

## Contract Signature Page

### MONTEREY COUNTY OFFICE OF EDUCATION (MCOE)

#### Invitation to Bid #AEPA 024-C

#### Digital Resources & Instructional Resources

Pursuant to and in compliance with Invitation for Bid #**AEPA IFB #024-C**, its Terms and Conditions, and the other documents relating thereto, the undersigned Bidder, having familiarized himself/herself 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 prices set forth in Vendor's bid. Awarded Vendor agrees to comply with the Monterey County Office of Education (MCOE) Terms and Conditions as written in the Invitation to Bid #**AEPA IFB #024-C** For clarification of bid Terms and Conditions, MCOE and Bidder agree the following interpretations apply:

#### I.1 Governing Law and Venue

As described in Part A of bid Terms and Conditions, the laws of the State of California govern the Contract and prevail in the interpretation and administration of the Contract. California-specific Terms and Conditions prevail over any General Terms and Conditions. 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.

The 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.

#### I.2 Authority

For California, this bid is issued under the authority of the elected Monterey County Superintendent of Schools administering the Monterey County Office of Education (MCOE), located at 901 Blanco Circle, Salinas, California, 93912. In this document, MCOE may be referred to as Agency, being distinct from other parties who may use this Contract who are hereinafter referred to as Local Education Agencies (LEAs), regardless of their hierarchy or their political and organizational status as schools or municipalities.

#### I.3 CalSave, Administration, and Agent

The Contract awarded and the awarded Contractor/Vendor will automatically be part of the CalSave program. CalSave is the cooperative purchasing program founded by the Monterey County Office of Education and administered by the Epylon Corporation under an agreement with MCOE. MCOE is the lead agency for all contracts, and the Monterey County Superintendent of Schools is the authority for the solicitation, evaluation, and award of all contracts. Epylon serves as MCOE's administrative agent, but only the Monterey County Superintendent of Schools has the authority to award contracts. Correspondence and communication related to

the Contract award or administration of the program should be directed to Epylon, 630 San Ramon Valley Blvd., Suite 210, Danville, CA 94526.

MCOE reserves the right to change agents or to change the contact name of existing Agent's personnel administering the Contract. If Agent or Agent's personnel change, awarded Contractors/Vendors will be notified with new instructions.

#### **I.4 Transaction Fees**

As described in bid Terms and Conditions, Transaction Fees are the funding source for the operation of the self-supporting CalSave cooperative purchasing program under MCOE. Awarded Contractors/Vendors shall be required to pay a Transaction Fee for all purchases by LEAs 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 of Net Sales, which means gross sales less returns and cancelled orders within 30 days, shipping and sales and other taxes (excluding taxes based on net income). Transaction Fees will not be charged to or paid by the buyers themselves. Neither awarded Contractor/Vendor nor its designated authorized reseller(s) shall include any additional amount corresponding to the Transaction Fees in the awarded Contract prices. This Transaction Fee 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. The Contractor/Vendor will make all participation fee payments within two weeks after sending the quarterly report. Checks are to be made payable to the Epylon Corporation and sent to 630 San Ramon Valley Blvd., Suite 210, Danville, CA 94526.

#### **I.5 Non-Conforming Jurisdictions**

Notwithstanding Section 1.4 (immediately above) no Transaction Fee is authorized to be charged to awarded Contractors/Vendors for sales within any jurisdiction where prohibited by law or local-government policy. Any LEA using this Contract where Section I.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 and §20652, which allows MCOE to charge reasonable costs to the public corporation or agency for furnishing the products and services covered under this Contract.

#### **I.6 Reports**

The Contractor/Vendor will compile a quarterly report listing each purchase made by participating agencies under this Contract, and send them by the 15th of April, July, October, and January to Racquel Landolf with the email address of rlandolf@epylon.com. These reports shall be in Microsoft Excel format and shall have file names that identify the Contractor/Vendor and the month being reported. The file at a minimum shall include the fields listed below and shall allow for sorting on any of these fields:

- Date of Order
- Name of Participating Agency or Other Agency (LEA)
- Description of Item and Services Purchased
- Manufacturer's SKU Number

- Quantity or Job Order Units
- Contract Unit Price
- Extended Price
- List Price Before AEPA Discount

### **I.7 Length of Term**

The term of the agreement shall commence on the date of the award and continue as stipulated in General Terms and Conditions, unless terminated, cancelled, or extended. California statutory term limits and extensions shall apply. This is not a “continuing contract” in the sense it has explicit end dates. The agreement shall remain in force until February 28, 2025, unless terminated, canceled, or extended. At no time may the contract be in force for more than three years at a time. By mutual written agreement as warranted, the contract may be extended for three additional 12-month periods or month by month for up to six months.

### **I.8 Marketing and Advertising Under This Agreement**

Vendor will actively promote the use of this Contract by LEAs in California. Vendor must comply with the marketing plan offered as part of its bid submission. Unless other arrangements are made with the CalSave Administrator, Vendor also agrees to perform the following:

- Include the approved CalSave logo and web address in all print, electronic mail and other advertising and promotion intended for release to California K-12 schools, excluding national marketing releases.
- Provide CalSave with a copy or proof sheet of the advertisement or promotion material. Vendor will provide CalSave with date of release and name of publication, journal, etc.
- Place a CalSave Vendor sign on booths, tables, etc. of any or all exhibits for which the Vendor displays/participates at California tradeshow, conventions and the like.
- Insert the approved CalSave logo and web address on any Vendor’s web site promoting the Contract or a specific CalSave landing page and providing a link to the CalSave website.
- Vendor will supply product catalog information, product description, pricing, etc., in a spreadsheet format as specified by CalSave for inclusion on the CalSave website.
- Vendor agrees to cooperate in developing appropriate website content to promote its products, services, and their advantages to school districts.
- Requested materials will be submitted to CalSave within 30 days.

### **I.9 Conformance to Public Contract Code §20111**

An award by the Monterey County Superintendent of Schools under this solicitation will be for the purchase of equipment, materials, supplies, services, or repairs to be furnished, sold, or leased in accordance with Public Contract Code §20111 and §20650 or other California code sections as may be allowed by law. Awards shall include allowance for installation and assembly services necessary to the use of the equipment, materials, supplies, and repairs purchased or leased.

### **I.10 Conformance to Public Contract Code §20118 and §20652**

All public agencies (LEAs) are authorized by law to purchase off a contract awarded by an agency that has itself gone to bid, including all K-12 schools districts, community college districts, special districts and JPAs serving education, pursuant to Public Contract Code §20118 and §20652. Using these statutes, the Monterey County Office of Education hereby declares its intent and authorization to make all contracts awarded under this Contract "piggybackable" by other agencies in the state. The Agency waives any right to receive payment from other California agencies making purchases off the awarded contracts and those agencies will make payment directly to the vendors. Any legislative changes to Public Contract Codes §20118 and §20652 during the term of the Contract(s) with Award Vendor(s) shall apply to the Contract(s) immediately when such changes become law.

### **I.11 Piggyback and Standard School Supply & Equipment Authority**

The Monterey County Office of Education declares that items, materials, personal property, equipment, 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 common Standard School Supply & Equipment Lists 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 Contract Code §20118 and §20652, but also in accordance with Education Code §38110 and §38112 dealing with cooperatives and Standard School Supplies & Equipment.

### **I.12 Intended for Personal Property**

An award by the MCOE under this solicitation will be for the purchase of equipment, materials, supplies, services, or repairs to be furnished, sold, or leased in accordance with Public Contract Code §20111 and §20650. Awards shall include allowance for installation and assembly services necessary for use of the equipment, materials, supplies, and repairs purchased or leased. When any services or repairs fall into a category of Public Works as defined in Public Contract Code §22002, an LEA may be required to conduct a separate bid for labor and services but may use this Contract for an unlimited dollar amount for any supplies, materials, equipment, or personal property to be staged and ready for use in a local Public Works project.

### **I.13 Service Limitations**

When Public Works services cost \$15,000 or more, an LEA, under most situations, must bid itself independently for the services and labor related to the public work, but may use this Contract for the contracted supplies, material or equipment related to the project. If circumstances allow, LEAs may also combine this competitively bid Contract with other alternative authorities for projects as may be allowed by law, such as CMAS, Public Contract Code §22030, Education Code §17406 or Government Code §1466. LEAs may consult with their own legal counsel to see if such statutes apply to their Public Works projects.

## **I.14 Job Order and Unit Price Contracting**

Notwithstanding, Sections I.9 through I.13, the awarded Contractors/Vendors and any authorized resellers or subcontractors, may extend bid pricing from **AEPA IFB #024-C** to other agencies in California, including school districts, community colleges, state colleges, cities, and counties to the extent allowed by law under Job Order Contracting statutes, including but not limited to Public Contracts Codes §20919.20 through §20919.33, §20665.20 through §20665.35 and §10710. Agency allows any school district, college, or agency to use this Contract and its competitively bid unit pricing as an alternative to other contracting procedures that the school district or agency is otherwise authorized or required by law to use. In using this Contract and pursuing a job-order-contracting project, a participating agency is obliged to conform to contracting steps spelled out in their respective code sections, state college trustee policies, or local board policies.

## **I.15 Start Date**

Once the award is made to the Contractor/Vendor and signatures have been placed on the Contract from both parties, the awarded Contractor/Vendor is authorized to begin selling to eligible agencies. MCOE will begin informing LEAs of the Contract once the Contract has been signed.

## **I.16 Prices and Requests for Quotes**

The awarded contractor/Vendor, in cooperation with MCOE's agent, must make provision for LEAs to quickly ascertain bid prices by posting prices, posting a link or a contact for prices, distributing catalogs and price lists, responding to requests for quotations, or participating in eCommerce. (The two percent Transaction Fee on all sales is a cost of doing business to the Vendor and the requirement for the fee is publicly disclosed in these bid documents for the edification of all buying agencies and LEAs. Transaction fees should not appear as a line item on a quotation or on listed bid pricing. The final price quoted or displayed must be inclusive of the participation fee on all pricing and quotations.)

## **I.17 Submission of Orders and Delivery**

After entering into an agreement with MCOE, an LEA electing to use this Contract will enter into a Separate Contract with the Vendor by way of a purchase order or separate contracting document ("Separate Contract"). Purchase orders will be issued by participating LEAs to contractor/Vendor.

LEAs will fax or mail purchase orders directly to the CalSave office fax at (866) 488-3729), unless other arrangements have been made and agreed to by the CalSave Administrator. LEAs may also use Epylon eCommerce software for transmission of purchase orders. Standard business practice is for all purchase orders received by 3:00 p.m. Pacific Time to be logged and forwarded to the appropriate Vendor on the same day received unless unusual circumstances occur. It is the responsibility of the awarded/Vendor contractor to track any purchase order received directly from an LEA and to include that order on quarterly reports.

Awarded Contractor/Vendor will deliver goods, services and corresponding invoices directly to the participating LEAs and receive payments directly from the participating LEAs as per bid specifications.

## I.18 Other Agencies' Right to Purchase

CalSave is a self-supporting contracting program led by the Monterey County Office of Education. Contracts are made available to all California public school districts, private and nonpublic schools registered with a county office of education or state Department of Education, charter schools, community college districts, eligible state agencies, non-profits (particularly those such as PTAs buying on behalf of schools or government), and any other agency allowed by law – all referred to as LEAs.

Subject to the following Terms and Conditions, MCOE consents to LEAs purchasing items at the same unit price(s) or pricing formula under the Terms and Conditions of this Contract, as may be authorized by §20118 and §20652 of the Public Contract Code, government Code 6502, or other legal authority:

a) Any other agency (LEA) authorized by law to use this Contract for its own purchase(s) from the awarded Contractor/Vendor or their authorized resellers shall by default enter into a standard agreement with MCOE, which *inter alia* will include the terms, conditions, and information set forth in this paragraph A and paragraphs B through I below.

b) After entering into a standard agreement with MCOE, an Other Agency electing to use this Contract will enter into a Separate Contract or purchase order ("Separate Contract") with the contractor/Vendor. The Separate Contract is subject to and includes and/or incorporates all applicable terms of this Contract and the specific requirement that the awarded Contractor/Vendor comply with the provisions set forth in the paragraph regarding payment of the 2 percent Transaction Fee (or the non-conforming jurisdiction fee) to be collected by the Epylon Corporation. MCOE will not be a party to any Separate Contract but will be considered a third-party beneficiary of such Separate Contract.

c) The Awarded Contractor/Vendor understands and agrees that failure or refusal to comply with the provisions set forth in this agreement regarding payment of the two percent Transaction Fee in conjunction with any Separate Contract or any other use of this Contract by an "Other Agency" is grounds for cancellation of the Contract. The Contractor/Vendor also understands and agrees that if the Contract is cancelled for this or any other reason, MCOE may give notice of such cancellation by any other means appropriate to inform LEAs of that cancellation.

d) The MCOE waives any right it may have to require any LEA using this Contract to draw its warrants for the purchase(s) in its favor and consents to each agency making such payment(s) directly to the contractor/Vendor.

e) Sales tax and freight/shipping charges included in the Contract apply to the MCOE only. Additional sales tax and freight/shipping charges may be required on purchases by any LEA and are outside the scope of this Contract, unless specifically addressed elsewhere in Part A or Part B of the Terms and Conditions.

f) This Contract and any Separate Contract are for the purchase of the items covered by Contract. An LEA may, however, exercise its authority under Education Code §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 Contractor/Vendor agrees to take any and all actions requested by any LEA 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.

g) Both the Contractor/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, Contractor/Vendor and any LEA considering such use consult with their own legal counsels before doing so.

h) Both the Contractor/Vendor and any LEA using this Contract agree to defend, indemnify, and hold the MCOE, the Monterey County Superintendent of Schools, and the Monterey County Board of Education and its members, as well as all of their respective officers, employees and agents, free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any such use.

i) MCOE reserves the right to cancel the whole or any part of this Contract due to failure by the contractor to carry out any obligation, term, or condition of the Contract. MCOE will issue written notice to the contractor for acting or failing to act in any of the following:

a) The Vendor fails to adequately perform the services set forth in the Contract

b) The Vendor fails to make progress in the performance of the Contract and/or gives MCOE reason to believe that the contractor will not or cannot perform to the requirements of the Contract

c) The contractor fails to observe any of the Terms and Conditions of the Contract

d) The contractor fails to pay Transaction Fees

e) The contractor fails to follow the established procedure for purchase orders, invoices and receipt of funds as stipulated by the MCOE. MCOE shall follow the following procedure if the Contract is to be terminated:

- Step 1 - Issue a warning letter of concern outlining the violations and length of time to correct the problem(s).
- Step 2 - Issue a letter of intent to cancel the Contract, if the problem(s) is not resolved by a given date.
- Step 3 - Issue letter to cancel the Contract. Upon receipt of the written notice of concern, the contractor shall have ten (10) business days to provide a satisfactory response to MCOE. Failure on the part of the contractor to address adequately all issues of concern may result in Contract cancellation.

### **I.19 Conversion to a California Multiple Awards Schedule (CMAS) Contract**

Because of its multiple-award provisions, this Contract may qualify for adoption as a California Multiple-Award Schedule contract. If the Vendor uses this MCOE Contract for the purpose of obtaining a separate CMAS contract from the State of California, the Vendor is responsible for paying both the CMAS fee and the two percent Transaction Fees described in Section I.4 for all orders submitted under the authority of the CMAS program. In exchange for this fee, the Vendor is given a license to use and duplicate MCOE/AEPA Terms and Conditions for the purpose of applying for a CMAS contract. Also, CalSave or CalBuy will post pricing allowing prospective buyers to check for pricing that is compliant with the MCOE Contract and CMAS requirements. Vendor must comply with MCOE's quarterly reporting requirements. Public records of sales through CMAS will be used to confirm that CalSave reports include sales made under the CMAS program.

### **I.20 Other Agencies, Constitutionally Independent Agencies, & Out-of-State Agencies**

Other agencies and out-of-state agencies and LEAs may use the Contract as allowed by California Government Code §6502, which says, "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, 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.”

**Awarded Vendor/Contractor**

**MCOE**

Barnes & Noble Booksellers Inc.  
33 East 17th St, Business Development

Monterey County Office of Education

901 Blanco Circle

New York, NY 10003

Salinas, California 93912-0851

By: Tracy Vidakovich Digitally signed by Tracy Vidakovich  
Date: 2023.12.12 10:13:15 -06'00'

By: Colleen Stanley  
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Name: Tracy Vidakovich

Name: Colleen Stanley

Title: VP, Business Development

Title Chief Business Official

Date: 12/12/2023

Date: 12/20/2023

*For Deneen Guss  
County Superintendent of Schools*