100,000.
- Compliance with the Solid Waste Disposal Act as described in Section 6002 and 40 CFR Part 247.
- Ability to negotiate profit as a separate element of the price for purchases exceeding \$150,000, as described in 2 CFR 200.323.
- Ability to request ceiling prices for a purchase based on time and materials, as spelled out in C.F.R. § 200.318(j).
- Bonding requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold currently set at \$150,000, under 2 C.F.R. § 325.
- Cooperation with buyers to provide information they need to comply with federal rules, including access to relevant recordkeeping, record retention requirements, and contract cost analysis.

V.7 NEWLY PUBLISHED OR NEWLY MANUFACTURED ITEMS

Newly published software titles, newly manufactured items introduced by manufacturers, or newly added catalog items during the course of this Contract may be added to the Contract at the same discount pricing structure as bid -- or a more favorable structure -- to MCOE as those discounts or prices for similar categories of products.

VI. Pricing

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VI.1 FORMULA PRICING

By bidding, Bidder commits to formula pricing by way of a formal bid of a fixed percentage discount off a specified price list of a commercially available catalog.

When applied to the identified catalog price list or cost basis, the respective discount shall create an effective price, which is the price to be paid by Agency and all participating LEAs. Effective prices will be used in the determination who is the low Bidder for price in the evaluation process. Vendors will be bound to the fixed discount(s) for the term of the Contract and all extensions, but the published prices contained within the specified catalog may change as catalog prices or cost bases change.

Contract prices will always be list price minus the discount, rounded to the nearest whole cent.

Bidder must ensure that the specified catalog for each quoted discount exists and continues to be published for the term of the contract and all extensions, so that effective pricing can be calculated and audited by MCOE at any time. However, MCOE will allow for new versions of a commercially available catalog to be published.

Accordingly prices based on the bid formula would change to match the Vendor's new catalog, provided that the new catalog is commercially available to all schools districts throughout the United States.

VI.2 PREPARATION OF THE QUOTE SHEET

Bidder must formally bid the discount(s) offered by specifying the discounts on the Quote Sheet of the Excel bidding SKU Template, which is attached to the bid form.

Bidder must download the MCOE Catalog Template, and on the Quote Sheet, identify the discounts either by entire catalog, by product line or by subcategory, alongside the name of the price list from which the discount will be calculated. The Quote Sheet limits Bidders to thirty (30) categories of variable discounts. If thirty (30) lines are insufficient, subcategories with the same discount may be grouped together or another Excel attachment can be provided separately.

VI.3 PREPARATION OF THE BID RESPONSE WORKSHEET

On the Bid Response Worksheet, Bidder must price the products listed by providing the price before discount and the percentage discount bid being bid. A set of about 30,000 representative product SKUs is listed. Discounts listed are to be consistent with percentages offered on the Quote Sheet tab.

The spreadsheet is locked, but configured so that the 30,000 items may be copied by a vendor for convenience in conducting v-look ups or comparison to data in their own systems. Then the Bidder's corresponding base prices and discount percentage can be pasted into the pink section of the Bid Response Tab alongside the proper corresponding product SKU and description.

The purpose of seeing individual products SKUs and effective pricing is to evaluate a Bidder's bid discount and to ensure that a bidder has the required range of products to be purchased by LEAs. The effective price will reveal the sufficiency or comparative value of the discount(s) being quoted.

The list of individual SKUs will be used for evaluation of lowest-price bidders. MCOE's omission of any SKU does not prevent that respective SKU from being offered under the Contract, because this bid seeks all products listed in a Vendor's commercially available catalog.

Once completed, the spreadsheet file must be electronically attached alongside the name of the corresponding catalog type listed within the Epylon-hosted software.

If any product on the Bid Response Worksheet is discontinued, the Bidder may offer a substitute product of similar form and function and use the notes column to indicate the item is no longer in production. Bidders will use the same procedure to indicate equivalent substitutes to a specified item. To be responsive, a Bidder must provide pricing for at least 50 percent of the 30,000 items specified.

VI.4 VOLUNTARY DISCOUNTS

Agency reserves the right for itself, CALSAVE and all eligible LEAs to request voluntary price reductions or additional volume price reductions from the awarded Vendor. Granting an additional discount is at the sole discretion of the awarded Vendor. The LEA shall obtain a written quotation from the Awarded Vendor indicating the volume or voluntary discount pricing and stating that it is a CALSAVE Discount Price Quote. In no case, shall any line-item price charged be higher than the effective bid price.

VII. Ordering, Shipping and Delivery

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VII.1 ORDERING

Another LEA electing to use this Contract will enter into a separate contract ("Separate Contract") with the Awarded Vendor. This Separate Contract may be by means of a purchase order. By default, this Separate Contract includes and/or incorporates all applicable terms of this Contract and a specific requirement that the contractor/Vendor comply with the provisions set forth regarding payment of the two percent (2%) participation fee. MCOE will not be a party to any Separate Contract, but will be considered a third party beneficiary of such Separate Contract as to payment of that participation fee.

To obtain bid pricing, districts shall reference the applicable MCOE Agreement and list relevant product SKUs and product descriptions on an LEA purchase order. An LEA's submittal of a purchase order shall be deemed a commitment to purchase from the awarded Vendor.

VII.2 ACCEPTANCE OF PURCHASE ORDERS

If an award is made, the Awarded Vendor may receive a Purchase Order to furnish the awarded item(s) in accordance with these Standard Purchase Order Terms and Conditions:

- 1) Any LEA or authorized buyer may issue purchase orders against this agreement. These constitute the vendor's authority to make delivery. All purchase orders received by the Awarded Vendor up to and including the expiration date of the agreement are acceptable and must be shipped in accordance with the delivery time specified in the agreement.
- 2) As stated in Section IX.4, Awarded Vendors shall be required to pay the Transaction Fee for all purchases by entities made through the awarded Contract. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.
- 3) LEAs may order directly from the awarded Vendor by submitting a purchase order by mail, by email, by ecommerce, by fax, or by the Epylon eCommerce system.
- 4) Purchase Orders may be issued by LEAs to Awarded Vendors through Epylon accounts at www.epylon.com. Any purchase orders submitted by Epylon eCommerce will arrive in the Vendor's Order inbox, accessed at www.epylon.com through a previously established login with a user name and password. Receipt of the electronic or facsimile transmission of the purchase order shall constitute receipt of an order.

VII.3 PAYMENT

LEAs will order the items, receive the items from the Vendor and directly pay the Vendor upon receipt of invoices.

VII.4 INVOICING

All invoices are to be sent directly to the purchasing LEA. LEAs will normally pay invoices within thirty (30) days of receipt of order, or in compliance with their board policy on bill payment. The Agency will encourage LEAs to arrange for prompt payment where possible and for payments of partial shipments.

The LEA shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Purchase Order; or (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address, and the Purchase Order items invoiced are received and accepted by the LEA. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the purchase order and the items actually received.

Payment should not be construed by the Vendor as acceptance of the items furnished by the Vendor. The LEA reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the item(s) if such post payment testing or inspection discloses a defect or a failure to meet specifications.

VII.5 PURCHASE CARDS AT DISCRETION OF VENDOR

At the discretion of the Vendor, LEAs or other authorized buyers may use a purchasing card or credit card to pay for the items purchased under the Purchase Order. In no case will the LEA(s) allow increases in prices to offset credit card fees paid by the Vendor or any other charges incurred by the Vendor, unless specifically stated in the terms of the Purchase Order.

VII.6 DELIVERY REQUIREMENTS

Deliveries shall be delivered to the destination as specified on an individual purchase order.

VII.7 SHIPPING

Orders must be shipped F.O.B. Destination, Freight Prepaid.

VII.8 DELIVERY TIMES

Deliveries must be made within five working days of receipt of order, unless alternative arrangements have been made with an LEA.

VII.9 INSPECTION AND ACCEPTANCE

Awarded Vendor agrees that it will comply with all California and federal laws. All items provided under the Agreement shall meet or exceed the bid specifications and shall comply with all Federal and California State laws governing their production, handling, processing and labeling. Inspection and acceptance of all items shall be at destination. Items found to be defective or not in accordance with the bid specifications shall be

replaced by the Bidder at no cost to MCOE or any participating public agency. Failure to replace said items shall be considered sufficient cause for default action under the DEFAULT provision of the Agreement.

VIII. Evaluation and Awards

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VIII.1 AWARD OF BID/CONTRACT

MCOE reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or the bidding, and to make its selection of awards based upon its best judgment as to which items and services substantially comply with the specifications, or which are most economical and/or best suited for the purpose for which they are intended.

VIII.2 AWARD BY COMPLETE CATALOG ONLY

MCOE intends to make an award for use of a single catalog. However, MCOE reserves the right to make a multiple award to the lowest-priced, responsive, responsible bidders in the case where bidders' catalogs, compared to each other, have a 50 percent difference in the number of product lines and manufacturers offered. A notice of award will serve as evidence of an executed, binding agreement between MCOE and the Awarded Vendor to begin effective on the Award Date. A copy of the Contract Signature Page will be returned to the awarded Vendor and will be signed by MCOE.

VIII.3 RESPONSIVE TEST

Bids will be judged first on whether they are responsive. A bid will be considered responsive if:

- The electronic bid has been received on time
- All required questions have been answered
- All required attachments are present
- Discounts have been identified on the Quote Sheet
- The Bid Response Worksheet contains pricing for at least 50 percent of the line-item SKUs
- Bidders meets required experience
- Terms and Conditions are accepted without any exceptions that would give the bidder a competitive advantage.

VIII.4 RESPONSIBLE TEST

A Bidder will be considered responsible if he or she, in answering questions, meets requirements in Section III and shows the ability to execute the service component of the Contract, including proper and efficient execution of:

- A Marketing plan
- Staffing Plan
- Customer Service Plan

VIII.5 EFFECTIVE PRICE EVALUATION

Where two or more Bidders have bid, the determination of lowest price shall be based on a comparison of each Bidder's effective discounted prices. Notwithstanding this evaluation, MCOE reserves the right to award, when applicable, in accordance with [Education Code 1276](#).

VIII.6 BIDS VALID FOR 90 DAYS

All bids shall remain open and valid and subject to acceptance for ninety (90) days after the bid opening date.

IX. Fees & Costs

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IX.1 BID FEES

There are no fees to submit a bid.

IX.2 NO FEE FOR ELECTRONIC BIDDING

There is no cost to register for or use the Epylon bidding system. Any legitimate company or Bidder may have access to the system for the purpose of bidding. The bidding process involves answering questions, selecting which product lines will be bid, adding necessary explanatory attachments in electronic form, and filling out a

bid form with pricing.

IX.3 BID COSTS

Monterey County Office of Education will not pay the Bidder or agents for any costs incurred by the Bidder in the preparation, presentation, or demonstration of this bid.

IX.4 TRANSACTION FEES

Transaction Fees are the funding source for the operation of the CalSave cooperative purchasing program. As allowed by Public Contract Code 20118, Awarded Vendors shall be required to pay a Transaction Fee ("Transaction Fee") for all purchases by entities made through the awarded Contract. For the purpose of this bid through Monterey County Office of Education and all Contracts awarded using this document, the Transaction Fee shall be two percent (2%) of "Net Sales," which means gross sales less returns and cancelled orders within thirty (30) days, shipping and sales and other taxes (excluding taxes based on net income).

When a sale is made through the federal e-Rate program, the vendor transaction fee is due on 100 percent of the net sale, that is, the combined total of the amount paid by the local agency and the amount paid by the federal government's e-Rate program.

Transaction Fees will not be charged to or paid by the buyers themselves. Awarded Vendor or its designated authorized reseller(s) shall not include any additional amount corresponding to the Transaction Fees in the bid responses or awarded Contract prices. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order. Epylon will collect the Transaction Fee on behalf of the CalSave program. By submitting a bid, an awarded Vendor:

- Verifies that it already has an Epylon Merchant agreement in force for California, or
- If not, it agrees to Epylon's Terms and Conditions for vendors in the Epylon Merchant Agreement, which is hereby attached here to Section IV.4 by reference, and will be bound to the Epylon Merchant Agreement as a part of the Terms and Conditions of the Bid and Contract between the Awarded Vendor and Agency.

For clarification purposes, the Transaction Fee stated in here in Section IX.4 is the agreed-upon Epylon Marketing Fee contemplated by Section 7 of the Epylon Merchant Agreement, attached.

IX.5 PAYMENT DATES AND PAYEE

Based on required Vendor reports, the Awarded Vendor will make all Transaction Fee payments, at a minimum, on a quarterly basis, by the 15th of the succeeding month of the end of the quarter. All checks are to be made payable to the cooperative's program administrator, that is:

Epylon Corporation
630 San Ramon Valley Blvd, Suite 210
Danville, CA 94526

IX.6 Fees in Non-Conforming Jurisdictions

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

X. Post Award Requirements

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X.1 WEB SITE CONFIGURATION

Each Bidder agrees that if they are awarded an Agreement under this bid, they will cooperate in the development of or access to a web site, linked to CalSave and its affiliate web sites, wherein Contract items will be visible to eligible LEAs and whereby LEAs will be able to have sufficient information to create a purchase order to be submitted in accordance with ordering instructions contained in this bid document.

X.2 PUNCHOUT

It is Monterey County Office of Education's preference, but not a requirement, that the Awarded Vendor

have a punchout and e-order relationship with Epsilon for the electronic transmission of orders.

X.3 SUBMISSION OF CATALOG ITEMS

In order to satisfy local County Office of Education rules regarding a Standard School Supply and Equipment List, an awarded Vendor may be required to provide a full electronic spreadsheet listing, with prices, of all catalog items under Contract and to update the list as often as each quarter.

X.4 REPORTING

Awarded Vendor will compile quarterly reports listing each purchase made by MCOE and other participating agencies or LEAs under this Contract. Reports must be sent by the 15th of the succeeding month after the end of the quarter as e-mail attachments to the CalSave program administrator. Addresses for the delivery of reports will be: rlandolf@epylon.com. CalSave will notify Awarded Vendor if there is any change of e-mail addresses during the course of the Contract. Reports shall be provided in Microsoft® Excel format, shall have file names that identify the contractor/Vendor and the months being reported, shall include the fields listed below, and shall allow for sorting on any of these fields:

- Date of Order
- Name of Participating Agency or Buyer
- Manufacturer SKU number
- Vendor SKU Number
- Description of Item Purchased
- Quantity
- Unit Price
- Extended Price

X.5 MARKETING

Awarded Vendor will be responsible for carrying out a marketing plan as mutually agreed to by CalSave and Awarded Vendor. Any marketing plan submitted for consideration as part of this bid must minimally include a combination of mailings, phone solicitations, California trade show appearances, print advertising, and web site advertising. In addition to, or in concert with, marketing activities and plans described in a Bidder's bid submission, Vendor will:

- Include the approved CalSave logo, web address, and toll free number in print, electronic mail, and other advertising and promotion intended for release to California K-12 schools
- Ensure that the CalSave logo and associated CalSave information be of a clearly readable size and in appropriate proportion to other elements in the print material
- Provide CalSave with a copy of any advertisement or promotional material
- Provide CalSave with date of release and name of publication, journal, etc., wherein promotional materials will be published
- Place a CalSave vendor sign on booths, tables, etc. at exhibits for which the Vendor displays/participates at California tradeshow conventions and the like
- Notify CalSave in advance of any scheduled exhibits where the Vendor intends to participate in California
- Make available at any of its California exhibits CalSave supplied brochures or other promotion materials
- Insert the approved CalSave logo, web address, toll free number on the Awarded Vendor's California education web site, promoting and providing a link to the CalSave website

MCOE and CalSave affirm that their logos are original and free of any copyright violations and will indemnify an Awarded Vendor against any damages suffered from any successful claim of a copyright violation.

XI. Contract Length and Termination Rights

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XI.1 TERM OF AGREEMENT

The Agreement period is for three years: from January 1, 2020 through December 31, 2022. Awards are valid throughout the Agreement period.

XI.2 EXTENSIONS OF CONTRACT TERM

MCOE at its sole discretion may elect to extend the term of this Contract for up to two (2) additional one- (1)-year periods, but in no case shall a contract be in force for more than three years at one time.

MCOE shall give such notice to the contractor before December 31, 2022. If an extension is granted after

the initial term, the extended term shall be from the January 1, 2023 to December 31, 2023.

To achieve a second extension, MCOE shall give such notice to the contractor before expiration of the extended term, which is December 31, 2023. If an extension is granted after the first extended term, the second extended term shall be from January 1, 2024 to December 31, 2024.

MCOE reserves the right to offer an Awarded Vendor month-to-month extensions for a period of up to six months, if legal or administrative circumstances so require.

XI.3 DEFAULT

In the event the Bidder to whom a Contract is awarded fails to perform in accordance with the terms and conditions of the bid or the Contract, MCOE may terminate this Contract and their orders, in whole or in part, in accordance with the TERMINATION FOR DEFAULT provision of this bid.

XI.4 TERMINATION FOR DEFAULT

MCOE may, by written Notice of Default to the successful Bidder, terminate the Contract issued in whole or in part if:

- A. The successful Bidder fails or neglects to perform any of the services listed herein in the manner and time specified, or if, in the opinion of the MCOE, the item(s) provided fail to perform satisfactorily;

OR

- B. The successful Bidder fails to perform any of the other provisions of the bid, Contract, or purchase order, and does not cure such failure within a period of ten (10) days (or such longer period as MCOE may authorize in writing) after receipt of notice from MCOE specifying such failure.

In the event MCOE terminates the Contract for default, in whole or in part, MCOE, or any participating public agency, may acquire goods, similar to those terminated, from another source and the successful Bidder shall be liable for any excess costs of acquisitions of such similar goods.

XI.5 TERMINATION FOR CLOSURE, RE-ORGANIZATION

MCOE does not guarantee that any or all services will be requested for the duration of the Contract period. MCOE reserve the right to cancel this Contract if MCOE ever faces closure or legislative reorganization.

XI.6 BAIT AND SWITCH PROHIBITED

MCOE reserves the right to terminate for default or to suspend this contract, if evidence shows that the awarded vendor has baited an LEA with marketing or with prices based on this contract, and then has advised the LEA to use another contract at a lower price to avoid payment of Transaction Fees.

XII. Other Terms and Conditions

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XII.1 EPYLON TERMS AND CONDITIONS

Vendor will be bound to an Epylon Merchant Agreement -- either an existing one a Vendor has in force with Epylon in California or, alternatively, the standard Merchant Agreement, which is attached.

XII.2 ACCEPTANCE OF TERMS AND CONDITIONS

Bidder must answer in response to the question in the Question Section whether he or she accepts MCOE's terms and conditions of this Invitation to Bid. A Bidder's failure to accept the terms and conditions or a Bidder notation of exceptions to any of MCOE's terms and conditions may result, in MCOE's sole discretion, a bid being deemed non-responsive.

XII.3 FORCE MAJEURE

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

The Vendor shall notify the Agency (LEA) orally within five (5) business days and in writing within ten (10) business days of the date on which the Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Agreement (Purchase Order) is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay, if the nature of the *force majeure* event does not prevent Vendor from reasonably making such estimation. The Vendor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce within ten (10) business days of LEAs written request such supporting documentation as the Agency (LEA) may reasonably request. After receipt of such notification, the LEA may elect either to cancel the Purchase Order or to extend the time for performance as reasonably necessary to compensate for the Vendor's delay.

In the event of a declared emergency by competent governmental authorities, the LEA by notice to the Vendor, may suspend all or a portion of the Purchase Order.

XII.4 RIGHT TO WAIVE INFORMALITIES IN BIDDING

The right is reserved to waive any informality in bids, to reject any or all bids, and to accept or reject any item or combination of items, as determined to be in the best interest of MCOE.

XII.5 ASSIGNMENT OF THE CONTRACT

The Contract awarded under this bid shall not be assigned without the prior written approval of MCOE's chief business official or designated agent.

XII.6 INDEMNIFICATION AND LIABILITY

As it pertains to each LEA using this contract and the Awarded Vendor, each party ("indemnifying party") shall indemnify and hold harmless the other party ("indemnified party") for any damages or losses to the indemnified party arising from claims. "claims" are defined as (i) claims brought by a third party for death or personal injury to a third party, or (ii) damage to tangible personal property suffered or incurred by the indemnified party allegedly resulting from the grossly negligent or willful misconduct of the indemnifying party, its employees, agents, contractors, representatives or affiliates. However, notwithstanding the prior sentence, a claim for death or personal injury to a third party or damage to tangible personal property shall not be a claim if such claim or damage was caused in whole or in part by the actions of the indemnified party, its employees, agents, contractors or representatives. Claims also do not include any damages or liability excluded in this agreement. In addition, neither MCOE nor Awarded Vendor will be liable, through indemnification or otherwise, for any loss, damage, expense, liability, action, suit or proceeding allegedly arising out of loss or damage to software or the data processed by such software or hardware, or loss of use of hardware. The obligation of the indemnifying party to indemnify and hold the indemnified party harmless is contingent upon the indemnified party providing the indemnifying party with (i) prompt written notice of and description of each claim, (ii) sole authority to defend or settle any such action, suit or proceeding, and (iii) all reasonable assistance in any such defense.

Neither MCOE nor the Awarded Vendor shall be liable for lost profits, loss of business or other consequential, special, indirect or punitive damages, even if advised of the possibility of such damages, or for any claim by any third party. The Awarded Vendor will not be held liable or responsible for any amount of damages in excess of the lesser of: (i) the dollar amount paid by any purchaser for the product(s) giving rise to the claim; or (ii) \$50,000.00.

XII.7 PUBLIC RECORDS

All documents received by MCOE, as a public agency, in connection with this bid are subject to the requirements of the California Public Records Act, Government Code 6250-6270. Bidder shall identify information contained in the bid, which the Bidder deems to be confidential or proprietary and wishes to be withheld from disclosure to others under the state Public Records Act. Note: A blanket statement that all contents of the bid are confidential or proprietary will not be honored by MCOE.

XII.8 RIGHTS OF LEAS

Unless otherwise agreed in this Contract, the rights and remedies of the LEA provided above shall not be exclusive and are in addition to any other rights and remedies provided by law and under the Contract.

XII.9 GOVERNING LAW AND VENUE

The laws of the State of California govern the Contract. Each and every provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included,

or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. Venue for any litigation arising out of or related to the Contract shall be with either the Superior Court in and for the County of Monterey, State of California or the Federal District Court for the Northern District of California, San Jose Division.

XII.10 SEVERABILITY:

The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract that may remain in effect without the invalid provision or application.

XII.11 TERMINATION FOR NON-PAYMENT

The Awarded Vendor understands and agrees that failure or refusal to comply with the provisions set forth in [Section IX.4](#) and [IX.5](#) regarding reports and the payment of the two percent 2% Transaction Fee in conjunction with any use of this Contract by MCOE or any other LEA is grounds for cancellation of the Contract as described in [Sections XI.3](#) and [XI.4](#)

XII.12 SALES TAX

Awarded Vendors must be authorized to sell in California and must collect and remit all required sales taxes associated with sales to LEAs within California. Sales tax rates for LEAs are different for each agency, depending upon their location within a taxing jurisdiction. Proper collection must be made from each participating LEA.

XII.13 LOCAL LEA COUNSEL

Both the Awarded Vendor and any LEA using this Contract agree that the MCOE makes no representation that use of this Contract by any Other Agency is, in fact, authorized by law. In this regard, the MCOE suggests that, at a minimum, Awarded Vendor and LEAs consult with their own legal counsels before consummating a purchase under this Contract.

XII.14 AWARDED VENDOR TERMS OF SALE

An Awarded Vendor's terms and conditions as published on its ordering website may be incorporated into the terms of any purchase order fulfilled. In case of conflict, the order of precedence is as follows 1) California and Federal law, 2) the Terms and Conditions of Invitation to Bid #530067, 3) Epylon's Merchant Agreement, 4) the Awarded Vendor's published terms and conditions.

XII.15 COPYRIGHT

These bid documents and all attachments are copyrighted in 2019 by the Epylon Corporation and the Monterey County Office of Education (©2019, Epylon and Monterey County Office of Education).

XIII. Code Citations

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XIII.1 PUBLIC CONTRACT CODES

Public Contract Code 20112. For the purpose of securing bids the governing board of a school district shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post on the district's Web site or through an electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the Web site where bids will be opened. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time. The governing board of the district may accept a bid that was submitted either electronically or on paper.

Public Contract Code 20118. Notwithstanding Sections 20111 and 20112, the governing board of any school district without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by **contract**, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, **lease**, requisition, or purchase order, the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the

services incidental to the lease or purchase of the personal property.

Public Contract Code 20652. Notwithstanding any other provisions of Sections 81640 to 81654, inclusive, of the Education Code, or of Sections 20651 to 20659, inclusive, of this code, the governing board of any community college district without advertising for bids, and when that board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the community college district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property.

XIII.2 EDUCATION CODES

Education Code 1276. The county superintendent of schools may contract with an acceptable party who is one of the three lowest responsible bidders for the lease, purchase, or maintenance of electronic data-processing systems and for the lease, purchase, or maintenance of supporting software.

Education Code 17597. In addition to utilizing the procedures specified in Article 14 (commencing with Section 17545) of Chapter 4, any school district or any county board of education may, by direct sale or otherwise, sell to a purchaser any electronic data processing equipment, other major items of equipment, or any relocatable building owned by, or to be owned by, the school district or county board, if the purchaser agrees to lease the equipment or building back to the school district or county for use by the school district or county following the sale.

The approval by the governing board of the school district or of the county superintendent of schools of the sale and leaseback shall be given only if the governing board of the school district or the county superintendent of schools finds, by resolution, that the equipment is data processing equipment, another major item of equipment, or a relocatable building within the meaning of this section and that the sale and leaseback is the most economical means for providing the electronic data processing equipment, other major items of equipment, or relocatable building to the school district or county. For purposes of determining the area of existing adequate school construction under the Leroy F. Greene State School Building Lease-Purchase Law of 1976, any portable relocatable classroom acquired under this section and used for classroom purposes shall be considered owned by the district.

Education Code 38110. The county board of education shall on or before the first day of February of each year establish rules and regulations under which any school district in the county shall, except as provided in Section 40002, purchase standard school supplies and equipment through the county superintendent of schools, or when so directed by him or her, through a county purchasing agent.

When the county superintendent of schools purchases standard school supplies without directing their purchase through the county purchasing agent or other county, city, or school district agent or agency, he or she shall make such purchase from the lowest responsible bidder who shall give such security as the county superintendent of schools requires, or else reject all bids. For the purpose of securing bids, the county superintendent of schools shall publish at least once a week for two weeks in a newspaper of general circulation published in the county, a notice calling for bids stating where the list and specifications of standard school supplies and equipment to be furnished may be obtained and the time when, and the place where bids will be opened.

The county board of education shall list as standard school supplies and equipment such supplies and equipment as can be advantageously purchased in quantity. The list of standard school supplies shall be accompanied by a table of specifications giving the minimum grade, quality, substance, or other standard required for the purchase of each item listed.

The cost of advertising for bids and the cost of preparation of a table of specifications shall be paid from the county general fund. The provisions of this section shall not apply to counties of the first or second class containing no more than three districts with an average daily attendance of less than 2,500.

Education Code 38112. (a) Except as provided in subdivision (b), the governing board of any school district may purchase any necessary school supplies and equipment, including standard school supplies and equipment listed by the county board of education, in the manner provided in this chapter, or the governing

board of any school district may purchase such supplies and equipment directly from the vendor. Such direct purchase may be as a single district or two or more districts acting as a cooperative.

(b) An elementary school district having an average daily attendance of less than 2,500 during the preceding fiscal year may purchase standard school supplies and equipment directly from a vendor only by means of a purchasing cooperative representing a total average daily attendance in excess of 2,500 and then only if the county superintendent of schools has on file a document certifying the school district's membership in such a cooperative.

Education Code 81645.5. In addition to utilizing the procedures specified in Article 9 (commencing with Section 81450) of Chapter 2, any community college district may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment or other major items of equipment owned by, or to be owned by, the district, if the purchaser agrees to lease the equipment back to the district for use by the district following the sale.

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

XIII.3 GOVERNMENT CODES

Government Code 6500 As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies

Government Code 6502 If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax, even though one or more of the contracting agencies may be located outside this state.

It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised. For purposes of this section, two or more public agencies having the power to conduct agricultural, livestock, industrial, cultural, or other fairs or exhibitions shall be deemed to have common power with respect to any such fair or exhibition conducted by any one or more of such public agencies or by an entity created pursuant to a joint powers agreement entered into by such public agencies.

[END]