



District School Board of Pasco County

20430 Gator Lane • Land O' Lakes, Florida 34638 • 813/ 794-2221

Heather Fiorentino, Superintendent

www.pasco.k12.fl.us

Department of Purchasing
Kendra Goodman, CPPO, CPPB, Purchasing Agent
813/ 794-2221 Fax: 813/ 794-2111
727/ 774-2221 TDD: 813/ 794-2484
352/ 524-2221 e-mail: kgoodman@pasco.k12.fl.us

June 5, 2012

MEMORANDUM

TO: Honorable School Board Members

FROM: Kendra Goodman, CPPO, CPPB, Purchasing Agent 

SUBJECT: Direct Negotiated Contract: Apple, Inc.
Computer Hardware, Software and Services
Second Year of a Three-Year Contract

On May 3, 2011, official action (attached) was taken to approve a three-year contract, annually renewable upon mutual consent, with Apple, Inc. This agreement provides the District with Apple computer hardware, software and services. The current term will expire on June 30, 2012. Under DOE Rule 6A-1.012(14), the District is permitted to negotiate for high-technology purchases, should we choose to do so.

As service has been satisfactory, Ed Mutell, Supervisor of Information Services, and John Simon, Director of Information Services, have requested (attached) to continue the agreement for the 2012-2013 school year.

Apple, Inc. has agreed to extend the same terms and conditions for the second year (attached). The Purchasing Department is requesting blanket approval to purchase Apple computer products on an as-needed basis not to exceed \$2.1 million for the 2012-2013 School year. Per its standard procedure, Purchasing will monitor all Apple purchase orders to ensure the blanket threshold is not exceeded.

We are requesting Board approval of the attached contract documents and approval of the blanket dollar amount as noted above. Should you have any questions regarding this matter, please feel free to contact Ed Mutell, John Simon or me at your earliest convenience.

KDG/mw
Attachments

Date/Time: May 30, 2012 09:00:00



District School Board of Pasco County

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638 • 813/794-2000

Heather Fiorentino, Superintendent

www.pasco.k12.fl.us

To: Kendra Goodman, Purchasing Agent

From: Edward B. Mutell, Supervisor of Information Services *EM*
John Simon, Director of Information Services *JS*

Date: May 8, 2012

Subject: Recommendation to Approve Apple, Inc. Year Two of the Three-Year Contract for Computer Hardware, Software and Services

The District currently has a 3-year contract with Apple for computer hardware, software, and services. The first year of the contract will expire on June 30, 2012.

District staff members are still pleased with the terms and conditions of the Apple, Inc. contract. Therefore, I am requesting your assistance in obtaining School Board approval to continue with year two of the three-year contract. I am also seeking a blanket approval for the 2012-13 fiscal year in the amount of \$2.1 million, on an "as-needed" basis.

Thank you very much for your assistance. If any additional information is needed, please contact me at 42912.



Amendment to the Education/State & Local Government Purchase Agreement

This Amendment to the Education/State & Local Government Purchase Agreement ("Amendment") amends the Education/State & Local Government Purchase Agreement ("Agreement") between Apple Inc., a California corporation located at 1 Infinite Loop, CA 95014 ("Apple") and:

Customer Name ("Purchaser") _____

Address: _____

City, ST, Zip: _____

This Amendment modifies the Agreement as follows:

- 1. Section 7.A, Term; Termination.** This provision is amended so as to renew the Agreement through June 30, 2013.
- 2.** All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

The duly authorized representatives of the parties execute this Amendment as of the dates set forth below.

Purchaser

Apple Inc.

SIGNATURE:

SIGNATURE:

PRINT NAME:

PRINT NAME:

TITLE:

TITLE:

DATE:

DEPT: Sales Contracts Management

EFFECTIVE DATE:



Education/State & Local Government Purchase Agreement

This Education/State & Local Government Purchase Agreement is made between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

Institution Legal Name ("Purchaser"): District School Board of Pasco County

Institution DBA (if different from Legal Name): _____

Address: 7227 Land O' Lakes Blvd.

City, ST, zip: Land O' Lakes, FL 34638

1. Definitions

A. "Agreement" means, collectively, this Education/State & Local Government Purchase Agreement, any addenda or amendments hereto that reference this Education Purchase Agreement and that are mutually executed by the parties, and any terms that are incorporated herein by specific reference, excluding the terms of any purchase orders.

B. "Apple Products" means hardware and software products manufactured, distributed or licensed ("sold") under the Apple Inc. brand name, that Purchaser has paid to acquire (or license) from Apple for its own use but excluding any Apple-branded software that Apple distributes free-of-charge, third party-branded hardware components, third party-branded component technology, third party open source software or freeware and all other third party-branded products. Apple Product consisting of software is referred to as "Apple Software".

C. "Limited Warranty" means and is limited to Apple's standard limited warranty that is set forth in the documentation that accompanies an Apple Product purchased under this Agreement.

D. "Products" means Services and hardware and software products, including Apple Products, that may be sold by Apple to Purchaser for Purchaser's own use.

E. "Services" mean, collectively, the standard, price-listed service, support and/or training products sold under the Apple Inc. brand name that Purchaser has paid to acquire.

**District School Board
of Pasco County**

MAY 03 2011

Board Approved

2. Purchases from Apple

A. **Limited Billing Service Account.** Apple will provide Purchaser a limited billing service account to use when placing service orders such as Customer Installable Parts (CIPs) and mail-in or on-site repairs. Purchaser may be asked to submit a purchase order when placing a service order. Purchaser acknowledges that Apple does not provide service CIP or repair pricing on an Apple price list; Apple will quote current pricing to Purchaser prior to processing any purchase order, and Purchaser will have the option to either accept or decline the quoted prices. In the event Purchaser accepts the quoted pricing, Apple will process the purchase order under the terms of this Agreement; should Purchaser decline the quoted prices, Apple will not process the purchase order.

B. **Price.** Prices shall be as set forth on the applicable Apple price list in effect on the date Purchaser's order is accepted by Apple. Apple reserves the right to accept or decline any order, in whole or in part. Apple may cancel any accepted order prior to shipment. Unless Purchaser notifies Apple otherwise, Apple may make partial shipments of Purchaser's orders. Apple will not be liable for any failure to ship complete orders. Purchaser will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Apple will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Purchaser. Prices include standard freight and insurance using an Apple-selected carrier. All applicable local sales or use taxes.

**CONTRACT REVIEWED
AND APPROVED:**
Raj 4/6/11



the notice and defense conditions in Section 5.B below, Apple will defend any proceeding or action brought by a third party against Purchaser to the extent based on a claim that: (1) an Apple Product sold by Apple that Purchaser has paid to acquire infringes a U.S. patent, copyright, trademark or trade secret; or (2) personal injury or tangible property damage suffered by such third party was caused by Apple's gross negligence or willful misconduct during the course of Apple's performance of Services. Notwithstanding anything to the contrary, Apple is not liable for any claims or damages arising out of or related to: (a) any modification of any Apple Product(s), (b) any combination, operation or use of any Apple Product(s) with non-Apple branded Products or other non-Apple-provided programs, data or documentation, (c) Purchaser's violation of any import or export control requirements, regulations, and laws, (d) Purchaser's use or exportation of any Apple Product(s) into any countries identified on any U.S. Government embargoed countries list, (e) use of any Apple Software in a manner not authorized under the applicable Apple end user license agreement (the "EULA"), or (f) Purchaser's, its employees or subcontractors' negligence, acts or omissions. Subject to the foregoing exceptions, Apple's obligation to defend Purchaser against claims covered by 5.A(1) or 5.A(2) above is contingent on Purchaser's compliance with Section 5.B below. THE FOREGOING CONSTITUTES PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND APPLE'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

B. Notice and Defense Conditions. Purchaser shall promptly notify Apple, in writing, of any claim, demand, proceeding or suit of which Purchaser becomes aware which may give rise to a right of defense pursuant to this section 5 ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Apple within thirty (30) days of Purchaser's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Apple. Apple, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions deemed appropriate by Apple to completely and

finally resolve the Claim by settlement or compromise. Upon Apple's acceptance of tender, Purchaser will cooperate with Apple with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, both parties will not publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

C. In the event of any actual or potential Claim, Apple will be entitled (but not obligated), at its sole option, to: (1) procure for Purchaser the right to continue use of the applicable Apple Product(s), (2) replace the applicable Apple Product(s), (3) modify the applicable Apple Product(s), or (4) refund the amount paid by Purchaser to Apple for the applicable Apple Product, less depreciation.

6. Limitation of Liabilities and Remedies. Notwithstanding anything to the contrary, except to the extent prohibited by applicable law, the maximum aggregate liability of Apple for any and all claims and damages arising out of or related to this Agreement, whether arising in contract, warranty, tort, strict liability, statute or otherwise, shall be limited to three hundred thousand U.S. dollars (\$300,000). IN NO EVENT SHALL APPLE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES, WHETHER AS A RESULT OR BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any and all claims against Apple, its agents and subcontractors in connection with or related to this Agreement. The parties further agree that the liability cap set forth herein shall not be applied cumulatively or on a per claim basis and nothing shall be construed so as to enlarge that aggregate limit. THE PARTIES AGREE THAT THE ABOVE TERMS REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD ENTERED INTO THE AGREEMENT.

7. Term and Termination

District School Board
of Pasco County

MAY 03 2011

Board Approved

NOT HAVE
CONTRACT REVIEWED
AND APPROVED:
KAY 4/6/11



E. Entire Agreement; Modifications. This Agreement supersedes all previous agreements and representations of, between or on behalf of the parties concerning the subject matter. This Agreement contains all of Apple's and Purchaser's agreements, warranties, understandings, conditions, covenants, and representations concerning the subject matter. In the event of any conflict or inconsistency between the terms of this Agreement and any EULA, the terms of the EULA shall control solely as to the Apple Software covered by that EULA. Neither Apple nor Purchaser will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. Any different or additional provisions in purchase orders, invoices or similar documents issued by Purchaser at any time are hereby deemed refused by Apple and such refused provisions will be unenforceable. Except as otherwise provided in this Agreement, no modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.

F. Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original but such counterparts together shall constitute one and the same instrument.

G. Force Majeure. Neither party shall be liable for any delay or failure to meet its obligations (except for Purchaser's payment obligations) under this Agreement due to circumstances beyond its reasonable control, including but not limited to war, riot, insurrection, civil commotion, epidemics, labor strikes or lockouts, shortages, factory or other labor conditions, fire, flood, earthquake or storm. Notwithstanding, this provision shall not be construed to relieve Purchaser of its obligations to make payments to Apple pursuant to this Agreement.

H. Authority. Purchaser represents and warrants that it has all right, power and authority under applicable law to enter into and perform this Agreement and that the person signing below has the requisite legal authority to bind Purchaser to the terms of this Agreement.

The duly authorized representatives of the parties execute this Agreement as of the Effective Date.

Purchaser

Apple Inc.

SIGNATURE:

Joanne Hurley

SIGNATURE:

Dee Murray

PRINT NAME: Joanne Hurley

PRINT NAME: Dee Murray

TITLE:

Board Chair

TITLE:

Mgr., Education Contracts

DATE:

May 3, 2011

DEPT:

Sales Contracts

Management

EFFECTIVE DATE:

5/5/2011

District School Board
of Pasco County

MAY 03 2011

Board Approved

CONTRACT REVIEWED
AND APPROVED:

Koby 4/6/11



E. Entire Agreement; Modifications. This Agreement supersedes all previous agreements and representations of, between or on behalf of the parties concerning the subject matter. This Agreement contains all of Apple's and Purchaser's agreements, warranties, understandings, conditions, covenants, and representations concerning the subject matter. In the event of any conflict or inconsistency between the terms of this Agreement and any EULA, the terms of the EULA shall control solely as to the Apple Software covered by that EULA. Neither Apple nor Purchaser will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. Any different or additional provisions in purchase orders, invoices or similar documents issued by Purchaser at any time are hereby deemed refused by Apple and such refused provisions will be unenforceable. Except as otherwise provided in this Agreement, no modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.

F. Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original but such counterparts together shall constitute one and the same instrument.

G. Force Majeure. Neither party shall be liable for any delay or failure to meet its obligations (except for Purchaser's payment obligations) under this Agreement due to circumstances beyond its reasonable control, including but not limited to war, riot, insurrection, civil commotion, epidemics, labor strikes or lockouts, shortages, factory or other labor conditions, fire, flood, earthquake or storm. Notwithstanding, this provision shall not be construed to relieve Purchaser of its obligations to make payments to Apple pursuant to this Agreement.

H. Authority. Purchaser represents and warrants that it has all right, power and authority under applicable law to enter into and perform this Agreement and that the person signing below has the requisite legal authority to bind Purchaser to the terms of this Agreement.

The duly authorized representatives of the parties execute this Agreement as of the Effective Date.

Purchaser

Apple Inc.

SIGNATURE:

Joanne Hurley

SIGNATURE:

PRINT NAME: Joanne Hurley

PRINT NAME:

TITLE:

Board Chair

TITLE:

DATE:

May 3, 2011

DEPT:

Sales Contracts

Management

EFFECTIVE DATE:

District School Board
of Pasco County

MAY 03 2011

Board Approved

CONTRACT REVIEWED
AND APPROVED:

Kdy 4/6/11