



District School Board of Pasco County

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

Heather Fiorentino, Superintendent

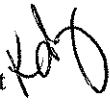
www.pasco.k12.fl.us

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

July 26, 2011

MEMORANDUM

TO: Honorable School Board Members

FROM: Kendra Goodman, CPPO, CPPB, Purchasing Agent 

RE: Contract and Dollar Amount Approval for Pearson Learning Solutions

The Instructional Media and Technology Services Department is requesting approval of the attached contract with Pearson Learning Solutions. The District has developed a required course for English IV: Florida College Prep which will serve to enhance students' college and career readiness. The attached contract is for the purchase of instruction materials totaling \$300,000 which will permit the District to offer this new course.

This contract has been reviewed and approved on July 12, 2011 by Nancy Alfonso, School Board Attorney. Funding for this contract will be provided through general operating funds for instructional materials and textbooks.

Should you have any questions regarding this request, please feel free to contact Ms. Wendy Spriggs or me at your earliest convenience.

KDG/sb
Attachments

Date/Time: July 19, 2011 11:07:00



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

MEMO # CIS-MLC-11-010

Contact: Michael Cloyd,
Ext. 42318

DATE: June 30, 2011

TO: Kendra Goodman, CPPO, CPPB, Purchasing Agent

FROM: Wendy Spriggs, Director of Instructional Media and Technology Services
Michael Cloyd, Supervisor of Curriculum and Instructional Services *msc*

SUBJECT: Approval of the Contract to Purchase Instructional Materials from Pearson

History

As required by SB 1908 from 2008 and HB 1255 from 2011, the District has developed a new course—English IV: Florida College Prep, which will serve to enhance students' college and career readiness. The attached contract is for instructional materials for the new course.

Description

The custom package components described in the contract will permit the District to offer the new course in a variety of formats: the virtual model through Pasco eSchool, the blended model with materials online and a teacher in the classroom, and the traditional model with students using textbooks in class. The My College & Career Readiness Lab component is an online tutorial program that will support students' learning in the course.

Action Requested

Approval of the contract in the amount of \$300,000 between the District School Board of Pasco County and Pearson Education, Inc. operating as Pearson Learning Solutions for the purchase of custom packages with the following components: Master Reader, 3/e; Writing for Life; Master Reader (eBook); Writing for Life (eBook); Thinking Through the Test; My College & Career Readiness Lab with student online access for three years.

cc: Ruth B. Reilly, Assistant Superintendent for Curriculum and Instruction
Tina Tiede, Assistant Superintendent for Secondary Schools
Vanessa Hilton, Director of Curriculum and Instructional Services

Pearson Learning Solutions Agreement

Effective Date: June 10, 2011

Parties: This Agreement is made between:

Customer
Pasco County School District
7227 Land O' Lakes Boulevard
Land O' Lakes, FL 34638

Pearson
Pearson Education, Inc.
Operating as Pearson Learning Solutions
501 Boylston Street, Suite 900
Boston, MA 02116

Pearson Products: Customer desires to utilize one or more of Pearson's educational products listed below (the "Pearson Products").

- ***Pearson Texts** – printed versions of traditional titles published by Pearson Education and its imprints
- ***eBooks** – electronic versions of Pearson Texts
- ***MyLabs** – standard or customized versions of Pearson's MyLab products
- ***Custom Packages** – custom packages containing any variation of Pearson Products, with a PLS curriculum card

Use: Customer will utilize the Pearson Products set forth in Attachment 1. Any use of the Pearson Products shall be governed by the terms of this Agreement.

Pricing: Pearson will charge a Net Price per unit for each Pearson Product. "Net Price" means the price per unit (as of the Effective Date) at which Pearson will provide each Pearson Product directly to Customer for distribution to students. Net Prices are listed in Attachment 1.

Payment: Customer will pay all amounts invoiced pursuant to Attachment 1 within thirty (30) days of invoice date and will be responsible for any taxes in connection with the resale of the Pearson Products. All payments must be made in USD. To the extent Customer fails to pay any invoices when due, Customer will be responsible for any legal fees incurred by Pearson relating to the enforcement of this Agreement.

Acceptance & Authority: By signing below, each party accepts this Agreement (including Attachments 1 & 2), agrees to all the obligations and limitations set forth in this Agreement, and represents that the individual executing this Agreement on behalf of the party has been authorized by all necessary actions (corporate or otherwise) to bind that party.

[Pasco County School District]

Pearson Education, Inc.

Signature

Printed Name

Title

Date of Signature

Signature

Printed Name

Title

Date of Signature

Employer ID / Tax Status:

CONTRACT REVIEWED
AND APPROVED:

Kdy 7/14/11-1-

SPECIFICATIONS OF PEARSON PRODUCTS

Pearson Product	Initial Purchase Order*	Net Price per unit**
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Custom Package containing the components set forth below 960 units \$312.50

* Customer shall have the right to request an additional 40 units of the Custom Package at no extra cost.

** Shipping is included

Author	Custom Package Component	ISBN
Henry	Master Reader, 3/e	0205780865
Henry	Writing for Life	0205668712
Henry	Master Reader (eBook)	0205000029
Henry	Writing for Life (eBook)	0205778275
Bellas	Thinking Through the Test (w/o Answer)	0205771114
	MyCollege&CareerReadinessLab (to include eBooks described above), 3000 student online access for 3-years	
Pearson	Custom Bundle Package	ISBN: 1256310905

MyLab Product. Each MyLab will be made accessible via the MySkillsLabPlus (MyCollege&CareerReadinessLab) electronically for each authorized user. learning platform (the "MyLab Platform"). Pearson will provide access for the MyLab, electronically for each authorized user described in the physical media cards that will be included with the Custom Packages, for use by Customer's students enrolled in the Course offering for such MySkillsLab who have received a Custom Package purchased by Customer ("Authorized Users"). Customer agrees that access to the MyLabs are exclusively for distribution to Authorized Users for their respective Courses, and no access codes may be distributed in any manner to other students, individuals, institutions, or third parties.

If an eBook is embedded in the MyLab, Customer acknowledges that such eBook may not include third-party material that appears in the print versions of the eBook, for which Pearson has not obtained all required electronic permissions.

Pearson agrees to provide training to Customer faculty members in connection with the use of the MyLab.

Termination of Access. The use of the Pearson Products is subject to the terms of this Agreement and any Terms of Use associated with each Pearson Product. Customer will promptly notify Pearson of any violation of which it becomes aware, and upon the request of Pearson in connection with any such violation, Customer will cooperate with Pearson regarding the violation, up to and including termination of the violator's access to the Pearson Products. Pearson reserves all rights against the violator including the right to bring any legal or equitable action deemed appropriate by Pearson.

CONTRACT REVIEWED AND APPROVED:

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General Terms & Conditions

Termination. This Agreement may be terminated by either party in the event of a material breach hereof by the other party, effective on sixty (60) days' prior written notice; provided that, during such sixty (60) day notice period, the breaching party fails to cure the breach to the reasonable satisfaction of the non-breaching party. Either party may also terminate this Agreement upon the other party's dissolution, liquidation, financial reorganization or recapitalization with creditors, assignment for the benefit of creditors, or the appointment of a receiver, trustee, custodian, or similar agent for the other party's business or property. On expiration or termination of this Agreement, each party shall promptly remit to the other all unpaid monies due, or to become due, under this Agreement. Customer further agrees to cease all access and use of the Pearson Products, and provide written notification from an officer of Customer to that effect. Those provisions which by their nature are intended to survive any termination or expiration of this Agreement shall survive such termination or expiration.

Ownership; Restrictions on Use. All right, title and interest in and to the Pearson Products and the content, materials and data contained therein, and any derivative works thereof is expressly reserved by Pearson (collectively, the "Pearson Materials"). Nothing in this Agreement will be construed to prevent Pearson from selling, licensing, using, repurposing or permitting any third party to use the Pearson Materials. Except as expressly set forth in this Agreement, all rights with regards to the Pearson Products offered herein are reserved by Pearson and under no circumstances shall Customer or any students resell, publish, transfer, distribute, sublicense, provide access to, copy, adapt, translate, reproduce, modify, enhance, or use the Pearson Products or the content contained therein without the express written permission of Pearson. Each of the parties to this agreement hereby agrees to indemnify and hold the other party hereto harmless from and against any and all damages of any nature whatsoever which are caused or materially contributed to by the negligent or tortuous act of any officer, employee, agent of other representative of the indemnifying party and which are not caused or materially contributed to by the negligent or tortuous act of any officer, employee, agent or other representative of the indemnified party. Each party will provide the other with notice of any such claim. Pearson will have the right to defend and settle any such claim with counsel of its choosing or to tender the defense to Customer. Customer agrees to cooperate with Pearson, its insurers and attorneys, and provide reasonable assistance in defending against any such claim.


Reservation of Rights. Except as specifically set forth in this Agreement, Customer agrees that it acquires no rights to use, display, market, license or promote (including but not limited to marketing tools, promotional or preview use allowances, printing allowances, cut/paste allowances or lending or sharing rights) in connection with its rights under this Agreement or any Authorized Users' use of the Pearson Products. Unless otherwise agreed to in writing by the parties, in no event will Customer or its Authorized Users have the right to further distribute, display or transmit the Pearson Products to anyone else including (i) in any physical form (CDs, DVDs, portable media, etc.), or (ii) in portions or in parts less than the complete eBook and (iii) in or as any derivative work.

Personal Use Only. Customer agrees that the online Pearson Products are intended to be used solely by Authorized Users solely for individual, personal, non-commercial and non-transferable use in accordance with this Agreement and are not otherwise to be shared, copied, distributed or hosted online. Customer agrees that it will notify Authorized Users of these restrictions.

Cessation of Use. Notwithstanding Customer's rights to use the Pearson Products, Pearson may require Customer to promptly cease (within three business days) using any Pearson Products, if (i) Pearson notifies Customer that Pearson no longer has the necessary rights to the Pearson Materials contained therein or the Pearson Product has been discontinued, (ii) Pearson believes cessation is necessary to limit or avoid liability or (iii) Pearson is otherwise required by law or court order to cease and desist. In such events, Pearson will use commercially reasonable efforts to replace, at no cost to Customer, any affected Pearson Products with other materials to be used by Customer pursuant to the terms of this Agreement.

Disclaimer. EXCEPT AS SET FORTH IN THIS AGREEMENT, PEARSON EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF

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CONTRACT REVIEWED AND APPROVED:  7/14/11

THIRD PARTY RIGHTS. PEARSON DOES NOT WARRANT THAT THE PEARSON PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESSED WARRANTIES PROVIDED IN THIS AGREEMENT.

Use of Marks. Each party owns certain trade names and trademarks (collectively, "Marks"), and such Marks are and will remain the exclusive property of such party. This Agreement gives the other party no rights therein, and the other party will never assert any rights therein; provided, however, that Customer grants to Pearson a non-exclusive, non-royalty bearing license to reproduce Customer's Marks in conjunction with the publication and sale of the Pearson Products. Customer further agrees not to remove or alter any trademark or other proprietary notice in or on any Pearson Product.

LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST DATA, LOST PROFITS AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE USE OF OR INABILITY TO USE THE PEARSON PRODUCTS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PEARSON'S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER'S USE OF THE PEARSON PRODUCTS WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SPECIFIC PEARSON PRODUCT GIVING RISE TO THE CLAIM. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OF LIMITATIONS OF INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO THE PARTIES.

Assignment. This Agreement will be binding on the parties and their respective successors and permitted assigns. Customer may not assign its rights or delegate its obligations under this Agreement to any third party without the prior written consent of Pearson.

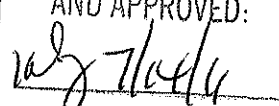
Publicity. Neither party will issue any press release concerning its relationship with the other, without the other party's prior written consent (not to be unreasonably withheld).

Confidentiality. Neither party will disclose the terms of this Agreement to any third party without the other party's prior written consent, except as required by law.

Force Majeure. Neither party will be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, labor conditions, shortages in materials or equipment, riots, insurrection, fires, earthquakes, floods, storms, explosions, acts of God, war, terrorism, acts of civil or military authority, governmental action, unavailability of energy or communication resources, unavailability of internet service, network outages, or any other cause which is beyond the reasonable control of such party.

Governing Law and Venue. This Agreement will be governed by the laws of the State of Florida, excluding principles of conflicts of law. Any action or proceeding arising from or relating to this Agreement will be brought in a federal or state court located in the State of Florida, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

Entire Agreement. This Agreement, together with any attachments and schedules hereto, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement will not be modified except by a subsequently dated written amendment signed on behalf of Pearson and Customer by their duly authorized representatives.

CONTRACT REVIEWED
AND APPROVED:


Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Execution and delivery of this Agreement may be evidenced by electronic signatures, facsimile or PDF transmission.

CONTRACT REVIEWED
AND APPROVED:
WJ 7/14/11