

Episcopal Children's Services

7/6/2020

8443 Baymeadows Road, Suite 1

Jacksonville, Florida 32256

Request for Quotation

Project Title: ECS Florida Copier Equipment

Introduction: Episcopal Children's Services (ECS) is a Jacksonville nonprofit corporation which serves more than 50,000 children and families in 14 northeast and central Florida counties. ECS has helped young children and their families for more than 50 years. ECS receives the majority of its funding through federal and state grants and is classified as a non-federal entity. As such, ECS is required to abide by federal/state procurement guidelines, terms and conditions.

Project Background:

Episcopal Children's Services is seeking to replace 16 copiers in the Northeast and Central Florida Region. ECS leases the current copiers and the contract expiration date for each piece of equipment is defined Addendum 1-Asset List . The winning bidder will be selected based on the proposal which offers the best overall value to ECS. Value will be evaluated using the following criteria: lease price, maintenance price, cost for haul away of current equipment, the quality of the offered equipment which must provide equal to or better features than the current specified Kyocera equipment models, the supplier's agreement to ECS terms and conditions.

Description of Bid Requirements:

1. ECS has provided an addendum to this document that defines the current Kyocera equipment that is deemed to meet ECS requirements. ECS has no bias toward the equipment offered and the bidder may quote Ricoh, Kyocera or any other quality product.
2. Quote the lowest three-year lease price possible, there will be no negotiation.
3. Quote the lowest three-year full maintenance price possible, there will be no negotiation.
4. Your bid must include the full cost of removing your equipment from ECS premises after the lease expires.
5. Your bid must include removing all equipment currently in place at ECS, with no cost to ECS.
6. Your bid should reflect the cost of all ancillary equipment and capabilities listed on Addendum 1.

7. For service pricing, use a combined pooled base of 40,000 black and white copies per month for all equipment listed in Addendum 1. The estimated annual black and white copies that will be made on this equipment is 1,000,000.
8. Within your proposal, define overage cost and if underage's are rolled over/accumulated.
9. Within your proposal, provide expected time frame in which we can expect service after requesting a service call.
10. Within your proposal, confirm that ECS will at a minimum, receive a loaner if the current machine is estimated to be down for more than 48 hours?
11. Within your proposal, describe your service team and capabilities.
12. If you are providing a discount to ECS because we are a non-profit, please define the discount so we may calculate the delta as non-federal match.
13. All shipping and set-up costs are waived by the equipment supplier.
14. If the transfer of equipment from one ECS location to another is required during the lease period, the equipment supplier will manage the transfer and set-up of a maximum of four units at no cost to ECS during the original three-year agreement.
15. Lease pricing will include all property taxes.
16. All origination costs will be waived by the equipment supplier.
17. Service costs may only be increased during month 13 and month 25 of the original service contract. Each increase is maxed at 2.5%.
18. Upon lease and service contract expiration, both the lease and service contracts will automatically renew for ongoing one-month periods until cancelled in writing by one party after providing a notice of at least 30 days to the other party.
19. All equipment to be quoted produce black and white copies only.
20. All equipment to be quoted must have the capability to be upgraded to track individual usage through card swipes.
21. If as a result of negligence on behalf of the equipment manufacturer/distributor, there is a data breach of ECS information, all liability and costs related to that breach will be assumed by contractor.
22. The equipment manufacturer/distributor shall provide in a timely manner, verification forms of data sanitization for all disposal, repairs or replacement of equipment.
23. Please use Addendum 2, Copier Bid Sheet to submit your proposals.

Additional Requirements

1. Please note that the federal government requires a termination for convenience clause in any contract with a value greater than \$10,000 annually. Therefore the following clauses are required in the contract. If the equipment manufacturer/distributor is unwilling to agree to the following contract language, your proposal is void and will not be considered.

- 1) ECS shall have the right to terminate any and all agreements, as it relates to all of the equipment or to any particular piece of equipment for this specific agreement only upon the occurrence of one or more the following conditions:
 - a. loss of funding,
 - b. budgetary non-appropriation,
 - c. the sale by management of a particular program unit or facility,
 - d. the equipment does not meet the needs of ECS as outlined and agreed to in the proposal and/or sales order between the equipment distributor and ECS.

- 2) If a loss of funding, budgetary non-appropriation, or sale by management of a particular program unit or facility occurs, then
 - a. ECS shall give the equipment manufacturer/distributor notice that one or more of the above specified conditions has occurred and said notice shall provide the effective date of termination (date to coincide with end of current fiscal period for which funding is available and/or the closing date of the sale);
 - b. ECS shall provide written evidence that one or more of the above specified conditions has occurred within sixty (60) days of a written request from equipment manufacturer/distributor requesting such information;
 - c. Equipment manufacturer/distributor shall pick up only the equipment affected by the specified condition from the ECS facility at the sole cost and expense of equipment manufacturer/distributor within five (5) working days of the effective date of the termination as set forth in the notice from ECS;
 - d. All agreements related to the specific equipment affected shall terminate on the effective date of the termination without penalty or expense to ECS and ECS shall have no further financial obligations related to said equipment; and
 - e. If applicable, ECS shall refund to equipment manufacturer/distributor on a pro-rated basis, any funds which equipment manufacturer/distributor provided to ECS for the payoff of any copiers which were replaced by equipment manufacturer/distributor's copiers and/or any other rebates provided by equipment manufacturer/distributor to ECS.
 - f. In the event the Agreement is terminated following an event of non-appropriation, ECS agrees (but only to the extent permitted by applicable law) that, for a period of one (1) year from the effective date of such termination, Customer shall not purchase, lease, rent or otherwise acquire any personal property performing functions similar to those performed by the equipment, for use at the site where the equipment are located, except as may be required for public health, safety of welfare purposes.
 - g. "CANCELLATION FOR CONVENIENCE: ECS may cancel this Lease at any time during the lease agreement period by providing Lessor with a thirty (30) day cancellation notice, in writing. Except for an event of cancellation or reduction in your federal funding ("Non-Appropriation of Federal Funding"), all payments through the end of the initial Lease term, (excluding maintenance and supplies costs) plus unpaid fees and taxes will be due and payable ("Early Termination Amount"). Upon payment of the Early Termination Amount, Lessee shall return the Equipment to Lessor at Lessee's cost and expense. In the event of a Non-Appropriation of Federal Funding event, Lessee must pay through the end of its appropriated fiscal year and return the equipment to Lessor at Lessee's expense.

Timeline: Requests for quotation will be issued to participants beginning 7/6/2020 on or before 5 p.m., Eastern Time. The proposal must be submitted to John Hougendobler via email, john.hougendobler@ecs4kids.org) by 07/24/2020 Bid awards will be made on or before 5 p.m., 08/7/2020. Delivery and installation of new equipment will occur no later than the Agreement Start Date listed for each piece of equipment defined in Addendum 1.

Bid Manager: John Hougendobler, Procurement Manager, ECS. 8443 Baymeadows Rd, Jacksonville, Florida 32257. 904-726-1500 (x 2248) or cell phone 901-482-2409. john.hougendobler@ecs4kids.org.

ECS Terms and Conditions (Federal and State Government Mandated)

ECS Contractual Requirements: General

1. During the performance of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(d) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. In compliance with Code of Federal Regulations, 29CFR1910.1200 if this purchase order involves the shipping of any item designates as a toxic substance such shipment must be accompanied by a Material Safety Data Sheet (MSDS). A toxic substance is designated as any chemical substance or mixture in gaseous, liquid, or solid state, which can cause harm to the human body.

3. The contractor certifies the Company's Directors and/or Principal Officers are not employed and/or affiliated with Episcopal Children's Services, unless a current Report of Specified interest form has been approved.

4. Equal Employment Opportunity – This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) Executive Order 11246 of September 24, 1965, and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

5. Rights to Inventions Made Under a Contract or Agreement – If the purchase order includes the performance of experimental, developmental, or research work, Vendor shall provide for the rights of the Federal Government and ECS in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended – If the Purchase Order amount exceeds \$100,000, Vendor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – If the Purchase Order amount is for \$100,000 or more, Vendor (and, if required, any sub-contractors) shall file the certifications required by this law and related regulations, certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Vendor (and, if required, any sub-contractors) shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

8. Debarment and Suspension (E.O.s 12549 and 12689) – Vendor represents and warrants that neither it (nor any other person or entity affiliated with Vendor and for whom the standing under these laws is imputed to Vendor) is listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. If the purchase order amount exceeds \$2000, the Vendor shall provide ECS with the required certification regarding its exclusion status and that of its principal employees.

9. Records Access (Contracts in excess of \$2,000). ECS, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Vendor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

10. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) – (Applies to purchase orders in excess of \$2000 for construction or repair). Vendor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Vendor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

11. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) (ARRA Section 1606). Vendor covenants and agrees that all laborers and mechanics employed by Vendor and its subcontractors on this project will be paid in compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Vendor is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Vendor is required to pay wages not less than once a week.

12. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – (Applies to purchase orders in excess of \$2000 for construction projects and purchase orders in excess of \$2500 for other contracts that involve the employment of mechanics or laborers). Vendor shall comply with Sections 102 and 107

of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, Vendor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

13. Recovered Materials (2 CFR 200.317): Contractors, where applicable, will comply with section 6002 of the Solid Waste Disposal Act.

14. American Made: Contractors shall to the greatest extent practicable, provide ECS with American made equipment.

15. Trafficking Victims Protection Act of 2000: Contractors supplying goods and services to ECS will fully comply with the Trafficking Victims Protection Act of 2000.

Episcopal Children's Services: Payment and PO Terms and Conditions

Episcopal Children's Services: PO/Contract Terms and Conditions

Last Update: 4/9/2020

1. **Acceptance.** Contractor's acceptance of this contract shall constitute Contractor's agreement to the terms and conditions set forth within the entirety of this contract. Notwithstanding the Episcopal Children's Services (stated as ECS throughout the remainder of this document) act of accepting and paying for any goods, no other terms contained in any bid, estimate, acknowledgment, confirmation or invoice given by Contractor shall in any way modify or supersede any of the terms of this contract or otherwise be binding on ECS unless accepted by a written instrument signed by an authorized representative of ECS.
2. **Stipulations.** The Contractor agrees to provide commodities or contractual services ECS within the manner and at the location specified in the contract and any attachments to the contract. Additionally, the terms of the contract supersede the terms of all prior agreements with respect to this purchase. Unless otherwise specified, the contract begins on the date of issuance. Contractual services or commodities to be provided by the Contractor shall be completed on or before the date specified by ECS and ECS shall always be entitled, upon request, to be advised as to the status of work being done by the Contractor.
3. **Performance.** If ECS determines that the performance of the Contractor is unsatisfactory, ECS will notify the Contractor of the deficiency to be corrected. The Contractor shall provide ECS with a corrective action plan describing how the Contractor will address all issues of contract non-compliance. A correction(s) will be made within a time-frame specified by ECS. Ultimately, if the Contractor fails to meet and comply with the deliverables established in this contract, ECS will prorate any payments pending and/or request a refund of payment in a proportionate amount equal to the goods/services not received. ECS, at its sole discretion, may offer the Contractor an extension for any listed task, timeline or deliverable during which the indicated financial consequences shall not apply. Any payment made in reliance on the Contractor's evidence of performance, which is subsequently determined to be erroneous, will be immediately due to the ECS as an overpayment.
4. **Purchase Order.** ECS requires that a contractor have a purchase order, or a purchase order number issued by a representative of the ECS team before shipping any merchandise. The purchase order number must be shown on all invoices.
5. **Payment Terms.** Invoices on properly accepted goods or services will generally be paid within 30 days of receipt of the invoice or of the goods/services, whichever happens last. "Properly accepted" means receipt, inspection, and approval of the goods or services. In the case of a bona fide dispute, payment will be authorized only for the amount not disputed. Payment for goods delivered does not constitute acceptance those goods. ECS reserves the right to inspect and test such goods and to reject, and return to Contractor, at Contractor's expense, goods (a) delivered in excess of the quantity defined on the contract, (b) which do not conform to specifications, (c) which in any way violate any federal, state or local law, or (d) which are in any way defective. Defective or rejected goods shall not be replaced except upon the receipt by the contractor of written instructions from ECS. If ECS receives goods with a defect or nonconformity which are not apparent upon examination, ECS reserves the right to require replacement, as well as payment of damages upon

discovery of the defect or non-conformity. Nothing contained in the contract shall relieve in any way the Contractor from the obligation of testing, inspection and quality control. The Contractor shall submit the final invoice for payment to ECS no more than 45 days after the contract ends or is terminated. If the Contractor fails to do so, unless waived in writing by ECS, all rights to payment are forfeited and ECS will not honor any requests submitted after the above 45-day time period. Any payment due under the terms of this contract may be withheld until all reports due from the Contractor and any necessary adjustment(s) thereto have been approved by ECS. ECS shall not be obligated to pay for costs incurred related to the contract prior to its effective date or after the ending date specified. Records of costs incurred under terms of the contract shall be maintained and made available to ECS upon request during the period of the contract, and for a period of five years

thereafter. Records of costs incurred shall include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by ECS for audit. The Contractor shall return to ECS any overpayments disbursed to the Contractor or by ECS due to unearned funds or funds disallowed pursuant to the terms of the contract. In the event the Contractor, ECS or an independent auditor discover an overpayment was received, the Contractor shall repay said overpayment within forty calendar days or be subject to interest charges on the unpaid balance.

- 6. Invoice Receipt Date.** For the purposes of determining the receipt of invoice date, ECS is deemed to receive an invoice on the date on which a correct and accurate invoice is first received at 8443 Baymeadows Road, Ste 1, Jacksonville, FL 32256. Invoices received from contractors that have failed to supply ECS with a complete and accurate W-9 or other form that provides all necessary data to determine 1099 status, will be deemed insufficient for payment until such information is received.
- 7. Indemnification.** To the extent permitted by Florida and Federal law, the Contractor agrees to indemnify, defend, and hold ECS, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, consequential or otherwise, including court costs and attorney's fees, arising out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the contract.
- 8. Payment of Contractor's Suppliers.** In connection with this contract, the Contractor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Contractor or any employee, agent, subcontractor, assignee or delegate.
- 9. Insurance.** All contractor insurance policies shall be with insurers qualified and doing business in Florida. The contractor shall furnish ECS with proof of insurance coverage upon request. During the life of the contract, the Contractor shall obtain and keep in force, Errors and Omissions Insurance. Errors and Omission Insurance coverage shall not limit any liabilities or any other obligations that the Contractor has under the contract. The Contractor shall maintain adequate liability insurance coverage on a comprehensive basis and hold such liability insurance at all times during the existence of the Contract and any subsequent renewals and extensions. By execution of the contract, the Contractor accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protections for the Contractor and ECS as served under the contract. During the contract term, the Contractor, at its sole expense, shall provide workers' compensation insurance to all employees engaged in work related to the contract and in accordance with all federal and state statutes. Minimum employer's liability limits shall be \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate.
- 10. Bonding.** Unless otherwise prohibited by law, ECS may require the Contractor to furnish, without additional cost to ECS, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. **Not required for this bid.**
- 11. Jurisdiction.** The laws of the State of Florida shall govern the contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action or dispute related to the contract. Further, the Contractor hereby waives all privileges and rights relating to the venue it may have under any other statute, rule or case law, including, but not limited to those based on convenience. The Contractor hereby submits to the venue in the county chosen by the ECS. If there is any conflict in the provisions set forth in applicable federal and state laws, the conflict will be resolved in the following priority (highest to lowest).
 - 1) Federal law and regulations, 2) Florida laws and rules, 3) Special conditions/additional requirements, 4) contract Scope of work.
- 12. Lobbying.** No funds from the contract may be used for lobbying the state Legislature, the judicial branch or any state Agency. Acceptance of these contract terms indicates the Contractor is aware of and currently complies with the described lobbying activity restrictions. The Contractor shall require all subcontracts to include this certification language, which is a material representation of fact upon which the parties placed reliance when they made or entered into this transaction.
- 13. Debarment and Suspension.** If this contract relies on federal funds, the Contractor shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor also agrees it shall not knowingly enter into any lower tier contract or other covered transaction with a person who is similarly debarred or suspended from participating in the contract's scoped transaction. The Contractor represents and warrants that neither it nor any other entity affiliated with the Contractor is listed on the GSA's List of Parties Excluded from Federal Procurement or Non-Procurement Programs in

accordance with E.O.s 12549 and 12689, "Debarment and Suspension." If the contract amount exceeds \$2000, the Contractor shall provide ECS with the required certification regarding its exclusion status and that of its principal employees. Further, in accordance with sections 287.133 and 287.134, F.S., an entity or affiliate who is on the Convicted Contractor List or the Discriminatory Contractor List may not perform work as a contractor, supplier, subcontractor, or consultant under the contract with any Agency.

- 14. Facilitation Payments.** The Contractor shall not, in connection with this or any other agreement with ECS, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any ECS employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any ECS officer or employee
- 15. Inventions.** If a discovery or invention arises or is developed in connection with the use of federal/state funds, ECS will refer it to OEL and the Florida Department of State to determine whether patent protection will be sought in the name of the state of Florida. Any and all patent rights accruing in connection with the performance of the contract are hereby reserved to the state of Florida. The Contractor shall refer any such discovery to ECS.
- 16. Termination.** Through a written notice to the contractor and per federal government publication 2 CFR Ch. II, Appendix II to Part 200, ECS may terminate for convenience any contract/agreement/purchase with a value equal to, or greater than \$10,000. The Contractor shall not furnish any services after it receives notice of the termination, except as necessary to complete the continued portion, if any, of the contract. The Contractor shall not be entitled to recover any cancellation charges or lost profit. After receipt of a notice of termination, and except as otherwise specified by the ECS, the Contractor shall: a) Stop work under the contract on the date of and to the extent specified in the notice; b) Complete performance of the work not terminated by ECS; c) Take such action as may be necessary, or as ECS may specify, to protect and preserve any property related to the contract which is in the possession of the Contractor and in which ECS has or may acquire an interest; d) Transfer, assign, and make available to ECS all property and materials belonging to ECS, upon the effective date of termination of the contract. No extra compensation will be paid to the Contractor for its services in connection with such transfer or assignment; e) Meet all the public records law requirements specified under the Public Records sections of these terms and conditions.

Applying to purchases over \$10,000 and pursuant to 2 CFR Part 200 Appendix II, item (B), in the event of termination of the Contract by ECS for cause or breach of listed terms and conditions, the Contractor shall be liable for the ECS's expenses for additional managerial and administrative services required to complete or obtain the services or items from another contractor. **See specific termination language contained within body of RFQ.**
- 17. Sub-contracting.** The Contractor shall not subcontract any work under the contract without the prior written consent of ECS. The Contractor is fully responsible for satisfactory completion of all subcontracted work. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the contract without the prior written consent of ECS. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless ECS expressly waives such secondary liability. ECS may assign the contract with prior written notice to the Contractor. The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of ECS. ECS shall not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in its subcontracts under this contract.
- 18. Modifications.** This contract may only be modified by a change purchase order agreed to by both ECS and the Contractor. Should a court determine any provision of the contract is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid.
- 19. On-time delivery.** Time is of the essence of this contract, and if delivery of goods is not completed by the time promised, ECS reserves the right, without liability and in addition to other rights and remedies, to terminate this contract by notice effective when received by Contractor as to goods not yet shipped. If ECS terminates the contract for this reason, ECS reserves the option to purchase substitute items from an alternate supplier.
- 20. Shipping.** The following shipping provisions shall apply to all POs unless otherwise indicated in the contract documents. All purchases are F.O.B. destination, transportation charges prepaid. Each shipment must be shipped to the address indicated on the face of the contract and marked to the attention of the individual identified, if any. Each shipment must be labeled plainly with the contract number. A complete packing list must accompany each shipment. This shall also apply to any third party who ships items on behalf of a Contractor. No extra charges shall be applied for boxing, crating, packing, or insurance. The following delivery schedule shall apply: 9:00 AM – 4:00 PM eastern time, Monday through Friday, excluding legal holidays. ECS assumes no liability for merchandise shipped to other than the specified destination. Items received in excess of quantities specified may, at Agency's option, be returned at the Contractor's expense. Substitutions are not permitted.
- 21. Minority Businesses.** ECS is an equal opportunity institution and encourages the use of Certified Minority Businesses (CMBE) and Small Businesses / Small Disadvantaged Businesses in the provision of all goods and services. CMBEs will have a fair and equal opportunity to compete for dollars spent by ECS. CMBE-related information shall be sent to the ECS Procurement Manager, 8443 Baymeadows Rd., Jacksonville, FL 32256.

- 22. Toxic Substances.** If this contract involves the shipping of any item designated as a toxic substance, such shipment must be accompanied by a Material Safety Data Sheet (MSDS).
- 23. Conflict of Interest.** The contractor certifies the Company's Directors and/or Principal Officers are not employed and/or affiliated with ECS, unless a current *Report of Specified Interest Form* has been approved.
- 24. Specifications.** All goods and services must conform to specifications furnished by Contractor and approved by ECS or furnished by ECS. Contractor warrants that all goods have been tested for their safety and will be of merchantable quality and in compliance with federal, state and local health/safety laws, rules and regulations applicable to such goods. Contractor warrants that all goods will be of good material and workmanship and free from defect.
- 25. Pricing.** This contract will not be filled at prices higher than specified on this document. Contractor agrees that any price decrease in effect at time of shipment will apply to this contract. Contractor warrants that the prices for the goods sold to ECS hereunder are not less favorable than those extended to any other customer for the same or similar goods during the term of this contract. If the Contractor reduces its prices for such goods during the term of this contract, the contractor agrees to reduce the prices hereof correspondingly. Contractor warrants that prices shown on this contract shall be complete, and no additional charges of any type shall be added without ECS's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating. Any cash discount periods will be calculated from receipt of invoice or receipt of acceptable goods, whichever occurs later, and not from the date of invoice. On invoices returned for correction, the cash discount period will be calculated from receipt of the corrected invoice.
- 26. Changes.** ECS shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any changes cause an increase or decrease in the cost or the time required for performance of this contract, an equitable adjustment shall be made, and this contract shall be modified in writing accordingly. Contractor agrees to accept any such changes subject to this paragraph.
- 27. Force Majeure.** Neither party shall be liable to the other for the consequences of any force majeure providing. However, if Contractor at any time becomes unable duly and timely to perform this contract for a period of 10 days or more, ECS shall be entitled to terminate this contract for cause.
- 28. Entire Agreement.** This contract, and any documents referred to on the face hereof, constitute the entire agreement of the parties.
- 29. Background Checks.** ECS may require the Contractor and its employees, agents, representative and subcontractors to provide fingerprints and be subject to such background checks as directed by ECS. The cost of the background check(s) shall be borne by the Contractor. ECS may require the Contractor to exclude selected Contractor's employees, agents, representatives or subcontractors based on the background check results.
- 30. Data Breach.** The Contractor shall immediately notify ECS's Procurement Manager in writing of any Security Incident, Breach or Breach of Security in which personal and/or confidential information of ECS and/or its employees has been obtained by unauthorized sources. Contractor's notification shall be made in writing to ECS within 24 hours of the Contractor learning of the security incident or breach. Contractor's notification shall identify: a) the nature of the unauthorized use or disclosure; b) the confidential information used or disclosed; c) who made the unauthorized use or received the unauthorized disclosure; d) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; e) and what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a full written report, as reasonably requested by ECS. If ECS, at its sole discretion, determines that the Contractor has failed to comply with any confidentiality provision of this contract, or determines that prompt and satisfactory corrective action has not occurred, ECS has the unilateral right to suspend the contract until it is satisfied that corrective action has been taken or ECS may terminate the contract. If the contract is terminated, Contractor must immediately surrender to the ECS all confidential information and copies thereof obtained under the Contract and any other information relevant to the Contract. The Contractor understands and agrees that all reasonable fees and costs necessary for ECS to remedy any breach of confidentiality due to the conduct of the Contractor, its employees, subcontractors, agents, or affiliates, or any individual within the control of the Contractor, shall be the responsibility of the Contractor. The Contractor shall cooperate in the defense and settlement of such claims. The obligations of this section shall survive the expiration or termination of the contract.
- 31. Confidentiality.** The Contractor understands and agrees to safeguard the confidentiality of the information which is the subject of this contract. All information included in the contract is deemed by ACH to be confidential, without exclusion. If unauthorized disclosure of the information occurs, or the confidentiality of the information are compromised in any way, the Contractor may be subject to both criminal and civil penalties. The Contractor shall not disclose public records that are exempt or confidential/exempt from public records disclosure requirements except as authorized by federal and state laws. The Contractor, its employees, subcontractors, agents, or any other individuals to whom the Contractor exposes confidential information obtained under the contract shall not store, or allow to be stored, any confidential information on any portable

storage media or peripheral device with the capacity to hold information without encryption software installed. Failure to strictly comply with this provision shall constitute a breach of the contract. Upon termination of the contract for any reason, Contractor agrees to either return to the ECS or, if return is not feasible, to destroy all confidential information in whatever form or medium the Contractor received from or created on behalf of ECS to include without limitation all backup tapes. This provision shall also apply to all confidential information in the possession of subcontractors or agents of the Contractor. In such case, Contractor shall retain no copies of such information, including any compilations derived from and allowing identification of confidential information. Contractor shall complete such return or destruction as promptly as possible, but not more than forty-five calendar days after the effective date of the conclusion of the contract. Within the forty-five days, Contractor shall certify on oath in writing to the ECS that such return or destruction has been completed. If Contractor believes that the return or destruction of confidential information is not feasible, Contractor shall provide in writing within forty-five (45) days, the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that the return or destruction is not feasible, Contractor shall continue the protections provided for in this contract as long as Contractor maintains the confidential information.

- 32. Document Review.** The Contractor and any subcontractor used to provide the scoped goods/services will comply with their duty to cooperate in good faith with any reasonable requests from ECS or State officials to discuss, review, inspect or audit Contractor performance and compliance under this contract. Upon request, the Contractor shall grant access to all records pertaining to the contract to ECS, OEL, OEL's Inspector General, OEL's General Counsel, the Office of Program Policy and Government Accountability, and Florida's Chief Financial Officer. The Contractor shall provide any type of information deemed relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the contract. The Contractor shall retain such records for five (5) years after the expiration date of the contract. The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and which result in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. The vendor acknowledges that expenditures by ECS in payment of dues or membership contributions as they pertain to the public agency from which or on whose behalf the payments are made, shall be public records pursuant to s. 119.01(3) F.S. If public funds are expended by ECS in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. [119.07](#).
- 33. Taxes.** Contractor is aware of and currently complies with requirements for full and timely payment of any federal taxes.
- 34. Child Abuse.** Any employee of the Contractor shall immediately report any knowledge or suspicion that a child is abused, abandoned, or neglected by any person responsible for that child's welfare. Contact the Florida Abuse Hotline (1-800-96ABUSE).
- 35. Security.** The Contractor must employ adequate security measures to protect ECS's information, applications, data, resources, and services.
- 36. Fraud.** The Contractor shall report to ECS's Procurement Manager within twenty-four chronological hours, all suspected or known instances of Contractor's operational fraud or criminal activities relating to the contract.
- 37. U.S. Based Work Product.** The Contractor and its subcontractors and agents are prohibited from performing any of the contract services outside the United States, or sending, transmitting or accessing any School Readiness Program or Voluntary Prekindergarten Education Program or other program-related data pursuant to this contract outside of the United States unless approved by ECS in writing. The Parties agree that a violation of this provision will: a) Entitle ECS to immediately terminate the contract for cause upon email notice to the Contractor; b) Result in immediate and irreparable harm to ECS, entitling ECS to immediate injunctive relief. Entitle ECS to recover damages for the breach. These damages will include all reasonable costs incurred by the ECS for investigations, forensic investigations, data recoveries, notifications and remediation.
- 38. Contractor Legal Issues.** The Contractor shall notify ECS of legal actions taken against it or potential actions, such as lawsuits, related to goods/services provided through this contract that may affect the Contractor's ability to deliver the contractual goods/services, or adversely impact ECS.
- 39. Recycle.** The Contractor is required (to the maximum extent possible) to procure products or materials with recycled content when the FL Department of Management Services determines such products/materials are available.
- 40. Media.** ECS does not endorse any Contractor, commodity or service. The Contractor shall not provide any information to any media representative or any other external party regarding the contract or any services delivered under the contract without prior written approval from the ECS. The Contractor shall also notify ECS of any inquiries received from any media outlet or representative. The notice shall be made to the ECS Procurement Manager within 1 hour by phone (904-674-6248) and in writing within 24 hours (8443

Baymeadows Rd, Ste 1, Jacksonville, FL 32256. The Contractor shall not use ECS's logo without the written approval of ECS. A sponsorship statement is required when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money. The Contractor is prohibited from using contract information, sales values, sales volumes, the names of ECS's stakeholders or customers within sales brochures or other promotions, including press releases, unless prior written approval is obtained from the ECS.

41. **Legal Revisions.** The Parties agree to negotiate changes to the contract if Federal or State revisions of any applicable laws or regulations make changes in the contract necessary.
42. **Subpoena.** The Contractor shall notify ECS if any data related to the contract is subpoenaed or used, copied or removed from the Contractor's possession by any individual not authorized by ECS to use, copy or remove such data. The Contractor shall provide notice to ECS verbally within twenty-four chronological hours and in writing within seventy-two chronological hours. The Contractor shall cooperate with ECS in taking all steps which ECS deems advisable to prevent misuse, regain possession of, and/or otherwise protect ECS's and the data subject's privacy.
43. **Travel.** Travel expenses are reimbursed only if expressly authorized by the terms of the contract. Only travel performed in connection with approved contract activities are eligible for reimbursement. ECS requires travel reimbursements be submitted within thirty calendar days of the travel event.
44. **Unauthorized Aliens.** The Contractor agrees that unauthorized aliens shall not be employed by the contractor. ECS shall consider the employment of unauthorized aliens a violation of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of the contract by ECS.
45. **Delays.** The delay or failure by the ECS to exercise or enforce any of its rights under the contract shall not constitute waiver of such rights.
46. **Whistleblower.** The Contractor and its subcontractors shall not retaliate against an employee for reporting violations of law, rule or regulation that creates and presents a substantial and specific danger to the public's health, safety, or welfare. Furthermore, agencies or independent contractors shall not retaliate against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of any agency, public officer or employee. The Contractor and any subcontractor(s) shall inform its employees that they and other persons may file a complaint with the Office of Chief Inspector General, the Office of Early Learning's Inspector General, the Florida Commission on Human Relations or the Whistleblower's Hotline number at 1-800-543-5353.
47. **Additional Regulation.** Where applicable to this contract, all Contractors will abide by, and be in compliance with, the following federal and/or state statutes and regulations:
 - A. Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
 - B. Federal Food Drug and Cosmetic Act including the Food Additives Amendment of 1958.
 - C. Federal Insecticide, Fungicide, and Rodenticide Act.
 - D. Electronic and Information Technology Accessibility standards provided in Rule 60-8.002, F.A.C.; 282.603, F.S.; and 2 CFR 200.335, *Methods for collection, transmission and storage of information*.
 - E. Byrd Anti-Lobbying Amendment 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995.
 - F. Certification of Minority Business Enterprises, Florida Statute 287.0943
 - G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
 - H. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
 - I. Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c)
 - J. Davis-Bacon Act (40 U.S.C. 276a, et. seq.), as supplemented by USDOL regulations (29 CFR Part 5)
 - K. Drug-Free Workplace compliant with 41 USC 81.
 - L. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. 41 CFR Part 60.
 - M. In accordance with Executive contract 11-116, the Contractor agrees to utilize the U.S. Agency of Homeland Security's E-Verify system.
 - N. "Buy American Act" (P.L. 103-333, the USDOL, USDHHS, USDOE and Related Agencies Appropriations Act of 1995, section 507).
 - O. Title XX of Public Law 103-227, the Pro-Kids Act of 1994 (as amended by the Pro Children Act of 2001, 42 U.S.C. 60).
 - P. Florida Statute 287.135: Prohibition Against Contracting with Scrutinized Companies.