



## **MONTEREY COUNTY OFFICE OF EDUCATION (MCOE)**

### **Request for Bids (RFB)**

#### **Comprehensive Product Catalogs for Technology and Audio-Visual Equipment**

**Electronic Bid # 538902**

**Bid Due Date: Wednesday, December 13, 2023, 3 p.m. PT**

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### **Terms and Conditions**

#### **I Introduction and Overview**

##### **I.1 Bid Title**

“Comprehensive Product Catalogs for Technology and Audio-Visual Equipment”

##### **I.2 Electronic Bid Number**

The applicable electronic bid form is numbered 538902.

##### **I.3 Bidding Agency**

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

##### **I.4 Bid Scope**

The Monterey County Office of Education is seeking bids for the use of separate comprehensive Catalogs in the areas of technology and audio-visual equipment all for the purpose of 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 ORGANIZATION OF BID TERMS AND CONDITIONS

Section and paragraph headings, hyperlinks, and sidebar annotations are provided only for description, ease of use, reference, and emphasis. They are not intended to be binding or to be used in the interpretation of the Contract.

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## I.6 The CalSave Cooperative

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 currently administered by the Epylon Corporation. MCOE and CalSave offer all education agencies in California and other eligible buying agencies the use of MCOE contracts as may be allowed by California law.

## I.7 Bid Due Date

All bids must be received electronically by 3 p.m. PST, Wednesday, December 13, 2023, (the “Bid Due Date”).

The Agency may extend the Bid Due Date and time at any time in advance of the Bid Due Date by issuing an addendum to this Request for Bids and notification in the External Notes Section of the electronic bid form.

## I.8 Bid Opening

Bids will be opened and publicly read at 3 p.m. PST, Wednesday, December 13, 2023 (the “Bid Opening Date”), at 630 San Ramon Valley Boulevard, Suite 210, Danville, California 94526. If public gatherings are prohibited due to any declared emergency or pandemic, a public online opening will be held by way of video-conferencing software. Information on any such change in venue and any necessary online credentials will be posted in the External Notes Section of the electronic bid form.

## I.9 Prebid Meeting

No prebid meeting will be held for this RFB.

## I.10 Bid Contact

Suzanne Barchi  
[suzbarchi@epylon.com](mailto:suzbarchi@epylon.com)

## I.11 Other Important Dates

- Questions Due Date December 01, 2023
- Tentative Award Date December 20, 2023
- Contract Start Date January 01, 2024

### **I.12 Advertising and Legal Notice of the Request for Bids**

The Agency's legal advertising requirements are met with legal notices in the Salinas *Californian*, a newspaper of general circulation in Monterey County where the Agency is located.

### **I.13 Contract Term**

The initial term of the awarded Contracts shall begin on January 1, 2024, and continue until December 31, 2026, unless terminated, canceled, or extended.

## **II Bid Document Definitions and Interpretations** [\[Return to Top\]](#)

### **II.1 Captions**

The captions appearing at the beginning of each Section or subsection of the Contract Documents are for reference and convenience only and shall be disregarded whenever an interpretation of the Contract Documents is required.

### **II.2 Capitalized Terms**

Unless the context otherwise requires, capitalized terms used but not otherwise defined in the Contract Documents shall have the respective meanings specified in these Terms and Conditions.

### **II.3 Use of Pronouns**

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

### **II.4 Provisions Required by Law**

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

### **II.5 Christian Doctrine**

Any clause required by rule or regulation not included in this Request for Bids, the Contract or Purchase Order will be read as if in this Request for Bids, the Contract, or Purchase Order whether or not physically included.

### **II.6 Non-Exclusive Contract**

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the Agency and Eligible Entities. Agency and Eligible Entities reserve the right to obtain equal or similar Products from another source.

### **II.7 Definition of "Agency"**

"Agency" shall mean the Monterey County Office of Education, administered under the authority of the publicly elected Superintendent of Schools and construed to include herself and her officers, employees, and agents.

### **II.8 Definition of "Agreement"**

"Agreement" shall mean the Awarded Vendor Agreement between Agency and the Awarded Vendor.

### **II.9 Definition of "Authorized Reseller"**

The term "Authorized Reseller" shall mean a firm, company, individual, business, partnership, or joint venture, such as dealers, distributors, value-added resellers, etc. that have been designated by the Awarded Vendor to help fulfill the Contract for the Wholesaler Catalog award held by the Awarded Vendor. Authorized Reseller responsibilities may include, but are not limited to, marketing activities, providing ancillary services, receipt of orders, fulfillment of orders, invoicing, receipt of payment, and

paying CalSave Transaction Fees as determined by the Awarded Vendor. By way of clarification, an entity that has been designated as an Awarded Vendor's Authorized Reseller shall not be considered an Authorized Reseller in situations where such entity is itself an Awarded Vendor for a different Product Line or Catalog award and is selling to the Eligible Entity in its capacity as an Awarded Vendor for such different Product Line or Catalog award.

#### **II.10 Definition of "Awarded Vendor"**

"Awarded Vendor" is the Bidder declared by the Agency to be the lowest, responsive, responsible Bidder with a discrete Catalog to whom the Agency's Board of Directors has awarded a Contract.

#### **II.11 Definition of "Bidder"**

"Bidder" is any firm, company, individual, business, partnership, joint venture, or other entity that has completed and submitted a response to this Request for Bids.

#### **II.12 Definition of "Catalog" or "Catalogs"**

A "Catalog" is the full line-card grouping of Products and services representing merchandise and services from multiple manufacturers aggregated by a vendor in the form of a commercially available list, published paper book, booklet, website, or mobile application.

#### **II.13 Definition of "Clarification"**

"Clarification" means communication with a Bidder for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the Bidder's bid. It is achieved by explanation or substantiation, either in response to an inquiry by the Agency or as initiated by the Bidder. Clarification does not allow the Bidder to revise or modify its bid, except to the extent that correction of apparent clerical mistakes results in a revision.

#### **II.14 Definition of a "Commercially Available Catalog"**

A "Commercially Available Catalog" is construed to mean a Catalog or price list that has widespread availability and distribution, as opposed to a custom or one-off Catalog. A key component of a Commercially Available Catalog is that its base pricing applies to a wide audience and cannot be easily changed or manipulated to raise or lower prices for a single customer.

#### **II.15 Definitions of "Contract Documents," "Contract" and "Purchase Order"**

Contract Documents Between Agency and Awarded Vendor. As between the Agency and Awarded Vendor, the "Contract Documents" consist of this Request for Bids, its Terms and Conditions, any applicable state-specific terms and conditions, all information incorporated into the electronic bid form by Agency or Bidder, the Bidder's responses to Questions, the Bidder's CalSave Bid Quote Sheet(s), the Bidder's pricing spreadsheet, the Bidder's Services Form, the Agreement, all other attachments and exhibits to the Request for Bids, all addenda to the Request for Bids issued before the Bid Opening Date, and all subsequent written amendments to the Agreement (e.g. adding state-specific terms and conditions). The Contract Documents form the "Contract" between Agency and the Awarded Vendor during the Contract term and any authorized extensions. "Purchase Order" may also include a mutually agreeable Statement of Work executed between the Eligible Entity and an Awarded Vendor.

Contract Documents Between Awarded Vendor and Eligible Entity. As between an Eligible Entity and an Awarded Vendor, the "Contract Documents" shall include, in addition to the Contract Documents listed above between Agency and Awarded Vendor, the Purchase Order, but excluding any pre-printed terms and conditions on such Purchase Order that conflict with the Contract Documents), the Awarded Vendor's performance, payment, and maintenance bonds (if applicable), lease financing documents (if applicable), maintenance service agreement (if applicable), the Prevailing Wage rate determination (if applicable), and any state-specific terms and conditions that are part of the Contract Documents, and all subsequent written amendments to the Purchase Order, and shall form the "Contract" between the LEA

and Awarded Vendor, which Contract is referred to in these Terms and Conditions as the “Purchase Order.”

**II.16 Definition of “Cooperative Procurement Code”**

The term “Cooperative Procurement Code” shall have the meaning outlined in Section III.2 of these Terms and Conditions.

**II.17 Definition of “Effective Date”**

The “Effective Date” of a Purchase Order is the date on which the Awarded Vendor receives a Purchase Order that has been executed by the Eligible Entity and has all approvals required by the Eligible Entity.

**II.18 Definition of “Eligible Entity”**

“Eligible Entity” means an LEA or other Eligible Organizations that qualify to be buyers. Several Sections provide a detailed description of “Eligible Entities” [starting here](#).

**II.19 Definition of “eCommerce Consultant”**

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

**II.20 Definition of “eCommerce Merchant Agreement”**

The term "eCommerce Merchant Agreement" is the document attached to the electronic bid form governing the eCommerce Consultant's services and software integral to the CalSave program.

**II.21 Definition of “Epylon”**

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

**II.22 Definition of “LEA”**

The term “Local Educational Agency” or “[LEA](#)” is defined [elsewhere](#) in the Terms and Conditions.

**II.23 Definition of “Non-Responsive Bid”**

Any bid that does not reasonably and substantially conform to the mandatory or essential terms, conditions, or specified requirements for this solicitation shall be considered non-responsive. Bids determined to be non-responsive will not be considered for an award.

**II.24 Definition of “CalSave”**

CalSave is a California cooperative purchasing program specializing in the development and administration of purchasing contracts awarded by the Monterey County Superintendent of Schools.

**II.25 Definition of “Responsible Bidder”**

A responsible Bidder is a vendor that has submitted a responsive bid and that possesses the capability and qualifications to perform the Contract requirements, plus one who has the financial strength, integrity, and reliability to assure good-faith performance. Agency must determine a Bidder to be responsible before awarding it a Contract.

**II.26 Definition of “Responsive Bid”**

A responsive bid is a bid that reasonably and substantially conforms to the mandatory or essential terms, conditions, and specified requirements for this solicitation. Bids must be responsive to receive award consideration.

## **II.27 Definition of “Punchout”**

The term “Punchout” is a website technology term for the functionality that allows one website to pass credentials to another site, enabling a user to access uniquely scoped or protected content and interactive functions for research, shopping, and buying.

## **II.28 Definition of “Transaction Fee”**

"Transaction Fee" is that fee paid by an Awarded Vendor on the net dollar amount of invoiced Products and ancillary services sold under an Agency Contract. “Transaction Fee” is more fully defined [elsewhere](#) in the Terms and Conditions.

# **III Legal Authority and Eligible Buying Agencies** [\[Return to Top\]](#)

## **III.1 Agency Role in California**

Agency is an elected county Superintendent of Schools, an office established by Article IX of the California Constitution. The current office holder is Deneen Guss, empowered with the authority to award and enter into contracts.

## **III.2 Authority for Bidding, Contracting, and Cooperative Use of Contracts**

Exercising powers under Article IX of the California Constitution, the Monterey County Superintendent of Schools, governing and administering the Monterey County Office of Education, solicits bids for LEAs under her Constitutional authority and California statutes.

Agency also claims bidding authority for bidding and use of its cooperative purchasing Contracts under the California Public Contract Code, the Education Code, and the Government Code.

Agency further claims its authority to bid under the Education Code for the creation of a Standard School Supply and Equipment List.

MCOE declares that items under Contract as a result of this Request for Bids 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 programs for the purpose of collectively creating a Standard School Supply and 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 school districts may be made, not only under Public Contract Codes 20118 and 20652 but also under Education Codes 38110 and 38112 dealing with cooperatives and Standard School Supplies & Equipment.

In addition, Agency extends its agreement for other public agencies to use Contracts arising out of this RFB under the authority of Government Code 6502 by mutually exercising powers common to the parties, whether in California or outside the state.

Therefore, the Agency intends that the Contracts awarded under this Request for Bids be made available for use by LEAs and other Eligible Organizations in all 50 U.S. states, Washington D.C., Puerto Rico, and other territories to the fullest extent permitted by law, as may be amended from time to time.

## **III.3 Piggybacking Authority and Use by Other Agencies**

Public agencies in California are authorized by law to purchase off a contract awarded by an agency that has itself gone to bid, including K-12 school districts, community college districts, special districts, public corporations, counties, cities, towns, and JPAs, under California Public Contract Code Sections 20118 and 20652. Using these statutes, Agency hereby declares its intent and authorization to make all Contracts awarded under this RFB "piggybackable" by other LEAs.

The Agency waives any right to receive payment from other Eligible Entities agencies making purchases off the awarded Contracts and those agencies will make payment directly to the vendors. A partial, but not exclusive, list of eligible LEAs is listed as a PDF attachment to the Terms and Conditions Section and is titled "Partial List of Eligible Agencies."

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.

### **III.4 Local Educational Agencies (LEAs)**

"Local Educational Agencies (LEAs)" means the following tax-exempt, nonprofit institutions and organizations (each an "LEA" and collectively "LEAs");

- Public school districts
- Regional Occupational Programs
- Intermediate units and county offices of education
- BOCES in states outside of California
- State-approved private schools
- Public libraries
- Nonpublic schools
- Charter schools
- Community colleges
- Other organizations defined as "LEAs" under applicable law.

At a minimum, an Awarded Vendor must agree to serve LEAs in California. At its option, an Awarded Vendor may elect to serve LEAs in other states.

### **III.5 Other Eligible Organizations**

"Eligible Organizations" means the following institutions and organizations whether residing inside or outside of the state of California, *subject to the Awarded Vendor's approval*:

- Tax-exempt, nonprofit colleges, and universities, other than community colleges which fall within the definition of LEAs
- Other tax-exempt, nonprofit educational institutions or organizations which do not fall within the definition of LEAs
- County governments, local municipalities, county/municipal/public authorities, and special districts
- State agencies
- Other political subdivisions
- Other tax-exempt, nonprofit public health institutions or organizations
- Other tax-exempt, nonprofit fire companies, rescue companies, or ambulance companies
- Other entities, including a council of governments or an area government, which expends public funds for the procurement of supplies, services, or construction
- Public utility districts, transit authorities, port authorities, elected sheriffs, and county fairs
- Other organizations, institutions, or entities permitted under applicable law to avail themselves of Agency Contracts

### **III.6 Eligible Entities**

The LEAs and other Eligible Organizations are sometimes collectively referred to in this Request for Bids as, each an "Eligible Entity" or "LEA" and collectively the "Eligible Entities." Unless approved by the Awarded Vendor, Eligible Entities do not include U.S. federal governmental entities.

### **III.7 Extending Contract Awards to Other States**

Although this Request for Bids is tailored for all LEAs in California, the Agency intends to allow for “piggybacking” on Agency Contracts by Eligible Entities residing inside or outside of the state of California that wish to participate.

In addition to California LEAs, the Agency will make its Contracts available to other Eligible Entities residing inside or outside of the state of California when:

- The Agency Contract meets the Eligible Entity's bidding requirements and is judged to be in the Eligible Entity's best interest;
- The Awarded Vendor is willing to extend its CalSave bid prices and Contract terms to the Eligible Entity;
- The order is processed according to CalSave ordering procedures or approved deviations.

### **III.8 Exercise of Common Powers**

By purchasing Products under an Agency Contract or entering into a Purchase Order with an Awarded Vendor under an Agency Contract, an Eligible Entity outside of California or an Eligible Agency inside of California buying under the authority of Government Code 6500, attests, affirms, acknowledges and agrees that:

- It is an eligible organization with authorized procurement powers itself;
- It is bound by all of the Terms and Conditions of the Contract applicable to the Eligible Entity including, without limitation, these Terms and Conditions, state-specific terms and conditions, and applicable law;
- No other Eligible Entity or the Agency be responsible for payments on account of said Eligible Entity's purchases, it being the intent that any such purchases shall constitute the separate agreement of Eligible Entity with the particular Awarded Vendor;
- Agency may disclose non-specific aggregate Eligible Entity information (such as the geographic spread of participants and number and types of participants) to third parties;
- The Agency and Eligible Entity intend that the Eligible Entity's purchase of Products and services under a Contract or entry into a Purchase Order with an Awarded Vendor, hereby bound by these Terms and Conditions, constitutes the necessary intergovernmental agreement between the Eligible Entity and Agency to satisfy the Cooperative Procurement Code requirements and any requirements for an interlocal agreement under the applicable procurement code of the Eligible Entity's state. No additional agreement is required (if, however, the Eligible Entity requests that the Agency execute a separate interlocal agreement, Agency will do so, provided such interlocal agreement is in form and substance acceptable to Agency).

### **III.9 Compliance with Laws and Specific Terms and Conditions**

Awarded Vendor shall comply with all laws, whether local, state, federal, or otherwise, applicable to it in its provision of any of the Products or ancillary services to be provided under the Contract. It shall be the Awarded Vendor's responsibility to determine the applicability and requirements of any such laws and abide by them.

Eligible Entities in states outside of California may have further requirements or conditions listed with this bid that clarify the ability of LEAs or other Eligible Entities to piggyback other state or cooperative procurement Contracts like Agency's. State-specific terms and conditions may be listed in an addendum to this Request for Bids and pertain only to the individual states listed. The inclusion or absence of any state-specific terms and conditions should not be construed as tacit approval by the state for purchases through the CalSave cooperative purchasing program. Adherence to the state-specific terms and conditions listed only applies if a Bidder extends its Agency Contract to LEAs (and other Eligible Entities, if applicable) in that specific state.

Other state-specific terms and conditions may be determined after the bid is awarded and added to the Contract via an amendment to the Awarded Vendor Agreement agreed upon by the Awarded Vendor and Agency, or added to an LEA's or other Eligible Entity's Purchase Order via an amendment agreed upon by the Awarded Vendor and LEA. The Awarded Vendor's agreement to either of the foregoing amendments shall not be unreasonably withheld, conditioned, or delayed.

### **III.10 eCommerce Merchant Agreement**

Awarded Vendors and Authorized Resellers will be bound to the eCommerce Merchant Agreement, which is attached to the electronic bid form.

### **III.11 Agency's Interest in a Contract Resulting from This RFB**

Notwithstanding its own consumption, to the extent Agency issues this Request for Bids and any resulting Contracts for the use of Eligible Entities, Agency's interests and liability for said use of the Contracts by Eligible Entities shall be limited to the competitive bidding process performed relating to said Contract and shall not extend to the Products, ancillary services, or warranties of the Awarded Vendor or the intended or unintended effects of the Products and ancillary services procured from it.

In no event shall Agency be liable to any Awarded Vendor or Eligible Entity for any special, indirect, incidental, exemplary, reliance, consequential, or punitive damages, lost profits, or other business interruption damages whether based on breach of Contract, tort (including negligence), Product liability or otherwise. Any liability of Agency shall be limited to direct, actual damages only, and in no event shall the Agency be liable for damages over the Transaction Fee it receives on the applicable transaction. Eligible Entities and Awarded Vendors acknowledge that the limitations set forth above are fundamental elements of the CalSave program and resulting Agreements and the Agency would not provide the CalSave program or enter into the Agreements absent such limitations.

### **III.12 New Laws; Change to Existing Laws**

If a new law, rule, or regulation comes into effect; or there is a change in any existing law, rule, or regulation; or there is a change in the interpretation of any applicable law, rule, or regulation by any court of law or regulatory body; and such event makes performance by Agency or an Eligible Entity under the Contract or a Purchase Order illegal, impracticable or impossible, the Agency or such Eligible Entity may at its option suspend performance under, or terminate, the Contract or such Purchase Order without further obligation to the Awarded Vendor or Authorized Reseller other than to pay any amounts owed through the date of suspension or termination.

## **IV CalSave Fees**

### **IV.1 No Bidding or Award Fees**

There are no bid fees, evaluation fees, or other costs related to a company bidding in response to this RFB.

### **IV.2 Transaction Fees**

Awarded Vendors shall be required to pay a Transaction Fee for all purchases by Eligible Entities made through the awarded Contracts. This applies to all orders, regardless of the method used to submit the order, the quantity of Products and services, or the dollar amount of the order.

The Transaction Fee amounts shall be two percent (2%) upon the percentage of "Net Sales," which means gross sales of Products and ancillary services less returns and canceled orders within 30 days, shipping, recycle fees, and other taxes (excluding taxes based on net income). The eCommerce Consultant will collect the Transaction Fee.

The Transaction Fee described here is the same as the agreed-upon eCommerce Consultant Marketing Fee contemplated by Section 7 of the Epylon eCommerce Merchant Agreement. The Agency Transaction

Fee stated here in Section IV.2 replaces and supersedes any requirement for higher fees in the eCommerce Merchant Agreement.

Any Authorized Resellers will be responsible for paying the Transaction Fee for Authorized Resellers' transactions unless the Awarded Vendor notifies the eCommerce Consultant of its intent to pay the Transaction Fee on behalf of their Authorized Resellers. Awarded Vendors shall remain responsible for paying the Transaction Fee on behalf of their Authorized Resellers if the Authorized Reseller fails to remit the Transaction Fee.

Transaction Fees publicly disclosed here will not be charged to or paid by the Eligible Entities themselves but are an Awarded Vendor's cost of doing business. Awarded Vendor or its Authorized Resellers shall not include any additional itemized amount corresponding to the Transaction Fees in the bid responses, awarded Contract prices, or any other quote to Eligible Entities.

Failure to pay Transaction Fees on a timely basis will result in suspension or termination of the Awarded Vendor's Contract whether sales were processed directly by the Awarded Vendor or its Authorized Resellers.

#### **IV.3 Fees in the Event of a Conversion to CMAS**

Any vendor, awarded or not, using this copyrighted Contract and its documents to obtain a separate California Multiple Awards Schedule (CMAS) contract from the state of California is responsible for paying both the CMAS fee and the two percent Transaction Fee described in Section IV.2 for all orders submitted through the CMAS program. Public records from CMAS will be used to identify any vendors using the CMAS program through CalSave-related Contracts. All sales on such CMAS contracts must be reported to CalSave monthly. Failure to remit will result in a claims process.

#### **IV.4 Fees in Nonconforming Jurisdictions**

Notwithstanding Section IV.2, no Transaction Fee is authorized to be collected or charged to Awarded 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 for LEAs in all other counties of California. However, any Eligible Entity using this Contract where Section IV.2 fees are not permitted shall be required to pay directly an additional 2 percent fee for use of the Contract, imposed by Agency on the authority of Public Contract Code 20118, which allows Agency to charge reasonable costs to the public corporation or Eligible Entity for furnishing the services incidental to the purchase of items under Contract.

#### **IV.5 Cost of Bid Preparation**

The Agency will not reimburse Bidders for the cost of developing, presenting, or providing any response to this Request for Bids.

### **V Bidder Qualifications** [\[Return to Top\]](#)

#### **V.1 Declaration of Non-Collusion**

Assuring that prices are arrived at independently and without collusion is so crucial that this RFB requires the Bidder to affirmatively and truthfully answer "Yes" to the non-collusion questions in the Question Section. Otherwise, the bid may not be qualified to be submitted to Agency.

Do not confuse your yes or *no* answer. Answer YES, if you DID NOT collude. Answer NO, if you are not in compliance with the bulleted statements below.

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

- The price(s) and amount of the bid have been arrived at independently and without consultation, communication, or agreement with any other contractor, Bidder, or potential Bidder
- Neither the prices nor the amount of the bid, and neither the approximate prices nor the approximate amount of the bid have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening
- 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 a complementary bid
- The bid of Bidder is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid
- Neither Bidder nor its affiliates, subsidiaries, officers, directors, or employees are currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract except as set forth in a separate attachment to your bid.

The representations above are material and important. They will be relied on by the Agency in awarding the Contract(s) for which this bid is submitted. Any misstatement is and shall be treated as fraudulent concealment from the Agency of the true facts relating to the submission of bids for this Contract.

## **V.2 Suspension or Debarment**

By submitting a bid, the Bidder certifies for itself and all its Authorized Resellers that, within the past five years, they have not been under suspension, debarment, or otherwise lawfully precluded from participating in any public-sector procurement activity.

At any time after Bidder's submission and during the term of any Contracts or Purchase Orders, Agency and Eligible Entities may inquire whether any Bidder, Awarded Vendor, or Authorized Reseller has been suspended or debarred or is otherwise lawfully precluded from participating in any public- sector procurement activity.

## **V.3 Overdue Tax Liabilities and Other Delinquent Obligations**

The Bidder certifies by submission of its bid that it does not know of any overdue tax liabilities of Bidder or its intended Authorized Resellers or other delinquent obligations owed to Agency, including, but not limited to, unpaid Transaction Fees or other fees from previous contracts. Otherwise, if the Bidder knows of possible delinquencies, then an explanation is required in the Question Section of the electronic bid form.

## **V.4 Notice of Any Changes**

An Awarded Vendor must inform the Agency if it changes its address or becomes delinquent in taxes. Also, the Awarded Vendor must tell the Agency if another government agency suspends one of its contracts or if another government agency debars it. All notices must be in writing and received by the Agency within 15 days of the change, delinquency, suspension, or debarment.

## **V.5 Americans With Disabilities Act**

Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. § 35.101 et seq., the Awarded Vendor agrees that it shall not cause any individual with a disability to be excluded from participation in the Contract or Purchase Order or from activities provided for under the Contract or Purchase Order on the basis of the disability. As a condition of accepting any Contract or Purchase Order, the Awarded Vendor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which apply to all benefits, services, programs, and activities relevant to the Contract or Purchase Order.

## **V.6 Covenant Against Contingent Fees**

The Awarded Vendor warrants that, no person or selling agency has been employed or retained to solicit or secure the Contract or Purchase Order upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide Authorized Resellers maintained by the Awarded Vendor for the purpose of securing business. For breach or violation of this warranty, the Agency or Eligible Entity, as applicable, shall have the right to terminate the Contract or Purchase Order, as applicable, without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

## **V.7 Sole Source of Responsibility**

Agency desires a “Sole Source of Responsibility” vendor, meaning the Awarded Vendor will take sole responsibility for the sale and delivery of the broadest scope of Products within a Catalog across the largest possible geographic area, and to the largest possible cross-section of Eligible Entities.

Having status as the “Sole Source of Responsibility,” an Awarded Vendor may establish relationships with Authorized Resellers to execute its contractual duties. The Awarded Vendor assumes all responsibility for the Products and ancillary services provided by its Authorized Resellers, the actions of its Authorized Resellers, and the Transaction Fees accrued by any Authorized Resellers.

Also, Awarded Vendors must ensure that their Authorized Resellers sell contracted Products and services at or below bid pricing. They must also ensure that their resellers obey all terms and conditions of the Contract and corresponding Purchase Order

If an Authorized Reseller does not pay its Transaction Fees, the Awarded Vendor becomes responsible for the payment of the Transaction Fees. The Awarded Vendor is also responsible for maintaining the Ordering Instructions, which are to include a list of Authorized Resellers. Additional Authorized Resellers may be added after the bid award subject to prior approval of the Agency.

Agency reserves the right to reject an Awarded Vendor’s proposed Authorized Reseller based on such Authorized Reseller’s unsatisfactory performance or behavior under past CalSave or Agency contracts, including, without limitation, unsatisfactory performance or behavior of an Authorized Reseller in connection with a CalSave Mini-Bid process under past CalSave or Agency contracts. Agency further reserves the right to require an Awarded Vendor to remove an Authorized Reseller from the Contract in its entirety, due to such Authorized Reseller’s unsatisfactory performance or behavior under the Contract, including, without limitation, unsatisfactory performance or debarment or suspension by under another public agency contract.

Neither an Awarded Vendor nor any of its Authorized Resellers may use this Contract to sell at a higher price compared to other CalSave contracts under which they may be authorized to sell. Therefore, an Authorized Reseller or an Awarded Vendor who participates in a CalSave Product Line contract must sell its CalSave-contracted Products at the lower of their other CalSave contract price or the Catalog contract price.

## **V.8 Number of Manufacturer Brands and Products in Catalog**

Bidder must have a minimum of 300 brands or manufacturers to be a qualified Bidder under this RFB. Bidders with fewer than 300 brands under its line card will not be considered for an award. Any Commercially Available Catalog offered must have a minimum of 100,000 Products.

## **V.9 Bidder Profiling**

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

- Maintain permanent places of business;
- Have a legal source of supply to furnish the Products offered within a Catalog;

- Will provide customer sales support and service to all LEAs and applicable Eligible Organizations;
- Have current relationships with LEAs or other customers for verification of customer satisfaction;
- Can demonstrate an active sales network;
- Can serve all California LEAs and, at Awarded Vendor's own option, other Eligible Entities they choose to sell to.

#### **V.10 Historically Under-Utilized Businesses (HUBs)**

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

#### **V.11 Insurance**

The Awarded Vendor is required to purchase and maintain insurance for the protection of claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any of the Awarded Vendor's employees for claims of damages due to injury or destruction of tangible property, and from claims arising out of the performance of the Contract or Purchase Order or caused by negligent acts for which the Awarded Vendor is legally liable. The Awarded Vendor must maintain throughout the term of the Contract and throughout the term of any outstanding Purchase Orders with an Eligible Entity a minimum of \$1,000,000 per occurrence commercial general liability insurance (basic and umbrella coverage) covering the services and work contemplated by the Contract and Purchase Order.

The Awarded Vendor is required to purchase and maintain throughout the term of the Contract and throughout the term of any outstanding Purchase Orders with an Eligible Entity automobile and truck liability coverage applicable to Awarded Vendor's business dealings with Eligible Entities with a minimum combined single limit liability of \$300,000.

If requested by the Agency or an Eligible Entity, the Awarded Vendor must provide a certificate of insurance evidencing all required coverage with a provision that notice of cancelation shall be provided in accordance with policy provisions. All required insurance must be written on an occurrence basis and maintained with a carrier authorized to conduct business in the state of California or the state in which the Eligible Entity resides, having a minimum "excellent" rating of A.M. Best A-. The Agency and Eligible Entity shall be included as additional insureds as respect to insurable liabilities assumed by Awarded Vendor under this Agreement on the Commercial General Liability policy of insurance required to be carried by Awarded Vendor under the Contract or Purchase Order.

The Awarded Vendor is required throughout the term of the Contract and through the term of any outstanding Purchase Orders to comply with the California worker's compensation laws and any such worker compensation acts from other states in which the Eligible Entity resides, and any supplements or amendments thereto, which may have been or may hereafter be passed.

#### **V.12 Definitions Related to Vendor Integrity**

For purposes of the Sections numbered Sections V.13 through V.26 only, the following definitions shall apply:

- "Confidential information" means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Agency or Eligible Entity
- "Consent" means written permission signed by a duly authorized officer or employee of the Agency or Eligible Entity, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Agency or Eligible Entity shall be

deemed to have consented by virtue of execution of the Contract or Purchase Order, as applicable

- “Vendor” means Awarded Vendor or Authorized Reseller who may be an individual or entity that has entered into the Contract or a Purchase Order with an Eligible Entity, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest
- “Financial interest” means a) ownership of more than a five percent interest in any business; or b) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management
- “Gratuity” means any payment of more than the nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind

#### **V.13 Highest Standards of Integrity**

The Vendor shall maintain the highest standards of integrity in the performance of the Contract and Purchase Order and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Agency or any Eligible Entity.

#### **V.14 Confidential Information**

The Vendor shall not disclose to others any confidential information gained by virtue of the Contract or Purchase Order.

#### **V.15 Pecuniary Benefit**

The Vendor shall not, in connection with the Contract or any other agreement with the Agency or the Purchase Order or any other agreement with any Eligible Entity directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Agency or any Eligible Entity.

#### **V.16 Giving Gratuities**

The vendor shall not, in connection with the Contract, Purchase Order, or any other agreement with the Agency or Eligible Entity, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Agency or Eligible Entity.

#### **V.17 Accepting Gratuities**

Except with the consent of the Agency or Eligible Entity, neither the Vendor nor anyone in privity with the Vendor shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract or a Purchase Order except as provided therein.

#### **V.18 Supplemental Financial Interests**

Except with the consent of the Agency or Eligible Entity, the Vendor shall not have a financial interest in any other vendor, designated partner, or supplier providing services, labor, or material on a project under a Contract or Purchase Order.

#### **V.19 Notification of Violations**

The Vendor, upon being informed that any violation of these provisions (i.e. Sections V.13 through V.23) has occurred or may occur, shall immediately notify the Agency or Eligible Entity in writing.

#### **V.20 Certification of Non-Violation**

The vendor, by execution of the Agreement and Purchase Order and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions (i.e., Sections V.13 through V.26).

## **V.21 Cooperation with Authorities**

The vendor, upon the inquiry or request of the appropriate state official of any participating state or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form relevant to the vendor's integrity or responsibility, as those terms are defined by relevant statutes or regulations. Such information may include, but shall not be limited to, the vendor's business or financial records, documents, or files of any type or form which must be disclosed under applicable law and refers to or concerns the Contract or Purchase Order. Such information shall be retained by the vendor for a period of three years beyond the termination of the Contract or Purchase Order unless a longer period is otherwise provided by law. For example, E-rate rules require E-rate applicants and Service Providers to maintain all E-rate-related documents including but not limited to procurement, billing, and communications, for a period of ten years from the last date to receive service in a particular funding year.

## **V.22 Rights and Remedies in the Event of Violation**

For violation of any of the above provisions (i.e. Sections V.12 through V.26), the Agency or Eligible Entity may terminate the Contract, Purchase Order, and any other agreement with the vendor, claim damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another vendor to complete performance hereunder, and debar and suspend the vendor from doing business with the Agency or Eligible Entity; provided that before any termination action under this Section, vendor shall be provided with written notice of the violation and 30 days to cure the violation. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Agency or Eligible Entity may have under law, statute, regulation, or otherwise.

## **V.23 Right of Vendor Employee Rejection**

LEAs that are school districts, nonpublic schools, charter schools, or public technology schools reserve the right to reject any person they deem unfit to be permitted on school grounds and in proximity to students. Upon written notice from the Eligible Entity or Agency, the Awarded Vendor shall have such persons who are performing services under the Purchase Order removed from the site immediately. The Eligible Entity's right to declare such person unfit shall not be limited to the required exclusion of such persons from the provisions of federal and state laws legislated as child protective services.

## **V.24 Separation of Employer Responsibilities**

It is understood that the Awarded Vendor, in performing services and providing Products under the Contract or any Purchase Order, is acting as an independent contractor and is not an agent, servant, partner, or employee of Agency or Eligible Entity. The Awarded Vendor has control over the services and Products it delivers under the Contract and any Purchase Order and shall be solely responsible for its own federal, state, and local income taxes, salary, social security payments, and any and all other payments incurred by the Awarded Vendor in the performance of the Contract and any Purchase Order, as well as adhere to all necessary legal requirements governing employment. None of the benefits provided by Agency or Eligible Entities to their own employees, including but not limited to retirement benefits, workers' compensation insurance, disability insurance, medical insurance, and unemployment insurance, are available from them to the Awarded Vendor and/or any and all of the Awarded Vendor's agents, servants, and employees. The Awarded Vendor has no authority under the Contract or any Purchase Order to assume or create any such obligation or responsibility, expressed or implied, on behalf or in the name of Agency or Eligible Entities, or to bind Agency or Eligible Entities in any way whatsoever.

## **V.25 Nondiscrimination and Sexual Harassment**

During the term of the Contract and any Purchase Order, the Awarded Vendor agrees as follows:

- In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any Purchase Order or any subcontract, the Awarded Vendor, designated partner or any person acting on behalf of the Awarded Vendor or designated partner shall not by reason of gender, race, creed, or color discriminate against any citizen of the state within which the award is made who is qualified and available to perform the work to which the employment relates.
- Neither the Awarded Vendor nor any designated partner nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Contract or any Purchase Order on account of gender, race, creed, or color.
- The Awarded Vendor and any designated partners shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated, and employees who practice it will be disciplined.
- The Awarded Vendor shall not discriminate by reason of gender, race, creed, or color against any designated partner or supplier who is qualified to perform the work to which the Contract relates.

If the Agency or Eligible Entity has reason to suspect that the Awarded Vendor failed to comply with the Nondiscrimination/Sexual Harassment Clause, the Agency or Eligible Entity may request, and the Awarded Vendor shall promptly provide, applicable information to prove compliance. If the Awarded Vendor or any designated partner does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Agency, Eligible Entity, or appropriate departments of state government.

The Awarded Vendor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract that specifically is undertaken to support the Contract or any Purchase Order so that such provisions will be binding upon each designated partner.

The Agency or Eligible Entity may cancel or terminate the Contract or Purchase Order, as applicable, and all money due or to become due under the Purchase Order may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Agency may proceed with debarment or suspension of that Awarded Vendor from the CalSave program.

## **V.26 References and Past Performance**

A Bidder must be responsible and capable of executing all duties to be covered under the Contract.

To evaluate a Bidder's qualifications to perform under the Contract, Agency will require the submission of three signed reference forms. Also, the Agency will consider the performance of Bidder on previously awarded CalSave or Agency contracts and Bidder's past conformance to bid terms and conditions, including submission of pricing updates, submission of Ordering Instructions, customer service, and payment of fees.

## **VI Catalog and Product Specifications** [\[Return to Top\]](#)

### **VI.1 Catalog Categories Sought**

This RFB seeks bids on technology, software, furniture, audio-visual, and instructional Products sold through online- and paper-based Catalogs in specific categories. Each requested Catalog Category is listed on a table within the electronic bid form. There will be only one award in a category, or if subcategories are listed, one award within each respective subcategory described below. Agency reserves the right not to award in a category or subcategory if no qualified or responsive bid has been received.

Agency is seeking bids on the following Catalog Categories (each a “Catalog Category” and collectively the “Catalog Categories”):

- A. Audio-Visual Products:** A Catalog containing a minimum of 300 different brands with a minimum of 100,000 Products that **MUST** include: projectors; electronic whiteboards; soundboards; public address systems; mixers; headsets; microphones; speakers; displays; monitors; control systems; screens; video, still, and document cameras; televisions and TV production equipment; studio equipment; audio and video recording equipment; carts, mounts, cases; and related accessories.
- B. General Hardware and Software:** A Catalog containing a minimum of 300 different brands with a minimum of 100,000 Products that **MUST** include: laptops, desktops, tablets, Chromebooks, and servers; multiple lines of enterprise hardware and software; networking equipment and related software; furniture, cabinets, racks, charging stations, and charging carts; operating system software; printers; calculators, interactive whiteboards; peripherals and accessories; Original Equipment Manufacturer (OEM) ink and toner and OEM-equivalent ink and toner; extended warranty and maintenance plans; administrative, office, instructional, and software with license options; security and surveillance Products; drones; projectors; and phones, voice-over-IP, and video-conferencing equipment and software; uninterrupted power equipment, scanners, operating software, business application software, educational software, and related services.

## VI.2 Overlapping Contracts

Catalog Category awards allow for some overlapping Product lines to be listed in more than one Catalog. Agency reserves the right to restrict certain Products or product lines for sale from a Catalog due to excessive price differences, conflict with other CalSave awards, limited-service capabilities, or any other conditions that are not in the Agency’s interest.

The Contracts resulting from this Request for Bids are not exclusive and the Agency reserves the right to conduct future competitive bids for the same or similar Products or Catalogs that are specified within this RFB.

## VI.3 Catalog Subcategories

- A. After the primary award to the lowest responsive, responsible Bidder in the General Hardware and Software category, Agency may consider additional awards to other Bidders being the lowest-price Catalog Bidder in a subcategory and uniquely offering one of the following:
- Operating a HUB program
  - Having a 50 percent different mix of manufacturer product lines than the category’s other low Bidder
  - Electing to serve other Eligible Organizations (cities, counties, and special districts) besides LEAs
  - Having authority and electing to sell OEM Products to Other Eligible Organizations, such as Apple Products to cities and universities
  - Having one or more cloud-service solutions included within its Commercially Available Catalog
  - Including ancillary services as part of its offer
- B. After the primary award to the lowest responsive, responsible Bidder in the Audio-Visual category, Agency may consider additional awards to other Bidders being the lowest-price Catalog Bidder in a subcategory and uniquely offering one of the following:
- Having an inventory of new Chromebook units (a non-mandatory Product in the specifications) available that can help reduce the backorders currently being faced by Eligible Entities

- Having a supply of refurbished computers or Chromebooks within its Commercially Available Catalog
- Operating one or more retail stores where Eligible Entities can make in-person purchases or pick-ups under the terms of the Contract
- Including ancillary services as part of its offer

#### **VI.4 Channel and Geographic Restrictions**

Allowance is given to the Awarded Vendors to restrict sales of Products in certain geographic locations or public-sector channels when such sales are prohibited by a government, by a manufacturer, or by a wholesaler's commercially applicable policies.

#### **VI.5 Direct Ordering Authority**

An Awarded Vendor who consistently sends CalSAVE monthly sales reports may take orders directly in any form convenient to the Award Vendor.

#### **VI.6 Website with CalSave Pricing**

In addition, the Awarded Vendor must maintain a direct-order website for CalSave orders by Eligible Entities. This requirement includes:

- Ability to accept a link from [www.CalSave.org](http://www.CalSave.org) to their website hosting CalSave pricing
- Include CalSave branding, including name or logo, on their website
- Registering and credentialing authorized buyers from Eligible Entities
- Accepting Purchase Orders on the website
- Reporting any authorized registrants or buyers upon CalSave's request
- Allow for periodic reviews by CalSave of Contract pricing on the website
- Maintain a history of accurate sales reporting and prompt payment of fees
- Provide reporting back to CalSave monthly in a standardized format

#### **VI.7 Attach a Line Card of Manufacturers or Product Lines in the Catalog**

Each Bidder must provide an Excel spreadsheet containing a list of manufacturer product lines being bid within their Catalog, a "Line Card" for Bidder's Catalog. This file must be attached to the Catalog Category being bid and must match any manufacturer product lines listed in the Bid Quote Sheet and the Bid Response Tab. This document will be used to substantiate that the Bidder has the minimum number of product lines in its Catalog required to meet the [Catalog specifications specified in Section VI.1.](#)

If using Discount-from-List bid pricing, Awarded Vendor must, upon request of CalSave, provide a snapshot file of the published Catalog price list used as the basis for their bid discount to CalSave for bid-price verification. CalSave reserves the right to ask for this snapshot quarterly. Likewise, if using Markup-over-Cost bid pricing, Awarded Vendor, upon request from CalSave, must submit all cost information to CalSave, if requested to do not, but not more than quarterly.

#### **VI.8 New Products Provisions**

Products offered by a Bidder and those sold by an Awarded Vendor or Authorized Reseller must be new and may not be used or refurbished, unless:

- Catalog includes clearly identified remanufactured or reconditioned ink and toner cartridges
- The Product is published in the Awarded Vendor's Commercially Available Catalog as a refurbished, open-box, return, [demonstration model, or display model item](#) and only in situations where a corresponding warranty is specifically described for the Product

Agency stipulates that some manufacturers may use some recycled, incidental components meeting like-new standards. All components inside a Product must be manufacturer-approved, unless otherwise noted, and subject to the full manufacturer's warranty. Awarded Vendors must ensure that all Products sold contain the components parts and features meeting commercial standards for the corresponding named manufacturer.

Any serialized Products and licenses must feature new and unique serial numbers, unaltered from the manufacturing source.

Also, an Awarded Vendor must make sure that any Products offered or sold in response to this RFB are the same models indicated by their external label and source of manufacture.

#### **VI.9 Necessary Supplies**

Bidders are encouraged to include Catalog pricing for all related supplies that are necessary to use the Products offered and sold from the awarded Catalog (for example, power supplies for computers sold, or cable connections for a printer). A Bidder may use variable discounts or mark-ups to address pricing variances among supplies, equipment, and services.

#### **VI.10 Sale of Demonstration Products**

Products that have never been sold or leased, but have been used for demonstration purposes may be sold under the Contract under three conditions:

- The price of the Product is further discounted below the CalSave bid price
- The Eligible Entity has full knowledge of the length of time the Product was in service
- A warranty policy is described

#### **VI.11 Installation and Service**

Any Products needing to be installed or any ancillary services rendered shall be provided in accordance with the manufacturer's instructions and in accordance with the schedule mutually agreed upon between Awarded Vendor and the Agency or Eligible Entity.

#### **VI.12 New Technology and Product Additions**

An Awarded Vendor may request to add newly invented Products, newly marketed Products, and other new Products for sale under its contracted Catalog Category under the following conditions:

- The new Products fit within the Catalog's specifications
- A clear pricing formula was originally bid and applies to the new Products
- Substitute or replacement Products are equal to or superior to the original offerings
- No request is made to subvert competitive procurement procedures

The Agency may reject any requests for additions or replacement in its sole discretion—with or without cause.

#### **VI.13 Replacement Parts**

Through their supply sources, Awarded Vendors must be able to provide or sell replacement, component parts for Products during any warranty period and two years thereafter. Replacement parts may be the same or a functional equivalent. They may be provided by the manufacturer, a manufacturer's designated representative, or a maintenance service provider designated by an Eligible Entity, so long as such maintenance service provider is authorized by the Awarded Vendor.

An Awarded Vendor and Eligible Entity may enter into a maintenance service agreement concerning the provision of repair parts.

#### **VI.14 Proof of Supply Must Be Attached**

A Bidder's offer must provide a written statement as to its wholesale, direct, or intermediate sources for Products offered within its Catalog. Agency must be able to determine that any Awarded Vendor will be providing Products from a legal and legitimate supply chain.

Bidders must include this statement as an attachment alongside each Catalog Category they are bidding.

#### **VI.15 Consequences of Using Ineligible Product Sources**

The Agency reserves the right to withdraw an award if a third party or government agency shows contractual or legal proof that an Awarded Vendor is prohibited from selling certain ineligible Products to Eligible Entities.

#### **VI.16 Liens**

All Products offered and sold shall be free of all liens.

#### **VI.17 Licenses**

Awarded Vendor (and its Authorized Resellers) shall maintain all federal, state, and local licenses, certifications, bonds, and permits applicable and required for operations in California and in all other states in which Awarded Vendor chooses to do business under the Contract.

#### **VI.18 Standard Warranty**

The Awarded Vendor shall pass through to the Eligible Entity the manufacturer's warranty for each Product sold.

The Awarded Vendor warrants that, to its knowledge, all Products furnished under the authority of the Contract shall at the time of delivery be free and clear of any defects in material and workmanship and shall conform to the published specifications of the manufacturer of the Products.

Awarded Vendors selling laptops, personal computers, desktops, and servers must provide a standard manufacturer's warranty of at least one year. If the standard manufacturer's warranty is longer than one year, the longer warranty period will apply.

Awarded Vendors selling computers must maintain certifications that the manufacturers have concerning compatibility and compliance with up-to-date operating systems, as well as federal safety and communications guidelines.

Awarded Vendor and Eligible Entity may enter into a maintenance service agreement that governs or extends the Product warranty. For Products under a CalSave Contract which Eligible Entity has elected to lease or rent from the Awarded Vendor, the warranty may be governed by a mandatory maintenance service agreement between the Awarded Vendor and Eligible Entity. Whether voluntary or mandatory, the maintenance service agreement shall commence upon installation of the equipment. accordance with the maintenance service agreement.

#### **VI.19 Onsite Warranty Service**

Bidders offering personal computers and servers must have the capability, either directly or through the manufacturer or a manufacturer's representative, to perform onsite warranty service (warranty is

defined as the standard provided by the manufacturer for the period indicated in the Contract). Awarded Vendors must perform warranty services at the Eligible Entity's site of the equipment in need of such service when requested by the Eligible Entity. Eligible Entities are responsible for payment of onsite warranty services that do not fall within the scope of the manufacturer's standard warranty. Manufacturer's "depot service only" Products or "customer replaceable parts" are excluded from this requirement.

#### **VI.20 Direct Relationships with Providers for Services Other Than Onsite Warranty Services**

For Bidders offering personal computers, offsite warranty service locations may be a branch or satellite office of the Bidder or manufacturer service and support facilities, or facilities of some other third party whose relationship the Bidder will maintain to provide the services required within the scope of Contract. The Contract may be terminated for default if, at any point during the term of the Contract, the Awarded Vendor fails to maintain these relationships. These relationships may, but are not required to, infer ownership and/or franchise relationships. They only require that an ongoing affirmative business relationship exists. Agency reserves the right to inquire into the extent of these business relationships maintained, and listed herein, by the Bidder up to the extent that confidentiality is not compromised. The Awarded Vendor is ultimately responsible for the satisfactory and timely completion of all service requirements and activities and is under a duty to monitor all service performances of the Service Providers.

#### **VI.21 Ancillary Services Related to Products**

As part of their bids, Bidders may offer pricing for ancillary services advantageous or necessary for the planning, use, deployment, and maintenance of the Products they sell.

The provision of ancillary services is not a requirement for a bid to be responsive, except where a Bidder is required to provide such services at no additional cost under a contractual arrangement with its supplier or manufacturer.

However, the Agency will evaluate bids for the presence of either a) an ancillary service spreadsheet form alongside each Catalog Category being bid or b) a statement the Bidder is not offering ancillary services. If awarded, any ancillary services offered will be part of the Contract and presumed bid-protected as allowed by law.

If the low Bidder in any category does not provide ancillary services, Agency reserves the right to award a contract to the low Bidder in a subcategory that has a bid with ancillary services.

Such ancillary services may include, but are not limited to, analysis and design, asset tagging, consulting, equipment configuration, heat mapping, cloud-based configuration, engineering, hard drive removal and retention, help desk support, image loading, installation, maintenance, training, and travel.

If offering ancillary services, a Bidder must submit an Ancillary Services Form, quoting a discounted bid price compared to the vendor's standard rate-card fees. Agency will use this form to evaluate and determine the bid price of any ancillary services offered. Stating prices "will be negotiated" or "by custom quote" is not acceptable; such line-item offers will not be considered for inclusion in an award.

Bidders must submit a separate spreadsheet form for each respective Catalog Category being bid with an offer of ancillary services.

Bidders are cautioned not to lower per-unit Product purchase prices and offer above-market ancillary service prices. Agency staff will review the availability and reasonableness of ancillary services and prices in the process of evaluating bids. Under California law, an Award Vendor may not sell below its cost.

For Awarded Vendors that offer ancillary services provided indirectly through an Authorized Reseller or designated service provider, the pricing for the services provided by the designated service provider must be at or below the prices provided by the Awarded Vendor as part of their bid.

Pricing that is based on “per-hour” rates or similar units does not determine the final cost to the Eligible Entity—just the rate. If an Awarded Vendor has chosen to offer ancillary services in conjunction with the bid-awarded Contract Products it provides to the Eligible Entity, the Awarded Vendor and the Eligible Entity shall mutually agree upon the scope of the ancillary services to be provided at the CalSave-discounted price.

In California Eligible Entities may be required to pay Prevailing Wage for certain ancillary services.

#### **VI.22 Returned Goods Policy Must Be Attached**

Bidders must have a policy regarding how they handle the return of goods from Eligible Entities. A document describing the policy must be attached alongside the name of each Catalog Category being bid.

#### **VI.23 Hazardous Materials**

Awarded Vendors and their Authorized Resellers are required to comply with all local, state, and federal laws with regard to hazardous materials.

#### **VI.24 Export Restrictions and Statement of Assurance**

CalSave Contracts involve Products, software, and technical data that are governed by the provisions of the U.S. Export Administration Regulations (“EAR”) and all other applicable U.S. export control laws and regulations.

Each Awarded Vendor and Eligible Entity shall comply with all U.S. export laws and all other applicable U.S. export control laws and regulations, as amended from time to time, including, but not limited to, §736 (General Prohibitions), §742 (Control Policy), §744 (End-user and End-use Based), §746 (Embargoes and Other Special Controls), and §774 (Commerce Control List) of the EAR, as they pertain to export or re-export. Each Eligible Entity certifies that, unless authorized by U.S. laws and regulations (either by specific regulation or written authorization from the U.S. Government), it shall not export or re-export any of the Products, software, technical data purchased under an Agency Contract from the Awarded Vendor, or the direct Product thereof in violation of applicable U.S. export control laws and regulations.

Each Eligible Entity acknowledges that:

- It is unlawful to export or re-export (without written U.S. Government authorization) Awarded Vendor’s Products, technology, or software if they know that they will be used:
- In the design, development, production, or use of missiles in or by a country listed in Country Group D:4
- In the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3

- In the design, development, production, stockpiling, or use of nuclear weapons in or by a country listed in Country Group D:2 (Supplement No. 1 to EAR §740); and
- Export or re-export of Awarded Vendor's technology, software, source codes, or direct Products thereof to a country or national thereof listed in Country Group D:1 or E:2 may be prohibited unless authorized by U.S. regulations (§740 of the EAR) or written authorization from the U.S. Government.

The provisions of this Section shall survive the term and termination of the Contract and Purchase Order.

#### **VI.25 Products Not Intended for Critical Application**

The Products sold under CalSave Contracts are not designed for any "Critical Applications." "Critical Applications" means life support systems, medical applications, human implantation, commercial aviation, nuclear facilities, or systems or any other applications where Product failure could lead to injury to persons, loss of life, or catastrophic property damage.

Awarded Vendors disclaim all liability arising out of the use of the Products in any Critical Applications. If an Eligible Entity uses the Products in a Critical Application, such Eligible Entity, and not Awarded Vendor, assumes full responsibility for such use.

Any medical lab and equipment items sold as part of a Vocational Catalog are intended for educational and vocational training purposes.

## **VII Ordering Procedures and Requirements** [\[Return to Top\]](#)

### **VII.1 An Overview of the Ordering Process**

To put this Section's Contract provisions into context, Agency provides this simplified overview of the CalSave ordering process:

- Eligible Entities shop on the Awarded Vendor's website, CalSave, or Epylon websites; create shopping lists; talk with Awarded Vendors; or get quotations from Awarded Vendors;
- Eligible Entities address their Purchase Orders to Awarded Vendors, itemizing desired Products and Contract pricing;
- Eligible Entities send their orders directly to Awarded Vendors;
- Awarded Vendors fulfill orders as directed on the Purchase Order;
- Awarded Vendors invoice Eligible Entities at Contract pricing or below;
- Eligible Entities pay Awarded Vendors directly.

### **VII.2 Display of Contract Pricing**

Vendors will be required to display all eligible Contract pricing on their own website, tailored as necessary, to show CalSave Contract pricing for any awarded Catalog. CalSave will link to this website.

For maximum visibility and the best shopping experience for customers – and in consultation with the Awarded Vendor – CalSave reserves the option to request that an Awarded Vendor also provide Product Stock Keeping Units (SKU) and descriptive information for Catalog Products so they can be listed on the CalSave website with links to the Awarded Vendor's website where pricing would be visible.

When possible, CalSave requests the development of an Awarded Vendor punchout with its eCommerce provider, providing online customers with a view of CalSave pricing

### **VII.3 Online Catalog Website: Up, Ready, and Functional**

Following the award of Catalog bids, all Awarded Vendors will be required to submit to CalSave a URL link to its functioning online Catalog with CalSave pricing. At a minimum, the website must display the contracted Product description, unit of measure, manufacturer name, manufacturer SKU, vendor SKU, and Contract price. Pictures and expanded descriptions are preferred. CalSave will link to this website through the CalSave pages along with Ordering Instructions. When an Awarded Vendor has links to other contracts, the CalSave link must be given equal access and visibility to all Eligible Entities.

Awarded Vendors must maintain current CalSave discounted pricing for their online Catalog. Failure to maintain current information and pricing may result in the suspension of the processing of orders until the conditions of the Contract are met. Continued negligence in maintaining current Product information and pricing may result in the termination of the MCOE award. Pricing can change throughout the term of the Contract so long as the prices are within the bid structure that was originally submitted on the Quote Sheet.

### **VII.4 Instruments for Orders**

The standard method for ordering is for Eligible Entities to issue a Purchase Order to the Awarded Vendor or Authorized Reseller. Eligible Entities shall precisely address their Purchase Orders to the proper vendors, following posted Ordering Instructions. Some Eligible Entities may choose to use alternative purchase instruments, such as formal contracts or procurement cards, as may be allowed by these Terms and Conditions.

### **VII.5 Electronic Transmissions**

Where Eligible Entities order through the eCommerce Consultant's website, companies are authorized to receive orders directly and electronically.

Vendors, upon receipt of a Purchase Order in their eCommerce inbox, shall promptly and properly transmit an acknowledgment and order status by using tools provided on the site.

To the maximum extent permitted by law, the parties agree to accept an electronic Purchase Order submission and acceptance, executed by an authorized user of the eCommerce system, as representing any necessary "[electronic signature](#)" required by law.

### **VII.6 Authority of the Purchase Order**

Receipt of a Purchase Order constitutes authority to the Awarded Vendor or Authorized Reseller to sell and make delivery of the ordered Products, according to these Terms and Conditions and directions listed on the Purchase Order.

### **VII.7 Awarded Vendor Is an Independent Contractor**

In performing its obligations under a Purchase Order, the Awarded Vendor will act as an independent contractor and not as an employee or agent of the Agency or any Eligible Entity.

### **VII.8 Term of the Purchase Order**

The term of the Purchase Order shall start on the date that the Awarded Vendor receives a Purchase Order that has been executed by the Eligible Entity. This is the "Effective Date."

Subject to any other provisions stipulated in the document, the Purchase Order shall end on the later of:

- Complete delivery and acceptance of the awarded Products;
- The expiration of any specified warranty and maintenance period;
- Payment by the Eligible Entity for the Product(s) received;
- The expiration date identified on the Purchase Order.

The Awarded Vendor shall not start the performance under the Purchase Order before the Effective Date and the Eligible Entity shall not be liable to pay the Awarded Vendor for any service or work performed or expenses incurred before the Effective Date. No Eligible Entity employee has the authority to orally direct the shipment of any Product(s) or the commencement of any work under the Purchase Order before the Effective Date.

## **VII.9 Orders Near a Contract Expiration Date**

The fulfillment of a Purchase Order may extend beyond the Agency Contract's expiration date as long as the Eligible Entity issues a Purchase Order before the Contract's expiration.

The expiration date of the Contract term is to be considered the final date to enter into a valid Purchase Order under the Contract.

As such, all Purchase Orders received by the Awarded Vendor up to and including the expiration date of the Contract term are acceptable and must be shipped following the delivery time specified in the Contract. If normal delivery time cannot be met, Awarded Vendor must notify the Eligible Entity, which has the option to accept or reject the extended delivery time.

## **VII.10 Invoice Requirements**

Unless otherwise agreed between Eligible Entity and Awarded Vendor:

- The Awarded Vendor shall send (which may include via email) an itemized invoice to the "Bill To" address on the Purchase Order promptly after the Product(s) are delivered.
- For hardware, "delivery" shall be the date the hardware arrives on Eligible Entity's premises. For software, "delivery" shall be the date the software features are enabled and ready for Eligible Entity to use.
- In the case where Products are being installed or implemented by the Awarded Vendor, the installation or implementation services invoice shall be presented after the Products are installed, have successfully completed diagnostic routines, and are available for the Eligible Entity's use. The foregoing does not preclude the Eligible Entity and the Awarded Vendor from agreeing to a different invoicing schedule depending on the scope and length of such installation or implementation services (for example, implementing a project in phases, with each phase having distinct milestones and payment obligations).
- Time and material services will be invoiced monthly in arrears.
- Maintenance, management-type services, and cloud services will be invoiced monthly in advance unless otherwise agreed.
- Invoices should include only amounts due under the Purchase Order. The Purchase Order number shall be prominently noted on all invoices, and the amounts invoiced must be at or below the bid Contract prices.

### **VII.11 Payments**

Eligible Entities will directly pay Awarded Vendors upon receipt of invoice and confirmation that Products have been delivered.

All invoices are to be sent directly to the Eligible Entity, which will normally pay invoices within 30 days of receipt or in compliance with their board policy on bill payment. The Agency will encourage Eligible Entities to arrange for prompt payment where possible and payments of partial shipments.

Payment shall not be deemed as acceptance of the Products furnished by the Awarded Vendor. Where the Awarded Vendor is responsible for the installation of the Products, acceptance of delivered Products is deemed to occur when the equipment is installed, has successfully completed diagnostic routines, and is available for Eligible Entity's use.

The Awarded Vendor agrees that the Eligible Entity may deduct the amount of any state tax liability not required by law or other unauthorized obligation of the Awarded Vendor or its subsidiaries to the Eligible Entity from any payments due the Awarded Vendor under any Purchase Order with the Eligible Entity, subject to the Eligible Entity promptly providing any tax exemption certificate or other documentation to support the deduction.

At the discretion of the Awarded Vendor, the Eligible Entity may use a valid purchasing card to pay for the Products at the time of purchase. Any fees related to this type of payment are the responsibility of the Awarded Vendor. In no case will the Awarded Vendor increase Contract or invoiced prices to offset purchasing card fees incurred by the Awarded Vendor.

### **VII.12 Tax Exemptions**

No charge will be allowed for federal, state, or local taxes from which the Eligible Entity is exempt. California Eligible Entities must pay California sales tax. Prices shall be net and shall not include the amount of any inapplicable tax. Exemption certificates, if required, will be furnished on forms provided by the Awarded Eligible Entity. LEAs are exempt from excise taxes imposed by the Internal Revenue Service and have accordingly registered with or been recognized by the Internal Revenue Service to make tax-exempt purchases.

### **VII.13 Delivery**

All Products ordered shall be delivered F.O.B. Destination, with the Awarded Vendor selecting the shipping company. All Products should be delivered within the period specified on the Purchase Order.

In situations where delivery cannot be made within the period specified on the Purchase Order, Eligible Entity should be notified in writing or by telephone of the delay and an estimated delivery date.

Delivery must be made to the place designated on each respective Purchase Order. Direct delivery to buildings must be placed at a point in the building as directed at the place of delivery. The Awarded Vendor will be required to furnish proof of delivery upon request from Eligible Entity. All materials and supplies must be securely packed in uniform containers and adequately marked as to contents and Purchase Order number. They must be delivered without damage or breakage. Otherwise, Eligible Entity return rights and warranties apply.

Any system configurations ordered shall be delivered as a complete system unless otherwise agreed by the ordering Entity. When required by the ordering Entity, it will be the responsibility of the Awarded Vendor to stage the equipment delivery so that all components are delivered as a single unit at the same time.

Awarded Vendors receiving Purchase Orders with delivery requirements that cannot be met have the right to refuse the order. The Awarded Vendor must return the Purchase Order with an explanation of why it was refused within five business days of receiving the Purchase Order from the Eligible Entity.

Awarded Vendor's CalSave prices include the cost of normal delivery. If non-standard rigging charges apply to equipment purchases (or leases), a quote will be provided to the Eligible Entity within five business days of receiving the Purchase Order from the Eligible Entity, or as soon as possible thereafter upon Awarded Vendor becoming aware that the order involves a non-standard delivery.

The Eligible Entity has five business days after receipt of the quote for non-standard rigging charges to cancel the Purchase Order. In no event shall Eligible Entity be responsible for non-standard rigging charges which are not made known to the Eligible Entity before delivery of the equipment and Awarded Vendor shall bear the cost of same.

#### **VII.14 Inspection and Rejection**

No Products received by the Eligible Entity shall be deemed accepted until the Eligible Entity has had a reasonable opportunity to inspect the Products. The Awarded Vendor and the Eligible Entity agree that a reasonable timeframe to inspect the Products shall not exceed 30 calendar days from the date of delivery. Products that have not been rejected during such a 30-day period shall be deemed accepted. If a defect or nonconforming item is discovered during the foregoing inspection period, the Eligible Entity will promptly notify the Awarded Vendor of the defect or nonconformance. It shall then become the duty of the Awarded Vendor to arrange for the rejected Products to be removed from the premises or returned without expense to the Eligible Entity within 15 days after notification, or such longer period mutually agreed upon by Awarded Vendor and Eligible Entity. Rejected Products left longer than 15 days or such mutually agreed-upon period will be regarded as abandoned, and the Eligible Entity shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale, which represents the Eligible Entity's costs and expenses regarding the storage and sale of the Products. Upon notice of rejection, the Awarded Vendor shall promptly replace all such rejected Products with others conforming to the specifications and which are not defective. If the Awarded Vendor fails, neglects, or refuses to do so, the Eligible Entity shall then have the right to procure a corresponding quantity of such equivalent Products, and deduct from any monies due or that may thereafter become due to the Awarded Vendor, the difference between the price stated in the Purchase Order and the actual price the Eligible Entity paid to the alternative vendor.

Notwithstanding the foregoing, where the Awarded Vendor is responsible for the installation of the Products, acceptance of delivered Products is deemed to occur when the Products are installed, have successfully completed diagnostic routines, and are available for Eligible Entity's use, provided that the deemed acceptance in the foregoing paragraph will control if Eligible Entity requests that such installation not take place during the 30 days following delivery of the applicable Products. Notwithstanding acceptance, for Products covered by a maintenance service agreement, the Awarded Vendor shall either keep the Products in good working order, or Awarded Vendor will replace the Products with a like-new or refurbished equivalent or better model conforming to the specifications which is not defective.

#### **VII.15 Shipping Errors**

Awarded Vendor agrees that its shipping errors will be covered at its own expense. Eligible Entities are financially responsible for shipping errors originating from their Purchase Orders or written instructions. No oral shipping instructions should be accepted by either party.

## VII.16 Title and Risk of Loss

Title to ordered merchandise that is leased shall remain with Awarded Vendors or lessor. Title to ordered merchandise that is purchased transfers to an Eligible Entity at the time of shipment. Notwithstanding such transfer of title, Awarded Vendors agree to bear the risk of loss, injury, or destruction of the Products ordered before receipt of the Products by the Eligible Entity. Such loss, injury, or destruction shall not release the Awarded Vendor from any contractual obligations.

## VIII Pricing Specifications [\[Return to Top\]](#)

### VIII.1 Pricing Methodology

This RFB requires responsive bid pricing to be offered by way of a pricing formula. This formula forms the foundation of a bid. The pricing formula must be calculated against a price basis to show final effective prices. The final effective prices, correctly calculated, will form the data for evaluation and comparison to competing bids.

### VIII.2 Pricing Formulas

A Bidder may opt to use one or a combination of the following formulas methodologies:

- Percent discounts off of a published and identifiable price list or a Commercially Available Catalog;
- Markup percentages over the documentable wholesale cost of Products Identification of the Price Basis.

The price basis is the foundation for discount formulas. Bidders must identify their price basis on the Quote Sheet Tab of the official CalSave Pricing Template, which in most cases will be their Commercially Available Catalog.

If bidding by the Discount-from-List method, the Bidder must describe the published list or Commercially Available Catalog—along with its last published date—from which discounts will be calculated. Some examples of an acceptable price basis include the Manufacturer's Suggested Retail Price (MSRP), retail web Catalogs, paper Catalogs, and the manufacturer's national education pricing.

Likewise, if bidding by the Markup-over-Cost method, a non-manufacturer Bidder must describe the type of documentation that will substantiate the basis for mark-ups. Some examples include manufacturer Catalogs or websites, gold-level pricing schedules from manufacturers, paid invoices, pricing contracts, and manufacturer pricing formulas.

### VIII.3 Variable Percentage Formulas

Bidders may offer varying formula percentages within a single Catalog Category. However, the Bidder must correlate a specific formula percentage alongside a well-described category of Products within the Catalog.

As a theoretical example, a single Bidder may bid 10 percent off list for inkjet printers, 15 percent off list for laser printers, 30 percent off list for ink and toner cartridges, and 22 percent off list for extended maintenance agreements. Or a Bidder may bid 10 percent off Products manufactured by company ABD and 12 percent manufactured by company XYZ.

The Quote Sheet Tab of the CalSave Pricing Template has space for about 30 different subcategories of percentage formulas. If that space is insufficient, a Bidder may add an additional spreadsheet to the bid form or combine descriptions on one line where percentages are equal.

#### VIII.4 Effective Bid Pricing for Evaluation

Bidders must apply their pricing formula to actual Products representative of the respective Products offered, creating final effective bid prices that evaluators will use to determine the lowest bid. For example, if a Bidder offers Products from 300 manufacturers, a representative array of Products for all 300 brands must be present on the CalSave Pricing Template's Bid Response tab. The pricing template will accept up to one million lines of Products. If more space is needed, a Bidder can provide additional spreadsheets to cover all representative items or its complete Catalog.

For all representative Products, a Bidder must either enter or paste information into an approved CalSave template to include:

- True Manufacturer SKU;
- Manufacturer Name;
- Product Name;
- Product Description;
- Unit of Measure;
- Basis Price for the Product;
- Percentage discount or Markup-over-Cost.

The spreadsheet will automatically calculate the final effective bid price from cells containing the price basis and the percentage formula.

Therefore, if bidding by discount off list, a Bidder would enter a negative percentage (e.g., -.10.5%) because the formula subtracts from a list price.

Alternatively, if bidding Markup-over-Cost, a Bidder would enter a positive percentage figure (e.g., 10.5%) because the formula is adding to a cost basis.

If the Bidder's discount or markup is zero, the value "0.0%" would be entered in the appropriate discount or markup column.

#### VIII.5 CalSave Pricing Template

The official CalSave Pricing Template is the Microsoft Excel workbook that Bidders must use to submit their pricing formulas and calculate effective bid pricing. The template contains two working spreadsheets, the Quote Sheet Tab and the Bid Response Tab.

The template can be downloaded from the electronic bid form. It is located under the instructions in the Section titled "Requested Product Lines." Bidders may download this form as many times as necessary, using one workbook for every Catalog Category to be bid. **The spreadsheets must not be modified, copied, or unlocked. Otherwise, Bidders run the risk that their spreadsheets will not load correctly when they submit their bids.**

If there is insufficient space to load all Catalog items into a single spreadsheet, other spreadsheets may be attached to the bid.

#### **VIII.6 Importance of Final Effective Price**

It is the Bidder's responsibility to look at the final, calculated, effective prices on the Bid Response Tab spreadsheet to see that they are calculated correctly. These are the official bid prices. If they are not correct, then either the price basis or the percent entered is incorrect because the spreadsheet automatically calculates the accurate effective prices based on Bidder's entries.

#### **VIII.7 Extent of Product Offered**

Products and prices listed will be used to establish both the extent of Products available from a particular Bidder's Catalog and the effective bid price per item. Bidders should enter a full range of Products to best represent the scope of Products available under any Catalog.

Bid pricing formulas and base pricing cannot be changed after bids are opened. However, the Agency reserves the right to request more sample SKUs so evaluators can apply a Bidder's bid formulas and base prices across a broader range of Products.

#### **VIII.8 Importance of Correct Manufacturer SKUs**

When adding Product information to the Bid Response Tab on the CalSave Pricing Template, Bidders must enter the correct and accurate manufacturer SKU for each Product (true manufacturer SKU).

The first phase of the evaluation process uses a manufacturer SKU number, after stripping away hyphens, spaces, and leading zeros, to compare pricing between competing companies.

Any Bidder-created identifiers that change a manufacturer's SKU must be removed before submission. Bidders must make their best efforts to match their "Manufacturer SKUs" to the manufacturer's published SKUs including or excluding identifier characters for such things as government or education pricing, country of use, color, or other manufacturer Product identifiers. Bidder should note that these requirements are for their CalSave Bid-Price Submission Templates submitted at the time of the bid.

Irregularities in listing the manufacturer's SKU numbers in a Bidder's bid proposal may result in a bid being determined non-responsive.

#### **VIII.9 New Product Pricing**

The Bidder's quoted pricing formula discounts or mark-ups will also apply in the future to any new Products created, invented, introduced, and made available through CalSave during the Contract period. New Products and associated supplies to be added must be priced according to the original bid discount or markup pricing structure.

If a new Product or Product group does not fit into one of its formula categories, an Awarded Vendor may appeal to CalSave in writing for consideration to include the new Products or brands on Contract. The written request must include an explanation of the circumstances that prevent the new Products from logically falling into an existing category of formula pricing.

The Agency and CalSave reserve the right to reject any and all requests for additional Products to be added to an Awarded Vendor's Contract Product list and corresponding price structure. No consideration will be given to requests that circumvent competitive bidding requirements.

#### **VIII.10 Errors on the Bid Response Tab**

If a Bidder makes a material error by expressing percentage formulas on the Bid Response Tab that are not described on the Quote Sheet, its bid may be non-responsive. Likewise, a bid may be non-responsive if a Bidder neglects to list Products on the Bid Response Tab for which a percentage formula

is described on the Quote Sheet. CalSave and Agency reserve the right to correct or calculate responses on the Bid Response Tab based on A Bidder's offered discounts on the Quote Sheet and offered base pricing.

#### **VIII.11 Allowances for Freight**

Awarded Vendors should never identify standard freight charges separately when submitting Contract prices to CalSave for publication. If bidding Markup-over-Cost, Bidders must ensure the freight allowance is built into either the cost of the Product or the markup percent. Likewise, Bidders offering a Discount-from-List must ensure the delivery allowance is to be built into the list price of the Product or the discount percent.

#### **VIII.12 Minimum Order for Free Shipping**

The minimum order qualifying for F.O.B. delivered price via Awarded Vendor's standard shipping method shall be \$500 to the same shipping address. Orders for less than \$500 to the same address may be accepted by the Awarded Vendor to ship prepaid with actual shipping charges added to the invoice as a separate item.

Shipping prices added must be actual documented costs of shipping. Awarded Vendor may charge for expedited, other special shipping circumstances or methods, if requested by the Eligible Entity. Shipping from or to the continental United States to or from Hawaii, Alaska, or overseas U.S. territories may also be considered as special shipping. Eligible Entity must be notified on quotes if and when a shipping charge will be applied to their cost of purchase.

An Awarded Vendor may appeal in writing to Agency for relief from the free-shipping threshold when the requirement disadvantages a buyer or forces an Awarded Vendor to sell at a loss. Any exceptions shall be at Agency's sole discretion. If granted, notice shall be provided in an Awarded Vendor's Ordering Instructions to Buyers.

#### **VIII.13 Large-Volume Purchase and Voluntary Price Reductions**

An Awarded Vendor, upon request from an Eligible Entity, may offer a voluntary price reduction or a quotation for a large-volume discount from the listed CalSave bid price. Such price decreases are discretionary on the part of the Awarded Vendor who is under no obligation to give the same or similar discount to another Eligible Entity unless required under federal E-rate Lowest Corresponding Price (LCP) rules.

When offering any such additional discounts, the Awarded Vendor will provide a written quotation to the requesting agency, indicating that the discounted price is an "As per CalSave" bid price quote. The Eligible Entity shall include the quotation as an attachment to its Purchase Order.

Agency reserves the right to research, conduct, and execute electronic reverse auctions or requests for quotes or proposals for aggregated numbers of specific Products under the Contract with interested or selected Agency Awarded Vendors in conformance with applicable laws.

Bidders are urged to stipulate any additional, predetermined discounts according to Bidder-designated criteria on their Pricing Templates so that Eligible Entities can quickly see if any additional discounts are available as a standard practice.

#### **VIII.14 Request to Cancel or Adjust MSRP**

Should a manufacturer adjust an MSRP or a price list used by an Awarded Vendor as its bid basis thereby resulting in the Awarded Vendor's financial loss, an Awarded Vendor may request that the items

be removed from the Catalog or adjust the percentage-off-MSRP. This decision to remove or adjust shall be made at the sole discretion of CalSave or Agency. Should the Agency or CalSave decide to adjust the percentage-off-MSRP, then the Agency will work with the Awarded Vendor to equitably adjust the percentage-off-MSRP by balancing the competing interests of the Awarded Vendors and the Eligible Entities.

The following procedure shall apply when an Awarded Vendor requests that the Agency remove or make an adjustment pursuant to this paragraph:

- Along with the Awarded Vendor's written request to cancel, rebid, or adjust, the Awarded Vendor shall provide all documentation needed for the Agency to make a decision;
- Within seven days of receipt of the written request and supporting documentation, the Agency shall provide a written determination indicating whether the Awarded Vendor's request was accepted or rejected, or whether additional information is needed to make a determination.

#### **VIII.15 Public Works and Prevailing Wage Rates**

If a project for a California Eligible Entity involves construction or service defined as a public work, an Eligible Entity may be required to bid labor services separately from the purchase of Products allowed and bid-protected under this Contract. In such instances, an Awarded Vendor may be required to comply with Prevailing Wage laws, licenses, and permits. To the extent applicable to an Eligible Entity from another state, such state's Prevailing Wage Rate Act, regulations, and minimum wage rates are made a part of the Purchase Order. When applicable, Davis-Bacon wage rates apply for federally funded projects.

## **IX Bid Procedures and Directions** [\[Return to Top\]](#)

### **IX.1 Help on Submitting a Responsive Bid**

To assist Bidders in submitting responsive bids, CalSave provides directions, access to help files, and contacts for technical support in filling out the electronic bid form.

Bidders must examine the entire bid package and then seek clarification of any item or requirement that may not be clear. They must check all their responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after the due date and time.

The following Sections provide an overview of bid procedures, requirements, and directions leading to a responsive bid.

### **IX.2 Registration**

Vendors interested in bidding must obtain a supplier account at [www.Epylon.com](http://www.Epylon.com) if they do not already have one. The entire bidding process will be conducted electronically using Epylon's eBid software. Epylon imposes no fee to register or use its eBid software.

### **IX.3 Delivery of the CalSave Bid Form**

Bid forms will be sent automatically to all those vendors who have accounts and have indicated an interest in receiving technology bids on the Epylon system. Newly registered vendors will find the bid form shortly after their account application has been approved. If vendors reviewing their inbox do not see the CalSave bid form, there are three possible reasons:

- Another employee under the company's account has accepted the bid form on behalf of the company. Only one bid form may be active for any given company, but any employee can forward the bid form to another company representative. Contact Epylon Customer Service to see if another company employee has opened the bid form.
- The company has not categorized itself as a technology-related supplier. Contact Epylon Customer Service to be added as a "technology supplier." Then the bid form will be promptly forwarded to the company's inbox.
- The company has divided its employees into geographic territories, and the bid has been directed to employees designated for California.

For assistance in finding the bid form, Bidders may contact Customer Service at (888) 211-7438 or [Service@Epylon.com](mailto:Service@Epylon.com).

#### **IX.4 Prebid Meetings**

No prebid meeting will be held for this RFB.

#### **IX.5 Bidders' Questions**

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

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

#### **IX.6 Exceptions to Terms and Conditions**

Any proposed exception from the requirements indicated in this Request for Bids or from the Terms and Conditions must be stated in writing. No material exceptions will be accepted with final electronic bid submissions received on the [Bid Due Date](#). Any material exceptions submitted by Bidder with the final electronic bid submission may disqualify the bid from consideration at the sole discretion of the Agency.

Following the award of a Contract to an Awarded Vendor, Agency reserves the right to amend the Terms and Conditions of this Request for Bids with the mutual consent of the Awarded Vendor solely to make non-material changes, correct errors, or craft minor adjustments that would not have had any material effect on any potential bid before awards.

#### **IX.7 An Overview of the Bid Form**

Completing a bid requires opening an electronic bid form starting from an inbox on the Epylon eCommerce system. Users may work on their bids at any time and save their work as they progress. There are three major components to the bid:

- *Answers to Questions:* If a question is tagged as required, a response must be provided, or the user will get an error message when saving their work. Some questions accept answers with file attachments;
- *Marking which Catalog is being Bid:* The Catalog Category is listed as the specified Catalog under the Product Line Section of the bid form. Bidders must check a box alongside the Catalog

name and description. Then the Bidder must attach several files alongside the Catalog description;

- Completion of the Pricing Template: The template is a spreadsheet with three tabs. Bid discount formulas must be entered on the Quote Sheet Tab. Data for calculating bid formulas into effective prices are entered on the Bid Response Tab. More information on filling out the form is located in the Pricing Specification Section.

## **IX.8 Required Attachments**

Some questions prompt Bidders to upload file attachments to the bid form. Attachments must be attached to one of three places on the electronic bid form.

Attachments that go alongside the name of each Catalog Category being bid are:

- List of All Manufacturers or Brands Offered in the Catalog;
- Returned Goods Policy;
- Proof of Supply Explanation;
- Ancillary Services Form;
- Signed Awarded Vendor Agreement;
- CalSave Pricing Template.

Attachments that go alongside a required question are:

- Reference Forms (containing at least three references);
- Detailed marketing plan;
- Any optional files to expand upon an answer to a question;
- Leasing information (optional).

Attachments that can be uploaded to the Additional Response Information Section are:

- Any optional files to provide the Agency with more information;
- Extra pricing files due to a large number of items not fitting in one pricing spreadsheet.

## **IX.9 Marketing Plan**

Agency requests that all Awarded Vendors develop a marketing program to promote knowledge of their awarded Contracts by way of activities and media such as printed materials, web-based information, e-mails, advertising, social media, telemarketing, webinars, trade shows, and other commercial avenues of communication. This plan must be described or attached to the bid form in response to a question in the Question Section.

## **IX.10 Danger of Procrastination**

It is in the best interests of Bidders to submit their bids far enough in advance of the [Bid Due Date](#) to avoid any hindrances out of the control of the Bidder, eCommerce Consultant, or Agency. Such impediments could include, extremely heavy Internet traffic, phone line disruption, busy circuits, unexpected computer outages, or weather-related obstacles. Agency assumes no responsibility for impediments out of its control and encourages Bidders to submit early to avoid any possibility their bids may be late.

#### **IX.11 Submission**

When Bidders complete their bids, clicking on the Continue button at the bottom of the page enables the Bidders to make one last review of their work before submission. When satisfied, Bidders must click the Submit button to send the bid electronically to the Agency. Once successfully transmitted, the bid will display as "Sent" in the user's inbox.

#### **IX.12 Electronic Signature**

In submitting a bid, the person named as the Bidder's representative on the electronic bid form declares that the use of his/her Username and Password constitute his/her Electronic Signature and that he/she is solely liable for full control and access to the password. Neither the Agency nor eCommerce Consultant has access to the user's password. By submitting the electronic bid form, he/she declares that he/she has the authority to submit the bid to the Agency and to bind his/her company to the Contract, including, without limitation to all Terms and Conditions, final pricing, statements and all other commitments submitted to Agency.

#### **IX.13 Status of Submitted Bids**

After Bidder clicks the Submit button all answers and submissions are locked, encrypted, sealed, and sent to the Agency inbox. The Agency cannot open them until the Bid Opening Date. However, Bidders can access their own submissions to print out a complete and accurate record of their responses precisely as seen by the Agency when the bids can legally be opened.

#### **IX.14 Withdrawal**

A bid must be complete and final before a Bidder clicks the Submit button and sends it to the Agency. In the event a Bidder wishes to withdraw a bid, a Bidder can open their submitted electronic form, scroll to the bottom of the page, and click the Retract Response Button before the Bid Opening Date.

After the bid has been opened, it may not be withdrawn, and the Bidder must supply the awarded Products and ancillary services, if applicable, at the bid price and in accordance with the Terms and Conditions.

#### **IX.15 Receipt and Opening of Bids**

Electronically sealed bids must be received by the [Bid Due Date](#). Bids will be electronically unsealed and publicly read at the Bid Opening Date and Time. Opening and public reading will consist of opening and displaying the electronic bid forms in front of any interested members of the public and staff in a public setting.

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

#### **IX.16 Late Bids**

The Agency will not consider late bids.

#### **IX.17 Length of Time the Bidder's Offer Is Good For**

After the public opening, bids will be evaluated. The Agency will conduct this process as quickly as possible so that award recommendations can be formulated. Bidder's bid, including responses to the RFB, bid formulas discount formulas, and pricing shall be valid and irrevocable for 120 days after the [Bid Opening Date](#).

## **IX.18 Protests**

Protests shall be filed with the Agency and shall be resolved following applicable law. A protest must be in writing and must be filed with the Agency. A protest of solicitation must be received at the Agency before the [Bid Opening Date](#). A protest of a proposed award or an actual award must be filed within 10 days after the protester knows or should have known the basis of the objection.

A protest must include:

- The name, address, and telephone number of the protester;
- The original signature of the protester or its representative;
- Identification of the solicitation;
- A detailed statement of the legal and factual grounds of protest, including copies of any relevant documents; and the form of relief requested.

## **IX.19 Use of Submitted Documents**

Everything submitted by a Bidder as part of a bid may be part of a public record. Bidders should not attach files or information to their bids that contain trade secrets or non-disclosable information. If documents, files, or information submitted are copyrighted, Bidders, by submitting, give the Agency and Eligible Entities a license to reproduce the material as part of bid documentation with the copyright notice as initially provided. Agency shall have the right to reproduce and publish any and all bid submission information, documents, and files. To the extent allowed by law, it is Agency's policy not to release Bidder's financial information, customer names, or references that, if public, would give an advantage to a competitor or be disadvantageous to a Bidder's business.

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

## **X.1 Qualification for Evaluation**

Following applicable California state law and accepted standards for competitive, sealed bidding, the Agency will make awards, in each Catalog Category, to the lowest, responsive, and responsible Bidder.

## **X.2 Creation of Contracts**

Evaluated bids that are recommended for award do not become formal Contracts until the Agency's elected Superintendent of Schools or designated signatory signs the Contracts.

## **X.3 Bid Evaluation Process**

Bids received on time will be evaluated. A high-level overview of the evaluation process is as follows:

- Bids will be evaluated to determine if the Bidder is responsive and that all required attachments and documents are present;
- Bidder's responses to questions will be examined to ensure the Bidder is responsible and capable of providing Products to LEAs and other Eligible Organizations under Agency's Terms and Conditions;
- Any bidding company deemed not responsible will be notified and entitled to a hearing;
- Pricing will be compared to competing bids for the same Catalog Category to rank pricing from lowest to highest;
- A low-price Bidder will be identified;
- Lowest, responsive bids from responsible Bidders will be recommended for an award.

In cases where a Bidder has submitted a bid in multiple categories with the same or near-same Catalog, Agency may choose to make an award in one category only.

#### **X.4 Rejection of Bids**

The Agency reserves the right to accept or reject any or all bids, any part thereof, or items therein, and to waive informalities and/or technicalities, as it deems best to protect its interests. Without limiting the foregoing, the Agency may reject:

- Late bids;
- Bids that are not responsive;
- Bids from Bidders deemed not responsible, so judged following a hearing;
- Bids in which quoted prices are higher than street prices or are unreasonable compared to other contracts.

#### **X.5 Ambiguities**

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

#### **X.6 Evaluation of Responsiveness**

Bid submissions by Bidders must pass a test for responsiveness before the bids will move on to be evaluated for price. The following factors will be evaluated for responsiveness:

Factors related to a vendor's bid as a whole:

- The bid was received on time;
- Bid Terms and Conditions were accepted;
- Reference forms for the Bidder were attached.

#### **X.7 Factors Related to the Catalog Specifications:**

- At least 300 brands or manufacturers are represented in the Catalog;
- The Catalog contains at least 100,000 Products;
- Catalog offered was for the technology Catalog specified;
- A signed Awarded Vendor Agreement was attached for each Catalog Category being bid;
- A returned goods policy for each Catalog Category was attached;
- A description of the Bidder's source of supply was attached for each Catalog Category being bid;
- A State Selection Form was attached alongside any Catalog Category being bid;
- Quote sheets present for each Catalog Category indicating pricing formulas and a price basis;
- Pricing formulas were represented and correctly applied on the Bid Response Tab of the pricing template;
- A Line Card of manufacturers included within the Catalog is attached;
- Manufacturer SKU numbers were present, accurate, and representative of the Products being bid so that effective prices could be compared to those of competing Bidders;
- The Bidder attached an ancillary service form spreadsheet to each Catalog Category being bid or stated in an answer to questions that it was not providing any ancillary services.

## **X.8 Evaluation of Responsibility**

Bidders must pass a test for responsibility before their bids will move on to be evaluated for price. The following factors will be evaluated for Bidder responsibility:

- Provided evidence of a permanent place of business;
- Is not insolvent or currently involved in bankruptcy;
- Has no known overdue tax liabilities or provides a satisfactory explanation;
- Owes no overdue CalSave Transaction Fees;
- Certifies it has not colluded in submitting its bid or developing pricing;
- Is not under suspension or debarment;
- Maintains sales representatives or a sales network of resellers;
- Has provided positive references from buying agencies or has past CalSave experience;
- Has given evidence of previous sales in the public sector;
- Deploys system of customer support and service to all chosen Eligible Entities as described on the bid form;
- Complied with any previous or existing CalSave or Agency contracts.

## **X.9 Evaluation of Pricing**

Effective pricing from competing, responsive, and responsible Bidders will be compared to identify the low-cost Bidder among comparable Catalogs in each category. Awards will be made to the lowest, responsive, responsible Bidder. In the event of tie bids, the winning Bidder will be decided by the flip of a coin or another method of chance selected by Agency.

## **X.10 Subcategory Awards**

Agency reserves the right to make subcategory awards to Bidders under the following circumstances:

- The product lines and related services within a Catalog Category from Bidders are substantially different from one bid to another
- Bids pertain solely to non-comparable technology-related services and items
- The first, lowest-price vendor cannot serve the entire United States where agencies are buying from CalSave Contracts
- The first, low-price Bidder did not offer a HUB program
- The first low-priced Bidder did not commit to serving higher ed clients or other Eligible Organizations such as cities, counties, or special districts
- The first low-priced Bidder did not offer to sell Products to non-K-12 Eligible Entities
- The first low-price Bidder did not offer Cloud-related solutions

## **X.11 Non-Material Deviations**

In evaluating bids, the Agency may waive Bidders' minor errors or non-material deviations where no competitive advantage is obtained and the information submitted by a Bidder can lead to a fair award decision among competing bids.

# **XI Uniform Grant Guidance Requirements** [\[Return to Top\]](#)

## **XI.1 United States Regulations May Impact Purchases with Grant or Contract Funds**

When an Eligible Entity seeks to purchase goods and services through an MCOE Contract using funds under a federal grant or contract, it's essential to be aware that specific federal laws, regulations, and

requirements may come into play in addition to those governed by state law. These federal requirements encompass the procurement standards outlined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200, which is commonly referred to as the "Uniform Grant Guidance," "UGG," or new "EDGAR." All vendors awarded contracts must commit to complying with these additional requirements that may apply to purchases made using federal grant funds. The Eligible Entity is responsible for informing the Awarded Vendor when an order will involve federal grant or contract funds, triggering the application of Sections XI.1 through XI.13.

To assist in the application of these requirements, MCOE has taken affirmative steps to publicize this RFb to historically underutilized businesses that sell instructional and office supplies.

## **XI.2 Consequences for Awarded Vendor Contract Violations**

Contracts exceeding the simplified acquisition threshold currently set at \$250,000 must address potential administrative, contractual, or legal remedies in cases where contractors violate or breach contract terms. Sanctions and penalties will be applied as appropriate. The specifics of Vendor default provisions are detailed in the Contract Documents. Any Contract award will be subject to these Contract Documents. The remedies outlined in the Contract are in addition to any other legal or equitable remedies that may be available.

## **XI.3 Termination Options for Contracts**

For any purchase or contract over \$10,000 using federal funds, the Awarded Vendor must agree to the following terms and conditions:

The Eligible Entity retains the right to terminate or cancel any Purchase Order under the Contract without cause by providing seven business days' advance written notice to the Awarded Vendor. In the event of termination for convenience, the Eligible Entity will only be obligated to pay the Awarded Vendor for goods or services delivered before the termination and not returned according to the Vendor's return policy. If the Eligible Entity has already paid for goods or services not yet provided at the time of termination, the Awarded Vendor must promptly refund such payments.

Additionally, the Eligible Entity may terminate or cancel any Purchase Order with cause under Section XIII.6.

## **XI.4 Commitment to Equal Employment Opportunity**

With the exception of 41 CFR Part 60, all Eligible Entity purchases or contracts meeting the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b). This compliance is in accordance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, and the related regulations at 41 CFR Part 60. The Awarded Vendor acknowledges that this provision applies to eligible purchases or contracts and agrees to comply with it.

## **XI.5 Adherence to the Davis-Bacon Act**

When required by federal program legislation, the Awarded Vendor must comply with the Davis-Bacon Act for all Eligible Entity prime construction contracts or purchases over \$2,000. The Act mandates paying laborers and mechanics no less than the prevailing wages specified by the Secretary of Labor. The Awarded Vendor must also ensure timely payment of wages.

Current Prevailing Wage determinations issued by the Department of Labor can be accessed at <https://beta.sam.gov>. The Awarded Vendor agrees that acceptance of the wage determination is a condition for being awarded any relevant purchase. The Vendor must also comply with the Copeland "Anti-Kickback" Act, which prohibits any inducements to construction workers to relinquish part of their entitled compensation.

#### **XI.6 Compliance with Contract Work Hours and Safety Standards Act**

For all Eligible Entity contracts or purchases over \$100,000 involving the employment of mechanics or laborers, the Awarded Vendor must adhere to 40 USC 3702 and 3704, as well as related Department of Labor regulations (29 CFR Part 5). These regulations mandate standard work hours and fair compensation for overtime work. Additionally, the Vendor must provide safe and suitable working conditions for laborers and mechanics involved in construction work.

Please be aware that these requirements do not apply to purchases of standard supplies or materials available on the open market or transportation or transmission contracts.

#### **XI.7 XI.7 Rights to Inventions Made Under a Contract or Agreement**

If the Eligible Entity's federal award qualifies as a "funding agreement" according to 37 CFR 401.2(a) and the recipient or sub-recipient intends to enter into a contract with a small business firm or nonprofit organization related to the substitution of parties, assignment, or experimental, developmental, or research work under that "funding agreement," compliance with the requirements of 37 CFR Part 401 and relevant agency regulations is mandatory. The Awarded Vendor agrees to adhere to these requirements when applicable but retains all rights allowed by applicable law to each subject invention.

#### **XI.8 Adherence to the Clean Air Act and Federal Water Pollution Contract Act**

Contracts or sub-grants over \$150,000 must include a provision requiring non-federal awardees to comply with all relevant standards, orders, or regulations under the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended. Any violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). The Awarded Vendor agrees to comply with all applicable standards, orders, or regulations issued under the Clean Air Act and the Federal Water Pollution Control Act when required.

#### **XI.9 Debarment and Suspension Prohibition**

A contract award must not be granted to parties listed on the government-wide exclusions in the System for Award Management (SAM) as per Debarment and Suspension Executive Orders 12549 and 12689. The Awarded Vendor certifies that they are not currently listed on the government-wide exclusions in SAM and have not been debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Vendor agrees to promptly notify the Eligible Entity if they are later listed in SAM or become debarred, suspended, or otherwise excluded.

#### **XI.10 Byrd Anti-Lobbying Amendment Compliance**

Bidders bidding for an award over \$100,000 must file the required certification regarding the Byrd Anti-Lobbying Amendment (31 USC 1352). This certification ensures that federally appropriated funds are not used to influence or attempt to influence government officials regarding the awarding of federal contracts, grants, or other awards. Bidders must also disclose any lobbying activities funded by non-

federal funds related to the acquisition of federal awards. Compliance with the Byrd Anti-Lobbying Amendment is required.

#### **XI.11 Procurement of Recovered Materials**

For Eligible Entity purchases using federal funds, the Awarded Vendor must adhere to Section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act. This includes providing necessary information and certifications as required by the district to confirm estimates and compliance. The requirements of Section 6002 involve procuring items containing the highest percentage of recovered materials practically possible according to EPA guidelines while maintaining a satisfactory level of competition.

Additionally, the Vendor must procure solid waste management services that maximize energy and resource recovery and establish an affirmative procurement program for the purchase of recovered materials identified in the EPA guidelines.

#### **XI.12 Profit as a Separate Element of Price**

For purchases using federal funds over \$250,000, the Eligible Entity may be required to negotiate profit as a separate element of the price. See, 2 CFR § 200.324(b). When the Eligible Entity determines that such information is required by law, the Awarded Vendor agrees to provide information and negotiate with the Eligible Entity regarding profit as a separate element of the price for a particular purchase. However, the Awarded Vendor agrees that the total price, including profit, charged by the Awarded Vendor to the Eligible Entity shall not be more than the awarded pricing.

#### **XI.13 Bonding Requirements**

According to 2 CFR § 326, the Agency mandates bid security, performance, and payment bonds for construction projects. For construction or facility improvement Contracts or subcontracts exceeding the current simplified acquisition threshold of \$250,000, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the Eligible Entity, provided that they ensure adequate protection of federal interests. If such a determination is not made, the minimum requirements are as follows:

- A bid guarantee from each Bidder equivalent to 5 percent of the bid price. This "bid guarantee" must be a firm commitment, such as a bid bond, certified check, or other negotiable instrument, accompanying a bid to ensure that the Bidder will fulfill the contractual obligations within the specified timeframe upon bid acceptance.
- A performance bond from the contractor covering 100 percent of the contract price. This "performance bond" secures the fulfillment of all obligations under the contract.
- A payment bond from the contractor covering 100 percent of the contract price. This "payment bond" guarantees payment to all laborers and material suppliers involved in the contract work as required by law.

#### **XI.14 Not-To-Exceed Price**

Upon request by the Eligible Entity, for any Contract based on time and materials, the Awarded Vendor must establish a ceiling price that the Vendor exceeds at its own risk, following 2 CFR § 200.318(j).

#### **XI.15 Contracting with Historically Underutilized Businesses**

The Awarded Vendor must take affirmative steps to promote the participation of minority businesses, women's business enterprises, and labor surplus area firms when feasible. These affirmative steps include:

- Including qualified small and minority businesses and women's business enterprises in solicitation lists.
- Ensuring that small and minority businesses and women's business enterprises are considered as potential sources whenever applicable.
- Dividing total requirements into smaller tasks or quantities, when economically feasible, to maximize participation by small and minority businesses and women's business enterprises.
- Encouraging the participation of small and minority businesses and women's business enterprises through appropriate delivery schedules.
- Utilizing the services and assistance of organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce as needed.
- Requiring any subcontractors, if subcontracts are involved, to follow the affirmative steps outlined in this Section.

#### **XI.16 Equivalent Products**

In cases where the specification mentions a branded Product equivalent Products may be bid. However, the burden falls on the Bidder to provide evidence that the proposed alternate meets or exceeds the Agency-specified named Product's attributes and provides an equal or better warranty. Significant qualities include attributes such as performance, weight, size, durability, visual effect, specific features, and indicated requirements. The Agency reserves the right to reject proposed alternate Products if they are not considered equal to or better than the named Product in the specification. See Section VI. 7.

An Awarded Vendor may also propose substitutions when the unavailability of the Product, regulatory changes, or unavailability of required warranty terms necessitates it. The Vendor must provide full documentation to the Agency and the purchasing Eligible Entity at least thirty (30) working days before commencing work to support the proposed substitution's equal or superior attributes compared to the specified Product. The proposed substitution must not disrupt the project and must be implementable by subcontractors as necessary. The purchasing Eligible Entity must approve all substitutions. The Eligible Entity retains the right to reject proposed alternate Products if they are not deemed equal to or better than the named Product in the specification.

Awarded Vendors are not allowed to propose substitutions for convenience.

#### **XI.17 Preference for American-Made Materials**

The Awarded Vendor should prioritize the purchase, acquisition, or use of goods, Products, or materials produced in the United States, where appropriate and in accordance with the law, when providing services to the Eligible Entity.

#### **XI.18 I.18 General Compliance and Cooperation with Eligible Entity**

In addition to the specific requirements mentioned above, the Awarded Vendor must genuinely collaborate with the Eligible Entity and exert good-faith efforts to provide the necessary information and meet the requirements applicable to the Eligible Entity's purchase or purchases. This includes compliance with recordkeeping and record retention requirements and Contract cost and price analyses mandated under the Uniform Grant Guidance.

For instance, the Eligible Entity must perform a cost or price analysis for all procurement actions exceeding \$250,000, including Contract modifications. A cost analysis involves evaluating the individual cost elements that constitute the total price, while a price analysis evaluates the total price

without considering individual cost elements. The Awarded Vendor agrees to work closely with the Eligible Entity to complete such cost or price analyses in compliance with the relevant laws.

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

### **XII.1 Audit Requirements**

Agency reserves the right to ask Awarded Vendors or Authorized Resellers for proof of correct bid- price posting, quoting, and invoicing. From time to time, Agency will conduct spot checks or hire a third-party accounting firm to statistically sample records to verify the integrity of CalSave posted pricing and invoiced sales. Therefore, Awarded Vendors are required to:

- Maintain standard business records for at least three years following any sale or payment;
- Store underlying cost data for pricing if they have bid under a Markup-over-Cost method;
- Keep a record of an underlying price-list basis if they have bid under a Discount-from-List method;
- Cooperate with CalSave staff or auditors for any request for records to sample or verify any of their posted pricing or invoiced sales.

### **XII.2 Minimum Sales**

While Agency does not guarantee any minimum sales, Awarded Vendors are expected to achieve a minimum of \$100,000 in sales per quarter. When an Awarded Vendor fails to meet a quarterly threshold, Agency may contact the company to obtain a progress report of sales in its pipeline, identify obstacles to sales, or suggest enhanced marketing to CalSave customers.

### **XII.3 Contact and Ordering Instructions**

CalSave will send newly Awarded Vendors an email with instructions on how to complete a standard template for Buyer Ordering Instructions. Awarded Vendors must fill out and return the document in Microsoft Word format for every Catalog awarded. The instructions will give Eligible Entities advice on how to fill out their Purchase Orders, whom to contact, and what resellers, if any, are authorized to sell under the Contract.

Ordering Instructions must be updated whenever an Awarded Vendor's information changes, especially when contact information changes or when resellers are added or removed.

### **XII.4 Vendor Website Functionality**

Within 30 days of notice of award, an Awarded Vendor must have available a website with Catalog functionality to display CalSave-contracted pricing and related Product information. The website must be able to:

- Be linkable through CalSave.org and affiliated websites;
- Accept access by CalSave buyers and customers;
- Make clear user is viewing CalSave bid-protected pricing;
- Include CalSave's logo;
- Filter any Awarded Vendor Products so only CalSave-contracted Products are displayed;
- Search, filter, and sort Products;
- Show Product name and Product description, manufacturer name, manufacturer SKU, vendor SKU, unit of measure, and CalSave Contract pricing;

- Provide additional expanded detail, documents, or photographs as desired by the Awarded Vendor;
- Add items to a shopping list or cart with a list marked as a “CalSave Quote.”

## **XII.5 Price Lists**

Upon request, Awarded Vendors may be required to submit price-list spreadsheets as prescribed in an Agency template. Data presented should include line items for both physical Products and intangible Products. In such cases, the Agency will provide specific directions in an email notice

Submitted data will be transferred by Agency to electronic Catalogs on CalSave.org and other eCommerce systems unless a Punchout is authorized or a link to a vendor’s website is authorized. The data will showcase bid-protected Products to Eligible Entities to foster purchases.

Vendor’s spreadsheet contents must be written so that buyers can easily find and identify Products under Contract. Data that includes abbreviations or lacks keyword descriptions will be disadvantaged compared to other competitors’ items covered by another CalSave-related Contract.

Agency and its eCommerce Consultant reserve the right to use a third-party content provider to describe or expand upon Product descriptions provided by an Awarded Vendor.

## **XII.6 Pricing Updates**

The pricing in an Awarded Vendor’s Catalog may change when the base pricing in its Commercially Available Catalog or price list changes for the company’s wider audience. However, the bid discount formula may not change. Awarded Vendors must always maintain current CalSave discounted pricing for their online Catalog. If using Discount-from-List, the Awarded Vendor must provide a snapshot file of the published Catalog price list used as the basis for their bid discount to CalSave for bid-price verification on a monthly basis.

If CalSave has chosen to link to an Awarded Vendor’s website, CalSave’s link to Catalog pricing must navigate to the current pricing on the Awarded Vendor’s website. Therefore, Awarded Vendor is required to provide CalSave with up-to-date links.

## **XII.7 Specials and Promotions**

During the term of its Contract, an Awarded Vendor may offer specials and promotions that can be posted on CalSave.org.

## **XII.8 Leasing Information**

A California Eligible Entity 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 Eligible Entity, if the purchaser agrees to lease the equipment back to the entity for use by the Eligible Entity following the sale.

The approval by the governing board of the Eligible Entity 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 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 Eligible Entity.

Awarded Vendors may allow Eligible Entities to enter into rental, lease, or lease purchase agreements, provided that such agreements comply with state statutes and state Department of Education policies, rules, and regulations, as well as any state-specific laws and regulations applicable to Eligible Entities

in other states. Awarded Vendor agrees that leases will be in compliance with the Uniform Commercial Code for the state in which the Eligible Entity is from.

Agency will not collect lease payments or be involved in the terms and conditions of the lease.

Awarded Vendor must indicate in its terms and conditions if the shipping costs for the return of leased or rented equipment are the responsibility of the Eligible Entity, and what that cost will be. No sale or assignment of a lease contract to a third party will be made without first informing Agency and the Eligible Entity of the sale or assignment. If an Awarded Vendor sells or assigns a lease contract to a third party, the cost of return must not be greater than the cost of return to the original Awarded Vendor.

Awarded Vendors providing lease or rental opportunities must submit a file detailing lease arrangements available to Eligible Entities. CalSave will post the information on the CalSave website. (Awarded Vendor shall be required to provide such information electronically such as Microsoft Word or Adobe PDF document.) If the Awarded Vendor makes changes to their terms and conditions during the term of the Agency Contract, the new document must be filed with CalSave for archiving and posting.

Lease or rental proposals to Eligible Entities under the Agency Contract must clearly demonstrate that the base price of the equipment and services in the lease or rental proposal was derived using the CalSave bid-discounted pricing or better. The Eligible Entity shall submit a copy of all leasing documents, any associated CalSave quotes, and any other Awarded Vendor required document(s) with a Purchase Order or letter of intent to lease provided on school or agency letterhead and signed.

Awarded Vendor may use a state procurement agency-approved lease agreement terms and conditions or may substitute its own leasing terms and conditions with the approval of the Eligible Entity.

Any financing arrangements (including lease purchasing arrangements) will be made directly between an Eligible Entity and the Awarded Vendor or applicable lender. Financing arrangements may be subject to additional laws, rules, regulations, and terms and conditions not described in this document, and are subject to separate negotiation with each Eligible Entity that is interested in such an arrangement. Each Eligible Entity should seek its own legal advice before entering into a financing arrangement. All financing arrangements are between the Eligible Entity and the Awarded Vendor or the applicable lender only, and Agency will not be involved in any way.

## **XII.9 Contract Promotion, Advertising, and Marketing**

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

Before an Awarded Vendor issues a press release about its Contracts, the Agency or CalSave must give prior approval.

For the term of its Contract, CalSave will extend Awarded Vendors a license to use the CalSave logo on the vendor's website and in marketing collateral. Advance permission and review are required. However, the Agency may cause the Awarded Vendor to recall any collateral or any use of the CalSave logo that is not in conformance with guidelines, untruthful, or inaccurate.

For each awarded Catalog, Awarded Vendors are required to carry out marketing plans as offered in their bid submissions. At any time, CalSave may telephone or email an Awarded Vendor for a progress report and evidence of activities conducted under their marketing plans.

#### **XII.10 Request for Voluntary Discounts and Promotions**

Awarded Vendors are required to provide an answer, even if no, to requests from LEAs for voluntary, additional discounts or volume discounts—in particular, from any requests deriving from the Agency or eCommerce Consultant's websites. When extending an optional discount, the Awarded Vendor is not obligated to provide a similar or equal discount to another LEA, except where required by federal E-rate Lowest Corresponding Price rules.

#### **XII.11 Punchout Functionality**

An Awarded Vendor may petition CalSave or Epylon, by email, for a Punchout technology solution. Under this arrangement, a vendor hosts its Products on its website and provides necessary data back to CalSave to ensure compliance with its Contract with the Agency. Prior to approval, an Awarded Vendor must demonstrate its ability to meet standards set by Agency and its eCommerce Consultant, which are available upon request. Permissions are granted at Agency's sole discretion.

#### **XII.12 Training of the Sales Force and Authorized Resellers**

Awarded Vendor is responsible for informing and training its sales force and Authorized Resellers on the use of its Agency Contracts for sales under Agency's bid-protection provisions.

#### **XII.13 Contract Extension**

At no time will the contract be in force for more than three whole years at a time. Agency reserves the right to extend any bid award, twice, for a period of up to one additional year at a time. The extension of any awarded bid will be optional upon the agreement of the Agency and the Awarded Vendor.

The Agency reserves the right to offer month-by-month extensions until an RFP is issued and a new Contract is awarded. These month-by-month extensions of the awarded Contract will be optional upon the agreement of the Agency and the Awarded Vendor.

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

#### **XIII.1 Entire Agreement**

The Contract will represent the complete agreement between the Agency and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Contract shall be in writing in the form of an amendment signed by Agency and Awarded Vendor (and the eCommerce Consultant if the eCommerce Consultant is a necessary party).

The Purchase Order will represent the complete agreement between the Eligible Entity and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Purchase Order shall be in writing in the form of an amendment signed by Eligible Entity and Awarded Vendor.

#### **XIII.2 Novation**

If the Awarded Vendor assigns, sells, or transfers substantially all assets or the entire portion of the assets used to perform the Contract, a successor in interest must guarantee to fulfill all obligations under the Contract and offer awarded Products at the same or better pricing determined by the original bid pricing formula. Agency reserves the right to recommend acceptance or rejection of the new party.

Confirmation of the acquiring vendor's intent and ability to honor all the obligations under the Contract and to offer awarded Products at the same or better pricing determined by the bid pricing formula will be documented by signing and submitting an Agency Contract Assignment Form. A simple change of the Awarded Vendor's name will not change the contractual obligations of the Awarded Vendor.

### **XIII.3 Default Related to the Contract**

The Agency may, subject to the provisions of force majeure, and in addition to its other rights under the Contract, at law or in equity, declare the Awarded Vendor in default by written notice thereof to the Awarded Vendor, and terminate the whole or any part of the Contract (including, without limitation, for one or more states) for any of the following reasons:

- Failure to deliver the awarded item(s) within the period specified under a Purchase Order or as otherwise specified
- Improper delivery
- Failure to provide an item which is in conformance with the specifications referenced in the Request for Bids
- Delivery of a defective item, where such defect is not cured subject to VII.15
- Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within 15 days notification
- Insolvency
- Assignment made for the benefit of creditors
- Failure to protect, to repair, or to make good any damage or injury to property as required by the Contract
- Breach of any provision of the Contract, if such breach is not cured within thirty (30) days of receipt of written notice thereof
- Failure to adequately perform the services set forth in the Contract and Purchase Orders issued thereunder if such failure is not cured within thirty (30) days of receipt of written notice thereof
- Failure to make progress in the performance of the Contract and/or giving Agency reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Contract if such failure is not cured within thirty (30) days of receipt of written notice thereof
- Failure to observe any of the Terms and Conditions of the Contract, if such failure is not cured within thirty (30) days of receipt of written notice thereof
- Failure to pay Transaction Fees
- Failure to follow the established procedure for Purchase Orders, invoices, and receipt of funds as stipulated by the Agency and/or Eligible Entity
- Failure to maintain its baseline Catalog online
- Failure to update prices
- Nonperformance in sales
- Failure to meet E-rate Program Compliance requirements including suspension or debarment
- Suspension or Debarment occurring during the term of the Contract
- The Awarded Vendor, Authorized Reseller, or awarded Catalog has been identified by the U.S. Government as posing a national security threat to the integrity of communications networks or the communications supply chain

#### **XIII.4 Default Related to the Purchase Order**

The Eligible Entity may, subject to the provisions of force majeure, and in addition to its other rights under the Purchase Order, at law or in equity, declare the Awarded Vendor in default by written notice of it to the Awarded Vendor, and terminate the whole or any part of a Purchase Order for any of the following reasons:

- Failure to deliver the awarded item(s) within the period specified on the Purchase Order or as otherwise specified.
- Improper delivery.
- Failure to provide an item that is in conformance with the specifications referenced in the Request for Bids.
- Delivery of a defective item, where such defect is not cured subject to VII.15.
- Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within 15 days after notification.
- Insolvency.
- Assignment made for the benefit of creditors.
- Failure to protect, to repair, or to make good any damage or injury to property as required by the Contract.
- Breach of any provision of the Purchase Order.
- Failure to adequately perform the services set forth in the Purchase Order.
- Failure to make progress in the performance of the Purchase Order and/or giving LEA reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Purchase Order.
- Failure to observe any of the Terms and Conditions of the Contract or Purchase Order.
- Failure to follow the established procedure for Purchase Orders, invoices, and receipt of funds as stipulated by the Eligible Entity.
- Suspension or Debarment occurring during the term of the Purchase Order.
- The Awarded Vendor, Authorized Reseller, or awarded Catalog has been identified by the U.S. Government as posing a national security threat to the integrity of communications networks or the communications supply chain.

If the Eligible Entity terminates the Purchase Order in whole or in part as provided above, the Eligible Entity may procure, upon such terms and in such manner as it determines, any Products similar or identical to the Products so terminated. If the Purchase Order is terminated as provided above, the Eligible Entity, in addition to any other rights provided in this paragraph, may require the Awarded Vendor to transfer title and deliver immediately to the Eligible Entity in the manner and to the extent directed by the Eligible Entity, any partially manufactured or delivered Products as the Awarded Vendor has specifically produced or specifically acquired for the performance of the Purchase Order as has been terminated. Except as provided below, payment for any partially manufactured or delivered Products accepted by the Eligible Entity shall be in an amount agreed upon by the Awarded Vendor and Eligible Entity. The Eligible Entity may withhold from amounts otherwise due the Awarded Vendor for any partially manufactured or delivered Products, such sum as the Eligible Entity reasonably determines to be necessary to protect the Eligible Entity against loss due to the Awarded Vendor's default.

### **XIII.5 Remedies**

The rights and remedies of the Agency or Eligible Entity provided in these Terms and Conditions shall not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or under the Contract or Purchase Order.

The Agency's or Eligible Entity's failure to exercise any rights or remedies provided in these Terms and Conditions, at law, in equity, or under the Contract or Purchase Order shall not be construed to be a waiver by the Agency or Eligible Entity of its rights and remedies in regard to the event of default or any succeeding event of default.

To the extent that an Eligible Entity has an administrative dispute resolution process that is mandated by law, the Awarded Vendor agrees to adhere to such process.

### **XIII.6 Force Majeure**

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

- The Awarded Vendor shall notify the Agency regarding obligations pursuant to the Contract or the Eligible Entity regarding obligations pursuant to the Purchase Order orally within five business days and in writing within ten business days of the date on which the Awarded Vendor becomes aware or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall:
  - Describe fully such cause(s) and its effect on performance;
  - State whether performance under the Contract or Purchase Order, as applicable, is prevented or delayed; and
  - If performance is delayed, state a reasonable estimate of the duration of the delay if the nature of the force majeure event does not prevent Awarded Vendor from reasonably making such an estimation.

The Awarded 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 business days of Agency's or Eligible Entity's written request such supporting documentation as the Agency or Eligible Entity may reasonably request. After receipt of such notification, the Agency or Eligible Entity may elect either to cancel the Contract or Purchase Order, as applicable or to extend the time for performance as reasonably necessary to compensate for the Awarded Vendor's delay.

In the event of a declared emergency by competent governmental authorities, the Eligible Entity by notice to the Awarded Vendor, may suspend all or a portion of the Purchase Order, and resume activities when the suspension ends, including making any delayed payments resulting from the suspension.

### **XIII.7 Termination of Purchase Order**

The Eligible Entity has the right to terminate a Purchase Order for the following reasons. Termination shall be effective upon written notice to the Awarded Vendor.

Termination for Cause: The Eligible Entity shall have the right to terminate a Purchase Order for Awarded Vendor default upon written notice to the Awarded Vendor unless the Awarded Vendor promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the Eligible Entity's notice of default. Notwithstanding any termination for cause, the Awarded Vendor shall be paid for work satisfactorily completed before the Effective Date of the termination, less the Eligible Entity's damages due to the Awarded Vendor's default.

Non-Appropriation: If the Eligible Entity purchasing from the Awarded Vendor or an Authorized Reseller is a state or local agency under laws of the state applicable to such Eligible Entity (e.g. Pennsylvania State System of Higher Education (PASSHE) members under Pennsylvania law), the Eligible Entity's obligation to make payments during any agency fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year period, the Eligible Entity shall have the right to terminate the Purchase Order (including any applicable lease). In such event, Eligible Entity must: (1) certify that its governing body did not appropriate funds for the applicable fiscal year; (2) certify that the canceled equipment is not being replaced by similar equipment or equipment performing similar functions during the ensuing fiscal year; and (3) return the equipment to Awarded Vendor, free of all liens and encumbrances, in good condition to a location designated by the Awarded Vendor (which location must be within the Eligible Entity's state, if so requested by Eligible Entity), whereupon Eligible Entity will be released from its obligations to make any further payments to Awarded Vendor, with Awarded Vendor retaining sums paid to date.

### **XIII.8 Termination of Contract**

Agency shall have the right to terminate the Contract for Awarded Vendor default upon written notice to the Awarded Vendor unless the Awarded Vendor promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the notice from the Agency or its agents.

At any time, the Agency reserves the right to conduct a review of the Awarded Vendor's performance of Contract responsibilities with the possibility of cancelation of the whole or any part of this Contract due to failure by the Awarded Vendor to carry out any obligation, term or condition of the Contract. The Agency may, but is not obligated to, follow the following procedure:

- Step 1: Issue a warning Letter of Concern outlining the violations and length of time to correct the problems;
- Step 2: Issue a letter of intent to cancel the Contract, if the problems are not resolved by a given date;
- Step 3: Issue a letter to cancel the Contract.

Upon receipt of the written Letter of Concern, the Awarded Vendor shall have ten business days to provide a satisfactory response to Agency detailing how Awarded Vendor intends to address Agency's concerns. Failure on the part of the Awarded Vendor to address adequately all issues of concern may result in Contract cancelation.

In the event of termination of the Awarded Vendor Contract by Agency, each Purchase Order then in effect shall remain in full force and effect until the end of its scheduled term and shall be governed by the Terms and Conditions of the Contract and Purchase Order as if the Contract were still in effect. No new Purchase Orders shall be entered into after the Effective Date of the termination of the Contract.

### **XIII.9 Assignability and Subcontracting**

The Contract and Purchase Order shall be binding upon the parties and their respective successors and assigns.

The Awarded Vendor shall not subcontract with any person or entity to perform all or substantially all of the work to be performed under the Contract or a Purchase Order, without notifying the Agency and Eligible Entity, as applicable. The use of delivery/removal carriers does not constitute subcontracting. Awarded Vendor may use subcontractors regularly retained by Awarded Vendor in the ordinary course of business to perform cost, freight, and insurance, custom factory integration, warranty, break/fix, administrative and back office services, provided such subcontractors shall not have access to Eligible Entity's confidential information other than billing and contact information, and Awarded Vendor shall indemnify and hold harmless Agency and Eligible Entity from any claims, penalties, damages, and expenses of any nature (including attorneys' fees and costs) arising out of or relating to such subcontractors.

The Awarded Vendor may not assign, in whole or in part, the Contract or any Purchase Order or its rights, duties, obligations, or responsibilities thereunder without the prior written consent of the Agency and Eligible Entity, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed.

For the purposes of the Contract and Purchase Order, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of a majority ownership interest in the Awarded Vendor provided that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

Any assignment consented to by Agency or Eligible Entity shall be evidenced by a written assignment agreement executed by the Awarded Vendor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract or Purchase Order, as applicable, and to assume the duties, obligations, and responsibilities being assigned. Unless the Agency or Eligible Entity has consented to an assignment and agreed in writing to release the assignor from liability under the Contract or Purchase Order, no assignment shall release the Awarded Vendor from liability under the Contract or Purchase Order.

A change of name by the Awarded Vendor, following which the Awarded Vendor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Awarded Vendor shall give the Agency and any Eligible Entities holding outstanding Purchase Orders written notice of any such change of name.

Notwithstanding the foregoing, the Awarded Vendor may, without the consent of the Eligible Entity, assign the Agreement to a successor entity in connection with a merger, consolidation or dissolution of all or substantially all of Awarded Vendor's assets or business, provided that Awarded Vendor's successor entity assumes in writing all of Awarded Vendor's obligations under this Agreement and agrees in writing to be bound by this Agreement, assign its rights to payment to be received pursuant to the Purchase Order, provided that the Awarded Vendor provides written notice of such assignment to the Eligible Entity together with a written acknowledgment from the assignee that any such payments are subject to all of the Terms and Conditions of the Purchase Order.

Further, notwithstanding the foregoing, the Awarded Vendor may, without the consent of Agency or Eligible Entity, assign leases to a third party for securitization or factoring.

### **XIII.10 Intellectual Property Indemnity**

Awarded Vendor shall defend, indemnify and hold harmless the Agency and Eligible Entity (collectively, "Indemnities") from and against all claims, damages, losses and expenses, including without limitation reasonable attorney's fees and legal costs, that Indemnities incur as a result of any third-party claims, demands, or actions arising out of or resulting from a claim or allegation that any Products provided by Awarded Vendor in connection with the Contract or a Purchase Order ("Covered product") infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property rights of any third party enforceable in the United States (each a "Covered Claim"). Awarded Vendor shall have no obligation for Covered Claims to the extent they are caused by: (i) the combination of a Covered Product with third-party Products with which such Covered Product was not intended to be used; (ii) the unauthorized modification of a Covered Product; (iii) the use of a Covered Product for a purpose or in a manner for which such Covered Product was not designed; or (vi) the use of a Covered Product after Awarded Vendor has informed Eligible Entity of modifications or changes to the Covered Product that do not result in a material loss of functionality and that are required to avoid such Covered Claim, and has offered to promptly implement such modifications or changes free of charge, if such Covered Claim would have been avoided by implementation of such modifications or changes. To obtain the benefit of the foregoing indemnification, Indemnitees must (a) promptly notify Awarded Vendor of a Covered Claim; (b) provide Awarded Vendor with such reasonable assistance as Awarded Vendor reasonably requires from time to time, provided Awarded Vendor shall pay for all Indemnitees' out of pocket costs; and (c) give Awarded Vendor full control of the defense and settlement of the Covered Claim, provided that no settlement shall require an admission of guilt from Indemnitees or the payment of any amount not indemnified for hereunder. If a Covered Claim is made, or in Awarded Vendor's opinion is likely to occur, Awarded Vendor, at its sole discretion and expense, may perform one of the following: (a) use its reasonable endeavors to procure for Indemnitees the right to continue using the Covered Products; (b) use its reasonable endeavors to replace or modify the Covered Products so that they become non-infringing, without material loss of functionality; or (c) if neither (a) or (b) are practicably available to Awarded Vendor acting reasonably, reimburse to Indemnitees all prepaid amounts, and reimburse Indemnitees for the total cost of such Covered Products depreciated on a straight-line basis over a period of five years. This Section states the exclusive and entire liability of Awarded Vendor to Indemnitees for Covered Claims.

### **XIII.11 Indemnification**

To the fullest extent allowed by law, the Awarded Vendor shall indemnify and hold harmless the Agency and Eligible Entity from and against all claims, damages, losses and expenses, including without limitation reasonable attorney's fees and legal costs that Agency or Eligible Entity incur as a result of any third-party claims, demands, or actions arising out of or resulting from the Awarded Vendor's actual or alleged negligence, willful misconduct, or breach of the Contract or a Purchase Order.

This includes, without limitation, claims, damages, losses, or expenses attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, caused in whole or in part by acts or omissions or negligence of the Awarded Vendor, its Authorized Resellers, anyone directly employed by them, or anyone for whose actions they are held to be legally liable.

The indemnification obligations under the Contract and Purchase Order shall not be limited by amount or type of damages, compensation, or benefits payable by or for the Awarded Vendor or Authorized Reseller under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Further, nothing in these indemnification provisions is intended to waive or extinguish the immunity protections of Agency or Eligible Entity, its agents, or employees as set forth in California law or other similar state or federal laws or Constitutional provisions. Awarded Vendor's indemnity obligations shall be in addition to any insurance requirements under the Contract or Purchase Order. The obligations shall survive the expiration or earlier termination of the Contract or Purchase Order.

#### **XIII.12 Limitation of Liability**

Under no circumstances, and notwithstanding the failure of essential purpose of any remedy set forth herein, will any party be liable for any incidental, indirect, special, punitive, or consequential damages, including, but not limited to, loss of profits, business, revenues or savings, and loss, damage or corruption of data or software, even if such party has been advised of the possibilities of such damages or if such damages are otherwise foreseeable.

In the event of any liability incurred by Awarded Vendor or any of its affiliates hereunder, the entire liability of Awarded Vendor, its Authorized Resellers, and its affiliates for damages from any cause whatsoever will not exceed the dollar amount paid by either the LEA or Agency [determined by the party bringing the claim] for the specific products or services giving rise to the claim.

#### **XIII.13 Governing Law; Jurisdiction and Venue, and Severability**

The Agreement between the Agency and the Awarded Vendor and its Authorized Resellers will be governed and construed in the courts with the laws of the state of California without giving effect to its conflict-of-laws provisions. Claimants submit to the exclusive jurisdiction of the courts of Monterey in the state of California and any United States courts located within Agency's jurisdiction for purposes of any and all litigation arising out of or relating to this Agreement or the use of the CalSave website. Claimants waive any objections to the forum of California for lack of venue, *forum non-conveniens*, or any other jurisdictional ground.

When claims, disputes, or other matters arise between an Eligible Entity and an Awarded Vendor, the agreement or Purchase Order shall be governed, construed, and enforced in the courts and under the laws of the state, district, or territory in which the Eligible Entity is located. Again, claimants waive any objections to the forum of the respective Eligible Entity for lack of venue, *forum non-conveniens*, or any other jurisdictional ground.

Should any term of the Contract or Purchase Order be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the Contract or Purchase Order to the extent possible. If such invalidity shall be caused by the length of any period set forth in any part of the Contract or Purchase Order, such period shall be considered to be reduced or increased, as necessary, to a period that would cure such invalidity.

#### **XIII.14 Rights of Eligible Entities**

The rights and remedies of the Agency and Eligible Entities provided in these Terms and Conditions shall not be exclusive and are in addition to any other rights and remedies provided by law, at equity, under the Contract and any Purchase Order.

#### **XIII.15 Legal Notices**

All notices explicitly or implicitly required by the Contract or Purchase Order shall be delivered by certified mail or other commercial carrier offering proof of delivery to the parties at the address referred to in the Awarded Vendor Agreement or Purchase Order. Unless proven to the contrary by the recipient,

notice shall be considered received no more than two business days after its postmark by the postal service or proof of delivery by a commercial carrier.

#### **XIII.16 Binding Nature and Survival**

The Contract and each Purchase Order shall be binding on and inure to the benefit of the respective parties thereto and their respective successors and assigns. It is understood and agreed, whether or not specifically provided herein, any provision of the Contract or Purchase Order, which by its nature and effect is required to be observed, kept, or performed after the expiration or termination of the Contract or Purchase Order shall survive the expiration or termination of the Contract or Purchase Order.

#### **XIII.17 Copyright**

This Request for Bids, these Terms and Conditions, the electronic bid form, and all attachments are copyrighted by MCOE and the Epylon Corporation, 2023 (©2023, MCOE & Epylon).

[END]