

Monterey County Office of Education

Contract Documentation

Bid #523606, Monterey County Office of Education

Product Line:

FileMaker[®] Licenses & Administration

Awarded to:

En Pointe Technologies Sales Inc.

Contract Start Date:

March 12th, 2010

CONTRACT SIGNATURE PAGE

**MONTEREY COUNTY OFFICE OF EDUCATION
Invitation to Bid # 523606**

FileMaker Software & Administration

1. Pursuant to and in compliance with Invitation for Bid #523606, its Terms and Conditions, and the other documents relating thereto, the undersigned Bidder, having familiarized himself with the terms of the bid and the conditions affecting the performance of the bid, hereby proposes and agrees to perform, within the time stipulated, everything required by this agreement at the service levels offered and at the discounts or mark-ups offered and any resulting effective prices herein set forth.
2. Awarded Vendor agrees to comply with the Monterey County Office of Education Terms and Conditions as written in the Invitation to Bid #523606.
3. Awarded Vendor must comply with terms of the license agreements between FileMaker and Monterey County Office of Education.
4. Bidder certifies, by affixing his/her signature below, that all of the products being offered or to be offered under this bid solicitation are legally valid licenses and products free of any copyright violation and that all items offered are in full compliance with specifications and Terms and Conditions of the Invitation to Bid and applicable California law.
5. It is understood that the Monterey County Office of Education reserves the right to reject this bid as specified in the Invitation to Bid and that the bid shall remain open and not be withdrawn for a period of ninety (90) days.
6. If awarded the bid by Monterey County Office of Education and by signing below, Bidder will be entering into an agreement with Monterey County Office of Education and obligating his/her company to this Contract and all Terms and Conditions of Invitation to Bid #523606.

Bidder

En Pointe Technologies Sales Inc.

18701 S. Figueroa Street,

Gardena CA 90248

By: 

Name: Imran Yunus

Title: Director of Govt. Sales

Date: 3-12-2010

MCOE

Monterey County Office of Education

901 Blanco Circle

Salinas, California 93912-0851

By: 

Name: Garry P. Bousum

Title: Assoc. Supt., Finance and Business

Date: 04-16-10

*For Nancy Kotowski.
County Superintendent of Schools*

**AMENDMENT TO
MASTER VOLUME LICENSE AGREEMENT**

This Amendment is entered into by and between **FileMaker, Inc.**, a Delaware corporation ("FMI") and **Monterey County Office of Education / CalSAVE Project** ("Licensee"). FMI and Licensee have previously entered into a Master Volume License Agreement dated January 1, 2002, as amended ("Agreement"). FMI and Licensee desire to amend the Agreement as follows:

1. **Extension of Term:** Section 4(a) of the Agreement is deleted in its entirety and replaced with the following:

The term of the Agreement will commence on the Contract Date set forth on the Signature Page, and will expire on January 31, 2011, unless terminated earlier as set forth in this Section 4.

In the event of any conflict between the Agreement and this Amendment, the terms of this Amendment shall govern. Except as expressly set forth above, (i) all capitalized terms used in this Amendment shall have the same meaning as defined in the Agreement, and (ii) all terms and conditions of the Agreement will remain in full force and effect.

"Licensee"

**Monterey County Office of Education
(CalSAVE Project)**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

"FMI"

FileMaker, Inc.

Signature: _____

Printed Name: Scott Lewis

Title: VP WW OPS

Date: 5/5/10

Always Low Prices!



MONTEREY COUNTY OFFICE OF EDUCATION
Invitation to Bid # 523606
FileMaker® Licenses & Administration
Deadline, 10:00 a.m., Tuesday, March 16, 2010

I. Bid Overview & Authorities

I.1 BID TITLE

FileMaker® Educational License Program, Sales and Administration for California

I.2 BID NUMBER

Invitation to Bid Number 523606

I.3 ORGANIZATION OF BID TERMS AND CONDITIONS

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

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

I.4 BID SCOPE

The Monterey County Office of Education is seeking a FileMaker® Reseller to administer, service, and support FileMaker® educational contracts, which includes the sale of FileMaker® software licenses and administration of the Monterey County Office of Education licenses. The initial term of the Contract will be approximately 36 months. The right to purchase from the Contract will be made available to all public school districts, K-12 private schools, charter schools, and other specified public agencies, such as libraries and museums, throughout the state of California, in keeping with terms of contracts between FileMaker and the Monterey County Office of Education and as allowed by law.

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

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

I.6 CALSAVE PROGRAM

The Monterey County Office of Education is issuing this bid in cooperation with the CalSAVE program, the purchasing cooperative founded by the Monterey County Office of Education and administered under contract by the Epylon Corporation. CalSAVE serves all education agencies in California. CalSAVE, through the Monterey County Office of Education, offers one or more Educational License Program contracts with FileMaker.

I.7 BID DUE DATE

The bid response is due no later than 10 a.m. PST, Tuesday, March 16, 2010.

I.8 METHOD OF SUBMISSION

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

I.9 CONTRACT TERM OF DURATION

The length of term of the awarded Contract will be from date of award through Thursday, February 28, 2013.

I.10 ELIGIBLE BUYING AGENCIES

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

Eligible agencies will include, not only all California County Offices of Education and California public school districts, but also California joint powers authorities related to education, charter schools, non-public schools, private schools, and any new schools, school districts, or charter schools established during the term of the Contract.

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

- 1,165 public school districts and education agencies
- 513 charter schools
- 58 County Offices of Education

I.11 PIGGYBACKABLE CLAUSE

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

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

I.12 STANDARD SCHOOL SUPPLY & EQUIPMENT LIST AND COOPERATIVES

Monterey County Office of Education declares that items and licenses under Contract as a result of this Invitation to Bid will qualify as items to be included within its Standard School Supply and Equipment List. Because many County Offices of Education have banded together to create both the EdBuy and the CalSAVE programs for the purpose of collectively creating both a Standard School Supply & Equipment List and cooperative contracts, the items solicited and awarded through this bid may also constitute a portion of an official Standard School Supply and Equipment List for other participating County Offices of Education and County Superintendents of Schools. Purchases by other County Offices of Education and LEAs may be made, not only in accordance with Public Contracts Code [20118](#) and [20652](#), but also in accordance with Education Code [38110](#) and [38112](#) dealing with cooperatives and Standard School Supplies & Equipment.

I.13 LEASE-BACK AUTHORITY ALLOWED BY LAW

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

II. Definitions

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

II.1 MONTEREY COUNTY OFFICE OF EDUCATION

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

II.2 AGENCY

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

II.3 CALIFORNIA COUNTY SUPERINTENDENTS EDUCATIONAL SERVICES ASSOCIATION

The California County Superintendents Educational Services Association, also known as “*CCSESA*,” located at 1121 L Street, Suite 510, Sacramento, CA 95814, is the association made up of California’s 58 county superintendents of schools who come together to provide collective and cooperative services serving multiple County Offices of Education and California schools as a whole. CCSESA owns and coordinates the EdBuy cooperative and the CalSAVE cooperative.

II.4 CALSAVE

CalSAVE is the cooperative purchasing program founded by the Monterey County Office of Education and administered by the Epylon Corporation under contract with MCOE, in cooperation with the California County Superintendents Educational Services Association (CCSESA).

II.5 EDBUY

EdBuy is the cooperative purchasing program founded by California county superintendents of schools through the California County Superintendents Educational Services Association. EdBuy is administered under contract by the Epylon Corporation with the California County Superintendents Educational Services Association (CCSESA), located at 1121 L Street, Suite 510, Sacramento, CA 95814. The EdBuy program may help publicize this Contract. Epylon is an agent of MCOE.

II.6 LEA

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

II.7 EPYLON CORPORATION®

Epylon Corporation, also referred to as “*Epylon*,” is the private corporation located at 3675 Mt. Diablo Blvd., #110, Lafayette, CA 94549, that has been hired by the Monterey County Office of Education to administer the CalSAVE cooperative and to provide technology and services necessary to issue bids and run the CalSAVE cooperative. Epylon also has a separate contract with CCSESA to administer its cooperative purchasing efforts. The name *Epylon* is a registered trademark of the Epylon Corporation in the United States.

II.8 FILEMAKER®

FileMaker, Inc. is a corporation headquartered at 5201 Patrick Henry Drive, Santa Clara, CA 95054, a wholly owned subsidiary of Apple Inc. FileMaker is that worldwide company that publishes a variety of software, manufactures and/or distributes computer-related software, licenses its software, and has licensing agreements with the Monterey County Office of Education. The term *FileMaker*, and the *FileMaker* product names in this document are either registered trademarks or trademarks of FileMaker Corporation in the United States and/or in other countries.

II.9 VENDOR

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

II. 10 BIDDER

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

II.11 QUOTE SHEET

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

II.12 BID RESPONSE WORKSHEET

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

II.13 CONTRACT

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

III. BIDDER STATUS AND QUALIFICATIONS

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

III.1 ANSWERING QUESTIONS ON THE BID FORM

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

- Maintain permanent places of business
- Have the capability to furnish the items offered satisfactorily and expeditiously
- Will provide satisfactory school customer sales support and service to all LEAs
- Have required experience to administer FileMaker[®] licenses
- Have current relationships with LEAs for verification of customer satisfaction
- Can demonstrate an active network or other acceptable method of service and support that will serve all LEAs in California.

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

III.2 COMPANY EXPERIENCE

To qualify as a Vendor, a Bidding company must have direct K-12 public school experience in California selling and administering FileMaker[®] licenses with complete knowledge of the FileMaker[®] products. Subcontractor experience will not be acceptable. This direct experience must be described in response to Question 40 in the Question Section.

In addition, a bidder must list, in response to Question 39, at least three public school districts in California with whom it has had previous experience with the FileMaker® academic licenses.

III.3 STAFF EXPERIENCE

Bidder must identify at least one full-time person on staff who will be the dedicated leader in administering this bid and Contract. The identified person must have experience administering FileMaker® licenses at the K-12 public school district(s) level in California. Bidders must identify such individual(s) in the attachment required to be submitted in response to Question 49 on the electronic bid form.

III.4 PROOF OF PROGRAM VOLUME

To qualify as a Vendor, Bidders must have provided a minimum of 1,000 FileMaker® licenses per calendar year for any one year between 2006 and 2009 in California, through a FileMaker® licensing agreement.

III.5 RESTRICTIONS ON MULTIPLE BIDS

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

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

III.6 DECLARATION OF NON-COLLUSION

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

The Bidder must affirmatively answer "Yes" to the non-collusion question in the Question Section or else the bid may not be submitted to Agency. By answering "Yes" to Question 63, the Bidder affirms the following:

(1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.

(2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) Neither he/she, the company, nor any of the company's affiliates, subsidiaries, officers, directors and employees are currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

(6) All representations are material and important, and will be relied on by the Monterey County Office of Education in awarding the Contract(s) for which this bid is submitted.

(7) Any misstatement is and shall be treated as fraudulent concealment from Monterey County Office of Education of the true facts relating to the submission of bids for this Contract.

If a Bidder cannot answer yes to Question 63, he/she will not be able to complete the bid form and will not be able to submit a bid.

III.7 SUSPENSION AND DEBARMENT

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

III.8 ABILITY TO FOLLOW DIRECTIONS

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

III.9 HISTORICALLY UNDER-UTILIZED BUSINESSES (HUBS)

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

IV. Bid Procedures and Instructions

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

IV.1. BID DUE DATE

The bid is due no later than 10 a.m. PST, Tuesday, March 16, 2010. It is the Bidder's sole responsibility to ensure that its bid is received prior to the scheduled date and time for receipt of bids.

IV.2 PRUDENCE AND FORETHOUGHT IN SUBMISSION

Although the deadline for bids is 10 a.m. PST, Tuesday, March 16, 2010, it is in the best interests of Bidders to submit their bids well enough in advance to avoid any hindrances out of the control of Monterey County Office of Education, CalSAVE, the Bidder, or Epylon. Such hindrances could include extremely heavy Internet traffic, disruptions in phone lines, busy circuits, unexpected computer outages or weather-related obstacles. Agency assumes no responsibility for hindrances out of its control. It admonishes Bidders to submit early to identify problems and to avoid any possibility their bids may be late.

IV. 3 BID SUBMISSION ADDRESSES

Bids will be sent through each Bidder's electronic account accessed at www.epylon.com. Bidders must have registered and obtained accounts on the Epylon system to bid. There is no cost to register or to bid. After opening and completing the bid form, a Bidder who clicks on the "Submit" button officially sends its bid to the Monterey County Office of Education and delivers the bid to the MCOE in-box. MCOE will not be able to open or view the bid until the bid opening date and time.

IV.4 BID OPENING

At 10 a.m. PST, Tuesday, March 16, 2010, the sealed bids will be opened electronically and displayed on a computer monitor at the Monterey County Office of Education.

IV.5 PRELIMINARY REGISTRATION PROCEDURES FOR ELECTRONIC BIDDING

- 1) If not already registered, companies that want to bid must register as an Epylon supplier by clicking on the Supplier Registration button at the top of the page at www.epylon.com.
- 2) When registering, new suppliers interested in the bid should choose the category of "Information Technology Broadcasting and Telecommunications" to ensure they will receive the Monterey County Office of Education bid form and all future bids related to software and technology.
- 3) All new registrants between February 24 through March 15, 2010 will automatically receive the Monterey County Office of Education bid form.
- 4) Once registered and logged in at www.epylon.com, click the e-Bid tab, view the in-box to see the Monterey County Office of Education bid form ready to be opened.

IV.6 ON-LINE BIDDING

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

- 1) Review the product line name and description of products to be bid.
- 2) Download the attached spreadsheet template found in the section titled "Filemaker SKU Template." There will be two worksheet tabs in the spreadsheet to fill out.
- 3) The first worksheet requires you to enter the percent discount you are offering as your bid or the percent mark-up over cost. This discount or mark-up percentage can be variable by category of products within the FileMaker® product line.
- 4) The second worksheet requires you to price actual products by indicating the discount or markup percentage and the list or cost price. The Excel® software will automatically calculate the effective unit price.
- 5) Save the file; name it the product category being bid.
- 6) Upload the file alongside the appropriate product line by clicking the white box to the left of Product Line Specifications column.
- 7) Click "Browse" to locate the template on your hard drive.
- 8) Click "Open," then click "Attach File" to upload template to bid form.
- 9) Designate the uploaded spreadsheet as the pricing template by clicking in the small white box next to the name of the template, then clicking the red "Identify SKU Attachment" button located at the bottom of the Product Line Specification section. This has the effect of distinguishing your pricing from any other attachment you choose to upload. A red asterisk will appear next to your file.
- 10) Click the white box in Bid Column for the product line category being bid to signify you are bidding for a specific product line.
- 11) Answer all questions listed in the Question Section. You can add attachments to answers as necessary.
- 12) Provide a handwritten signature to the Contract Signature page. Scan it, and attach it as a PDF file to the bid form as requested in the Question Section.
- 13) Click on "Save as Draft" at any time while working on the bid form.
- 14) When ready to submit, click Continue at bottom of first page.
- 15) Review your bid, making sure you are satisfied with your answers, attachments and pricing.
- 16) Click on the "Submit" button to send the sealed electronic bid to Monterey County Office of Education.

IV.7 ELECTRONIC SIGNATURE

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

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

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

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

IV.8 HOW TO GET HELP

Technical questions on how to fill out the bid form, upload or download attachments or maintain your Epylon account can be directed to the Epylon customer service line at (888) 211-7438. Or questions can be e-mailed to service@epylon.com. Customer service will not answer bid policy questions or interpret bid terms.

IV.9 BID CONTENT QUESTIONS

Questions on bid content, policy or interpretation must be submitted by e-mail to Suzanne Barchi, no later than 4:00 p.m. Tuesday, March 9, 2010. The address is suzanne@calsave.org. Answers and responses will be posted on the electronic bid form for all bidders to see prior to the bid deadline.

IV.10 MODIFICATIONS

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

IV.11 EXAMINATION OF BID AND CONTRACT DOCUMENTS

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

IV.12 WITHDRAWAL OF BID

After reviewing a bid document and clicking on the "Submit" button, the electronic bid form is officially submitted to the Agency. If a Bidder wants to withdraw his or her bid, he or she may do so by clicking the "Retract" button within the Epylon software any time prior to the bid deadline.

V. Specifications

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

V.1 QUANTITIES

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

V.2 PRODUCT LINES

This Invitation to Bid seeks pricing on all available software and products manufactured by FileMaker® and eligible to be sold to education agencies in California through master agreements held between FileMaker® and MCOE. A table of specifications for known FileMaker® products is attached in the official bid template within the Excel file.

V.3 ADMINISTRATION

Vendor shall provide for full administration of the MCOE FileMaker® licenses as required in MCOE-FileMaker® master license agreements. In addition, administration shall include the full payment of MCOE Transaction Fees, where authorized.

V.4 DATABASE

Vendor shall maintain any FileMaker® Educational license databases in compliance with the FileMaker® requirements.

V.5 STAFFING

The awarded Vendor will administer MCOE's FileMaker® master licenses; therefore Bidding companies must propose a staffing plan for administration of this bid and resulting Contract. The staffing plan must be attached to Question 55 of the Questions Section. MCOE understands that some roles will overlap single or multiple job positions. Staffing plans must include:

- A list of positions that will serve and administer this Contract

- Names of persons currently filling those positions
- A short biography of persons currently filling those positions
- Phone and e-mail contact information for the persons listed
- Estimated percent of time the staff member will be devoted to the Contract

Minimally, a company must identify those job positions that would carry out many of the administrative tasks for the Contract, including jobs to:

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

V.6 PHONE SUPPORT

A successful Bidder shall provide a California toll-free support phone number for LEAs using this Contract. The support number and customer service shall be provided for order placement, pricing reference, sales support, and general assistance. Bidders must describe their phone support plan in response to Questions 49 and 55 of the Question Section.

V.7 AVAILABILITY

Any required information for each order, whether for license, media and/or documents, must be forwarded immediately as applicable to FileMaker® or distributor within five working days of receipt. Batching of orders is not allowed.

V.8 NEWLY PUBLISHED OR NEWLY MANUFACTURED ITEMS

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

VI. Pricing

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

VI.1 FORMULA PRICING

By bidding, Bidder commits to formula pricing in one of the following manners:

- A) The formal bid of a fixed percentage discount off a specified price list within identified product categories.
- B) The formal bid of a fixed percentage mark-up over cost from a specified cost-basis within identified product categories. (A Bidder who is also the software manufacturer may not bid using a mark-up over cost formula because no reliable cost-basis can be determined).

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

Depending on the method of a Bidder's bid, Contract prices will always be either:

- A) List price minus the discount, rounded to the nearest whole cent or
- B) Cost plus mark-up, rounded to the nearest whole cent.

If bidding by discount off list, Bidder must ensure that the specified price list or rate card for each quoted discount exists and continues to be published for the term of the contact and all extensions, so that effective pricing can be calculated and audited by MCOE at any time.

If bidding by mark-up over cost, Bidder must ensure that ongoing documentation for the cost basis exists and continues to be available for the term of the Contract and all extensions, so that effective pricing can be calculated and audited by MCOE at any time.

VI.2 PREPARATION OF THE QUOTE SHEET

Bidder must formally bid A) the discount(s) offered by specifying the discounts, or B) percentage mark-up over cost, on the Quote Sheet of the Excel bidding SKU Template, which is attached to the bid form.

Bidder must download the spreadsheet template, and on the Quote Sheet, identify the discounts or mark-ups to be offered, either by entire product line or by subcategory, alongside the name of the price list from which the discount will be calculated. The Quote Sheet limits Bidders to thirty (30) categories of variable discounts or mark-ups. If thirty (30) lines are insufficient, subcategories with the same discount or mark-up percentage may be grouped together.

VI.3 PREPARATION OF THE BID RESPONSE WORKSHEET

On the Bid Response Worksheet, Bidder must price the products listed by providing the price before discount or mark-up, and the percentage discount bid or mark-up being bid. A set of representative product SKUs is listed.

The purpose of seeing individual products SKUs and effective pricing is to evaluate a Bidder's bid discount. Only the effective price can reveal the sufficiency or comparative value of the discount(s) or mark-ups being quoted.

The list of individual SKUs is for evaluation use only. MCOE's listing or omitting any SKU does not authorize or prevent that respective SKU from being offered under the Contract, because this bid seeks all products manufactured by FileMaker®. See the [attached example](#) for a sample of how a [Quote Sheet](#) and a [Bid Response Worksheet](#) are properly filled out.

Once completed, the spreadsheet file must be electronically attached alongside the name of the corresponding product line being bid upon using Epylon hosted software.

VI.4 VOLUNTARY DISCOUNTS

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

VI.5 BENCHMARK PRICING

The effective prices achieved by MCOE's current contract for FileMaker® products will be used as a benchmark to gauge the efficacy of pricing under this Invitation to Bid. MCOE reserves the right to reject, in its sole discretion, any and all bids that do not match or provide better effective prices than the existing formula pricing structure currently being used by MCOE for its FileMaker® Educational Program.

VII. Ordering, Shipping and Delivery

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

VII.1 ORDERING

Another LEA electing to use this Contract will enter into a separate contract ("Separate Contract") with the Awarded Vendor. This Separate Contract may be by means of a purchase order. By default, this Separate Contract automatically includes and/or incorporates all applicable terms of this Contract including the specific requirement, where applicable, that the contractor/Vendor comply with the provisions set forth regarding payment of the one percent (1%) participation fee. MCOE will not be a party to any Separate Contract, but will be considered a third party beneficiary of such Separate Contract as to payment of that participation fee, where applicable.

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

VII.2 ACCEPTANCE OF PURCHASE ORDERS

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

1) Any LEA may issue purchase orders against this agreement. These constitute the vendor's authority to make delivery. All purchase orders received by the Awarded Vendor up to and including the expiration date of the agreement are acceptable and must be shipped in accordance with the delivery time specified in the agreement.

2) As stated in Section IX.4, Awarded Vendors shall be required to pay the Transaction Fee for all purchases by entities made through the awarded Contract, except as explained in Section IX.6, where school districts themselves are responsible. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.

3) LEAs may order directly from the awarded Vendor by submitting a purchase order either by mail, by fax or by the Epylon eCommerce system.

4) Purchase Orders may be issued by LEAs to Awarded Vendors through Epylon accounts at www.epylon.com. Any purchase orders submitted by Epylon eCommerce will arrive in the Vendor's Order inbox, accessed at www.epylon.com through a previously established login with a user name and password. Receipt of the electronic or facsimile transmission of the purchase order shall constitute receipt of an order.

5) If a Vendor receives a Purchase order through Epylon, the parties agree that no hand-written signature shall be required in order for the purchase order to be legally enforceable. To the maximum extent permitted by law, the parties hereby agree to accept an order submission or acceptance by a properly authorized user of the Epylon system as any necessary "signature" that may be required by law. Any purchase order or acknowledgement that has been issued by a properly authorized Epylon user shall be deemed for all purposes to have been "signed" and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business. Neither party shall disclose to any unauthorized person the "signatures" of the other party.

6) If a Vendor receives a Purchase order through Epylon, the parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine purchase order or acknowledgement issued through Epylon under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine purchase order or acknowledgment issued through Epylon, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine purchase orders or acknowledgments under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement shall be deemed to be genuine for all purposes if: (a) it was received from the Epylon Purchase Order inbox and (b) it is transmitted to the location designated for such documents in the procedure agreed to by the parties.

VII.3 PAYMENT

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

VII.4 INVOICING

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

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

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

VII.5 PURCHASE CARDS AT DISCRETION OF VENDOR

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

VII.6 DELIVERY REQUIREMENTS

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

VII.7 SHIPPING

Orders must be shipped F.O.B. Destination, Freight Prepaid. Fax or e-mail delivery of license numbers is acceptable.

VII.8 DELIVERY TIMES

Delivery must be made within five working days.

VII.9 INSPECTION AND ACCEPTANCE

All items provided under the Agreement shall meet or exceed the bid specifications and shall comply with all Federal and California State laws governing their production, handling, processing and labeling. Inspection and acceptance of all items shall be at destination. Items found to be defective or not in accordance with the bid specifications shall be replaced by the Bidder at no cost to MCOE or any participating public agency. Failure to replace said items shall be considered sufficient cause for default action under the DEFAULT provision of the Agreement.

VIII. Evaluation and Awards

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

VIII.1 AWARD OF BID/CONTRACT

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

VIII.2 AWARD BY COMPLETE PRODUCT LINE ONLY

MCOE will make one award for the entire range of FileMaker® products. A notice of award will serve as evidence of an executed, binding agreement between MCOE and authorization for the Awarded Vendor to begin work. A copy of the Contract Signature Page will be returned to the awarded Vendor and will be signed by MCOE.

VIII.3 RESPONSIVE TEST

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

- The electronic bid has been received on time
- All required questions have been answered completely
- All required attachments are present
- Discounts or markup have been identified on the Quote Sheet
- The Bid Response Worksheet contains pricing of line-item SKUs
- Bidders meets required experience
- Prices are closely aligned with benchmark pricing
- Terms and Conditions are accepted

VIII.4 RESPONSIBLE TEST

A Bidder will be considered responsible if he or she, in answering questions, meets requirements in Section VIII.3 and shows the ability to execute the service component of the Contract, including proper and efficient execution of:

- MCOE/FileMaker Educational Program Agreement Administration
- Marketing plan
- Staffing Plan
- Customer Service Plan

VIII.5 BENCHMARK PRICE TEST

At its discretion, MCOE may forego an award for this product line if a bid does not pass the Benchmark Pricing Test. The Benchmark Pricing Test shall be as follows: Does bid pricing exceed previously achieved pricing by more than 2 percent in total under MCOE's current discount structure for FileMaker®?

VIII.6 EFFECTIVE PRICE EVALUATION

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

VIII.7 BIDS VALID FOR 90 DAYS

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

IX. Fees & Costs

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

IX.1 BID FEES

There are no fees to submit a bid.

IX.2 NO FEE FOR ELECTRONIC BIDDING

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

IX.3 BID COSTS

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

IX.4 TRANSACTION FEES

Transaction Fees are the funding source for the operation of the CalSAVE cooperative purchasing program. Awarded Vendors shall be required to pay a Transaction Fee ("Transaction Fee") for all purchases by entities made through the awarded Contract. For the purpose of this bid through Monterey County Office of Education and all Contracts awarded using this document, the Transaction Fee shall be 1 (one) percent of "Net Sales," which means gross sales less returns and cancelled orders within thirty (30) days, shipping and sales and other taxes (excluding taxes based on net income).

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

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

For clarification purposes, the Transaction Fee stated of 1 percent here in Section IX.4 is the agreed-upon Epylon Marketing Fee contemplated by Section 7 of the Epylon Merchant Agreement.

IX.5 PAYMENT DATES AND PAYEE

Based on required Vendor reports, the Awarded Vendor will make all Transaction Fee payments by the 15th of the succeeding month after Vendor has received payment. All checks are to be made payable to the CalSAVE program administrator, that is, Epylon Corporation, 3675 Mt. Diablo Blvd. #110, Lafayette, CA 94549. CalSAVE will notify Awarded Vendor if there is any change of payee or payee address during the course of the Contract.

IX.6. NON-CONFORMING COUNTIES

In any county jurisdiction where county counsel or a governing body finds an objection to fees imposed by Section IX.4 and terms related to that section, an LEA may still use this contract to buy the specified licenses, but no transaction fee is authorized by MCOE to be charged to vendors for sales within that non-conforming jurisdiction. The cost of products, services, licenses and goods sold under this contract in those jurisdictions shall be the same as all for school districts in all other counties of California. However, any agency using this contract in those non-conforming jurisdictions shall be required to pay an additional one (1) percent fee for use of the contract, imposed by MCOE on the authority of Public Contract Code 20118, which allows MCOE to charge reasonable costs to the public corporation or agency for furnishing the services incidental to the purchase of items under contract.

X. Post Award Requirements

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

X.1 WEB SITE CONFIGURATION

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

X.2 PUNCHOUT

It is Monterey County Office of Education's preference, but not a requirement, that the Awarded Vendor have a punchout and e-order relationship with Epylon for the electronic transmission of orders.

X.3 SUBMISSION OF CATALOG ITEMS

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

X.4 REPORTING

Awarded Vendor will compile monthly reports listing each purchase made by MCOE and other participating agencies or LEAs under this Contract. Reports must be sent by the 10th of the succeeding month as e-mail attachments to the CalSAVE program administrator. Addresses for the delivery of reports will be: TedWitt@epylon.com and rlandolf@epylon.com. CalSAVE will notify Awarded Vendor if there is any change of e-mail addresses during the course of the Contract. Reports shall be provided in Excel format or earlier versions of this software, shall have file names that identify the contractor/Vendor and the month being reported, shall include the fields listed below, and shall allow for sorting on any of these fields:

- Date of Order
- Name of Participating Agency
- Item Purchased
- Quantity
- Unit Price
- Extended Price

X.5 MARKETING

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

- Include the approved CalSAVE logo, web address, and toll free number in all print, electronic mail, and other advertising and promotion intended for release to California K-12 schools
- Ensure that the CalSAVE logo and associated CalSAVE information shall be of a clearly readable size and in appropriate proportion to other elements in the print material
- Provide CalSAVE with a copy or proof sheet of any advertisement or promotional material
- Provide CalSAVE with date of release and name of publication, journal, etc, wherein promotional materials will be published
- Place a CalSAVE vendor sign on booths, tables, etc. of any or all exhibits for which the Vendor displays/participates at California tradeshow conventions and the like

- Notify CalSAVE in advance of any scheduled exhibits where the Vendor intends to participate
- Make available at any of its California exhibits CalSAVE supplied brochures or other promotion materials
- Insert the approved CalSAVE logo, web address, toll free number on the Awarded Vendor's web site, promoting and providing a link to the CalSAVE website

XI. Contract Length and Termination Rights

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

XI.1 TERM OF AGREEMENT

The Agreement period is from the award date through February 28, 2013. Awards are valid throughout the Agreement period.

XI.2 DEFAULT

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

XI.3 TERMINATION FOR DEFAULT

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

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

OR

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

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

XI.4 TERMINATION FOR CLOSURE, RE-ORGANIZATION OR CANCELLATION BY FILEMAKER

MCOE does not guarantee that any or all services will be requested for the duration of the Contract period. MCOE reserves the right to cancel this Contract if MCOE ever faces closure or legislative reorganization. MCOE reserves the right to cancel the Contract if the underlying FileMaker® master licenses are cancelled or if license renewals fail to rollover to coincide with the length of term of this Contract.

XII. Other Terms and Conditions

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

XII.1 EPYLON TERMS AND CONDITIONS

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

XII.2 ACCEPTANCE OF TERMS AND CONDITIONS

Bidder must answer in response to Question 61 in the Question Section whether he or she accepts MCOE's terms and conditions of this Invitation to Bid. A Bidder's failure to accept the terms and conditions or a Bidder notation of exceptions to any of MCOE's terms and conditions may result, in MCOE's sole discretion, a bid being deemed non-responsive.

XII.3 FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation pursuant to the Agreement or Purchase Order is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war,

changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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

XII.4 RIGHT TO WAIVE INFORMALITIES IN BIDDING

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

XII.5 ASSIGNMENT OF THE CONTRACT

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

XII.6 LIABILITY

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

XII.7 PUBLIC RECORDS

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

XII.8 RIGHTS OF LEAS

The rights and remedies of the LEA provided above shall not be exclusive and are in addition to any other rights and remedies provided by law and under the Contract.

XII.9 GOVERNING LAW AND VENUE

The laws of the State of California govern the Contract. Each and every provision of law and clause required by law to be included in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. Venue for any litigation arising out of or related to the Contract shall be with either the Superior Court in and for the County of Monterey, State of California or the Federal District Court for the Northern District of California, San Jose Division.

XII.10 TERMINATION FOR NON-PAYMENT

The Awarded Vendor understands and agrees that failure or refusal to comply with the provisions set forth in Section IX.4 and IX.5 regarding reports and the payment of the one percent (1%) Transaction Fee in conjunction with any use of this Contract by MCOE or any other LEA is grounds for cancellation of the Contract as described in Sections XI.3 and XI.4

XII.11 SALES TAX

Award Vendors must be authorized to sell in California and must collect and remit all required sales taxes associated with sales to LEAs within California. Sales tax rates for LEAs are different for each agency, depending upon their location within a taxing jurisdiction. Proper collection must be made from each participating LEA. Some licenses, where no physical media are ordered and are provided via the Internet, may be exempt from sales tax.

XII.12 LOCAL LEA COUNSEL

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

XII.13 COPYRIGHT

These bid documents and all attachments are copyrighted in 2008 by the Epylon Corporation and the Monterey County Office of Education (©2008, Epylon and Monterey County Office of Education).

XIII. Code Citations

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

XIII.1 PUBLIC CONTRACT CODES

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

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

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

XIII.2 EDUCATION CODES

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

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

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

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

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

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

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

Education Code 38112. (a) Except as provided in subdivision (b), the governing board of any school district may purchase any necessary school supplies and equipment, including standard school supplies and equipment listed by the county board of education, in the manner provided in this chapter, or the governing board of any school district may purchase such supplies and equipment directly from the vendor. Such direct purchase may be as a single district or two or more districts acting as a cooperative.

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

Education Code 81645.5. In addition to utilizing the procedures specified in Article 9 (commencing with Section 81450) of Chapter 2, any community college district may, by direct sale or otherwise, sell to a

purchaser any electronic data-processing equipment or other major items of equipment owned by, or to be owned by, the district, if the purchaser agrees to lease the equipment back to the district for use by the district following the sale.

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

Part 1 – Completing the Quote Sheet Tab to Bid Percentage Discounts

Official Bid Quote Sheet

My firm proposes -- after careful review, understanding and acceptance of all bid Terms and Conditions, plus instructions and specifications -- to supply the equipment and/or materials noted on Bid Response tab of this spreadsheet according to the bid price structure and at the final prices noted below (subject to further adjustments by manufacturers during the award period) to any eligible agency in any jurisdictions that are specified in the bid during the contract term specified in the bid Terms and Conditions.

Enter Company Info

Bidding Company Name > Danish Storage Products Inc A. Company
 Submitted By and Attested to By> Tom DeLapp B. Bid Signatory
 Signature Required Below Bid Contracts Manager C. Corporate Title
 (800) 555-5555 D. Phone Number
 tom@danish.ddd E. E-Mail Address
 October 26, 2005 F. Date

Identify Product Line You Are Bidding

Product Line Being Bidd> EMC G.
 Description of Product Line> SAN/Storage Products H.

If Your Discount is the Same for All Items offered, You May enter It Once Here

Method Used for Calculation of Final Effective Bid Prices > Variable I.
 Percent Discount > Variable J.
 Name of the Catalog or Price List Used for Price Basis > Mfg. Suggested Retail Price K.
 Effective Date of the Catalog or Price List > October 26, 2005 L.

NOTE: If certain subcategories of SKUs are being bid at variable percent mark-ups or discounts, you must clearly identify the subcategory grouping, the applicable percent and the method for determining the final effective bid price. If applicable, you may designate up to 30 subcategories in the spaces below. When completing the Bid Response Tab you must enter the same corresponding discounts in column H so that the final prices are correctly calculated.

Clearly Defined Subcategory	Percent	Discount
Subcategory No. 1 DiskTender 2000	20.0000%	Discount off list
Subcategory No. 2 DiskTender for Windows	20.0000%	Discount off list
Subcategory No. 3 EmailKaminer	20.0000%	Discount off list
Subcategory No. 4 EmailTender Archive Edition	20.0000%	Discount off list
Subcategory No. 5 Media Kits	20.0000%	Discount off list
Subcategory No. 6 Networker	20.0000%	Discount off list
Subcategory No. 7 RepliStor	20.0000%	Discount off list
Subcategory No. 8 Retrospect	20.0000%	Discount off list
Subcategory No. 9 EMC Hardware	30.0000%	Discount off list
Subcategory No. 10		
Subcategory No. 11		
Subcategory No. 12		

If Offering Variable Discounts, Enter Percentage Discount for Each Category of Items Within Your Product Line and Each Category of Third-Party Items

Figure One – How to Complete the Quote Sheet

Part II – Completing the Bid Response Tab to Calculate Effective Pricing

Official Bid Submission Template									
Item#	Manufacturer SKU	Manufacturer's Name (Product Line)	Product Name	Product Description	Unit of Measure	Price Before Discount or Mark-Up	Discount or Mark-Up	Your Effective Bid Price	
Sample	B00005L8VS	Broderbund	Oregon Trail	CD-ROM, Single User License, 5th Edition, For Ages 9+, Windows XP, Mac	each	24.99	-10.5000%	\$22.37	
5	1	BIC-0A1500-D1	EMC	DiskTender 2000	DiskTender 2000 Data Manager - Base	each	0.00	-20.0000%	\$0.00
6	2	BIC-0A1500-D3	EMC	DiskTender 2000	DiskTender 2000 Data Manager - Base	each	0.00	-20.0000%	\$0.00
7	3	LIC-001500-D1	EMC	DiskTender 2000	DiskTender 2000 Data Manager	each	1,899.00	-20.0000%	\$1,519.20
8	4	LIC-001500-D3	EMC	DiskTender 2000	DiskTender 2000 Data Manager	each	2,459.58	-20.0000%	\$1,967.67
9	5	LIC-001567-D1	EMC	2000	Miration 100GB Capacity	each	1,299.00	-20.0000%	\$1,039.20
10	6	LIC-001567-D3	EMC	DiskTender 2000	DiskTender 2000 RAID/NAS	each	1,682.46	-20.0000%	\$1,345.97
11	7	LIC-001568-D1	EMC	DiskTender 2000	Miration 500GB Capacity	each	3,799.00	-20.0000%	\$3,039.20
12	8	LIC-001568-D3	EMC	DiskTender 2000	DiskTender 2000 RAID/NAS	each	4,920.46	-20.0000%	\$3,936.37
13	9	LIC-001568-D1	EMC	DiskTender 2000	DiskTender 2000 RAID/NAS	each	6,399.00	-20.0000%	\$5,119.20
14	10	LIC-001568-D3	EMC	DiskTender 2000	Miration 1TB Capacity	each	8,267.98	-20.0000%	\$6,630.39
15	11	LIC-001570-D1	EMC	DiskTender 2000	DiskTender 2000 RAID/NAS	each	11,899.00	-20.0000%	\$9,359.20
16	12	LIC-001570-D3	EMC	DiskTender 2000	Miration 2TB Capacity	each	15,152.54	-20.0000%	\$12,122.04
17	13	LIC-001571-D1	EMC	DiskTender 2000	DiskTender 2000 RAID/NAS	each	25,299.00	-20.0000%	\$20,239.20
18	14	LIC-001571-D3	EMC	2000	Miration 5TB Capacity	each	32,767.26	-20.0000%	\$26,213.81
19	15	LIC-001572-D1	EMC	DiskTender 2000	DiskTender 2000 RAID/NAS	each	41,799.00	-20.0000%	\$33,439.20
20	16	LIC-001572-D3	EMC	DiskTender 2000	Miration 10TB Capacity	each	54,138.06	-20.0000%	\$43,310.45
21	17	LIC-001573-D1	EMC	DiskTender 2000	DiskTender 2000 RAID/NAS	each	50,599.00	-20.0000%	\$40,479.20
22	18	LIC-001573-D3	EMC	DiskTender 2000	Miration 20TB Capacity	each	65,535.82	-20.0000%	\$52,428.66
23	19	BIC-0A1506	EMC	DiskTender for Windows	DiskTender for Windows - Base	each	0.00	-20.0000%	\$0.00
24	20	LIC-001851-D3	EMC	DiskTender for Windows	DiskTender for Windows 100GB Capacity	each	1,293.90	-20.0000%	\$1,035.12

Enter List Price Before Discount

Enter Appropriate Discount for Category of Items as a Negative Number

Effective Price is Calculated Automatically

Figure Two – How to Complete the Bid Response Tab