

## **SMALL PURCHASE ORDER TERMS AND CONDITIONS**

### **REFERENCE: STATE OF FLORIDA PURCHASING AGREEMENT (PUR 7722) AND THE OFFICE OF EARLY LEARNING PURCHASE ORDER TERMS AND CONDITIONS**

Taxes: The Coalition is a 501(C)(3) Organization and does not pay Federal Excise and Sales taxes on direct purchases of tangible personal property. This exemption does not apply to purchases of tangible personal property in the performance of agreements for the improvement of state-owned real property as defined in Chapter 192, F.S. Tax-exempt certificate is available upon request.

***Purpose:*** This document applies to all Service Agreements/Purchases/Requisitions (SA/P/R) that are optional use and limited to expenditures not to exceed the State **Category 2 (\$35,000)** as defined in [Chapter 287](#), Florida Statutes (F.S.). Refer to the State Purchasing Agreement [Terms and Conditions](#) (PUR 7722) and the Office of Early Learning “Purchase Order Terms and Conditions (May 30, 2015)”, for more details. Any contractor/vendor that conducts business with the Early Learning Coalition of Osceola County must read this document and agree with all the terms and conditions specified herein. Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Director of Procurement and Accountability ([swong@elcosceola.org](mailto:swong@elcosceola.org)). Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified. The terms ‘contractor’ and ‘vendor’ are used interchangeably throughout this document; they mean one and the same.

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### **Section 1. Introduction.**

#### **A. Composition of Agreement and Priority.**

The Coalition contracts with Vendor to furnish, within the manner and at the location specified, certain services, or commodities as specified in the completed SA/P/R, and/or attachments to this document, which are integral parts of this SA/P/R. The SA/P/R Terms and Conditions, whether generic or specific, shall take precedence over and supersede any inconsistent or conflicting provision in the State of Florida, General Contract Conditions, (PUR1000). Additionally, the terms of this SA/P/R supersede the terms of any and all prior agreements with respect to this purchase/service.

#### **B. Term.**

This Agreement has a term of one (1) year from the Effective Date, or as noted on the Agreement's Scope of Work, whichever comes first. This Agreement may be cancelled in whole or in part by either party at any time by written notice to the other party. The effective date of the cancellation will be as stated in the notice or on the date of receipt if the notice does not specify a date certain. Vendor's failure to perform in any aspect of this Agreement may result in immediate termination of this Agreement, in addition to those remedies laid out in the relevant sections of the Florida Administrative Code.

### **Section 2. Performance.**

#### **A. Performance Standards.**

The Vendor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and contractual documents attached to the SA/P/R. The Coalition shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. The Vendor shall maintain coordination with representatives of the Coalition or of other agencies interested in the project on behalf of the Coalition.

#### **B. Performance Deficiency.**

If the Coalition determines that the performance of the Vendor is unsatisfactory, the Coalition will notify the Vendor of the deficiency to be corrected, which correction shall be made within a timeframe specified by the Coalition. The Vendor shall, within the time specified in the contractual documents after notice from the Coalition, provide the Coalition with a corrective action plan describing how the Vendor will address all issues of non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Coalition, the Vendor may be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the contractual documents. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Vendor resolves the deficiency. If the deficiency is subsequently resolved, the Vendor may bill the Coalition for the retained amount during the next billing period. If the Vendor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.

### **Section 3. Payment and Fees.**

#### **A. Payment Invoicing.**

The Vendor will be paid upon submission of properly certified invoice(s) to the Coalition after delivery and acceptance of commodities or services is confirmed in writing by the Coalition. Invoices shall contain detail sufficient for a proper pre-audit and post audit thereof and shall contain the SA/P/R and the Vendor's Federal Employer Identification Number or Social Security Number.

#### **B. Payment Timeframe.**

Section 215.422, F.S., provides that agencies have 5 (five) working days to inspect and approve commodities and services. Items may be tested.

for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at Vendor's expense. Any increase in cost will be charged against the Vendor. Interest penalties for late payment are also provided for in Section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for Vendors who may be experiencing problems in obtaining timely payment(s) from a State Agency /Coalition may be contacted at 850-413-5516 or by calling the State Comptroller's Hotline, 1-800-848-3792.

#### **C. My Florida Market Place Fees. (N/A)**

#### **D. Payment Audit.**

Records of costs incurred under terms of this SA/P/R shall be maintained and made available upon request to the Coalition at all times during the period of this SA/P/R. Copies of these documents and records shall be furnished to the Coalition upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all sub-contractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Coalition for a proper audit of project costs.

#### **E. Annual Appropriation.**

Pursuant to section 287.0582, F.S., if this agreement binds the Coalition for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the Coalition's performance and obligation to pay under this SA/P/R is contingent upon an annual appropriation by the Legislature. Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with section 112.061, F.S.

### **Section 4. Liability.**

#### **A. Indemnity.**

To the extent permitted by Florida law, Vendor agrees to indemnify, defend, and hold the State of Florida, 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 Vendor, its employees, agents, subcontractors, assignees or delegates related to this SA/P/R, as well as for any determination arising out of or related to this SA/P/R, that Vendor or Vendor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Coalition. This SA/P/R does not constitute a waiver of sovereign immunity or consent by the Coalition or the State of Florida or its subdivisions to suit by third parties.

#### **B. Payment for Claims.**

The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, assignee or delegate in connection with the SA/P/R.

#### **C. Liability Insurance.**

The Vendor shall maintain insurance sufficient to adequately protect the Coalition from any and all liability and property damage/hazards which may result from the performance of this SA/P/R. All insurance shall be with insurers qualified and duly licensed to transact business in the State of Florida. If required by the Coalition and prior to commencing any work Vendor shall provide a Certification(s) of Insurance evidencing that all appropriate coverage is in full force and showing the Coalition to be an additional insured.

#### **D. Workers' Compensation.**

The Vendor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law.

#### **E. Performance Bond.**

Unless otherwise prohibited by law, the Coalition may require the

## **SMALL PURCHASE ORDER TERMS AND CONDITIONS**

Vendor to furnish, without additional cost to the Coalition, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Coalition shall determine the type and amount of security.

### **Section 5. Compliance with Laws.**

#### **A. Conduct of Business.**

The Vendor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Vendor shall comply with all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Pursuant to Section 287.058(1), F.S., the provisions of Section 287.058(1)(a)-(c), and (i), F.S., are hereby incorporated by reference, to the extent applicable.

#### **B. E.E.O**

The Contractor agrees that it shall comply with Exec. Order No. 11246, Equal Employment Opportunity, as amended by Exec. Order No. 11375, and as supplemented in Department of Labor regulation 41 C.F.R., part 60.

#### **C. Lobbying.**

Pursuant to Sections 11.062 and 216.347, F.S., the Vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a Coalition.

#### **D. Gratuities**

Vendor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or 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 any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Inspector General or any other authorized State official, the Vendor shall provide any type of information the Inspector General deems relevant to the Vendor's integrity or responsibility. Such information may include, but shall not be limited to, the Vendor's business or financial records, documents, or files of any type or form that refer to or relate to the SA/P/R. The Vendor shall retain such records for the longer of (1) three years after the expiration of the SA/P/R or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: [General Records Schedules/](#)). The Vendor 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 Vendor's compliance with the terms of this or any other agreement between the Vendor and the State which results in the suspension or debarment of the Vendor. 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 shall not be responsible for any costs of investigations that do not result in the Vendor's suspension or debarment.

#### **E. Public Records.**

To the extent required by the Florida Public Records Act, Chapter 119, F.S., Vendor shall maintain and allow access to public records made or received in conjunction with this SA/P/R. This SA/P/R may be unilaterally cancelled by the Coalition for Vendor's refusal to allow access to public records.

#### **F. Communications and Confidentiality.**

The Vendor agrees that it shall make no statements, press releases, or publicity releases concerning this SA/P/R or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this SA/P/R, or any particulars thereof, during the period of the SA/P/R, without first notifying the Coalition's Contract Manager or the Coalition's designated contact person and securing prior written consent. Vendor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to this SA/P/R and shall comply with all state and federal laws, including, but not limited to Sections 381.004, 384.29, 392.65, and 456.057, F.S. Vendor's confidentiality procedures shall be consistent with the most recent version of the Coalition's security policies, protocols, and procedures. The Vendor shall also comply with any applicable professional standards with respect to confidentiality of information.

#### **G. Intellectual Property.**

Unless specifically addressed in the SA/P/R, intellectual property rights to all property created or otherwise developed by Vendor for the Coalition will be owned by the State of Florida through the Coalition at the completion of the SA/SA/P/R. Proceeds to any Coalition derived from the sale, licensing, marketing or other authorization related to any such Coalition-controlled intellectual property right shall be handled in the manner specified by applicable state statute.

#### **H. Convicted Vendors.**

In accordance with Sections 287.133 and 287.134, F.S., the Contractor may not be an entity or affiliate who is on the Convicted Vendor List or the Discriminatory Vendor List and may not perform work as a contractor, supplier, sub-contractor, or consultant with any Coalition.

#### **I. Competitive Advantage.**

Section 287.057, Florida Statutes, provides, "A person who receives a contract that has not been procured pursuant to subsections (1)-(3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the State for any other contracts dealing with that specific subject matter, and any firm in which such person has any interest is not eligible to receive such contract. However, this prohibition does not prevent a Vendor who responds to a request for information from being eligible to contract with a Coalition." The Coalition considers participation through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or any other advisory capacity to constitute participation in the drafting of a competitive solicitation.

### **Section 6. Termination.**

#### **A. Termination for Convenience.**

This SA/P/R may be terminated by the Coalition in whole or in part at any time in the best interest of the Coalition. If the SA/P/R is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this SA/P/R. All work in progress shall become the property of the Coalition and shall be turned over promptly by the Vendor.

#### **B. Termination for Cause.**

If the Coalition determines that the performance of the Vendor is not satisfactory, the Coalition shall have the option of (a) immediately terminating the SA/P/R, or (b) notifying the Vendor of the deficiency.

**SMALL PURCHASE ORDER TERMS AND CONDITIONS**

with a requirement that the deficiency, be corrected within a specified time, otherwise the SA/P/R will be terminated at the end of such time, or (c) take other action deemed appropriate by the Coalition.

**Section 7. Subcontractors and Assignments.**

**A. Subcontractors.**

The Vendor shall not subcontract any work under this SA/P/R without the prior written consent of the Coalition. The Vendor is fully responsible for satisfactory completion of all subcontracted work.

**B. Assignment.**

The Vendor shall not sell, assign or transfer any of its rights, duties or obligations under the SA/P/R without the prior written consent of the Coalition. In the event of any assignment, the Vendor remains secondarily liable for performance of the SA/P/R, unless the Coalition expressly waives such secondary liability. The Coalition may assign the SA/P/R with prior written notice to Vendor.

**Section 8. Miscellaneous.**

**A. Independent Contractor.**

The Vendor and its employees, agents, representatives, and subcontractors are not employees or agents of the Coalition and are not entitled to the benefits of State of Florida employees. The Coalition shall not be bound by any acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all of its subcontracts under this SA/P/R.

**B. Governing Law and Venue.**

The laws of the State of Florida shall govern this SA/P/R. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to this SA/P/R. Further, the Vendor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Vendor hereby submits to venue in the County chosen by the Coalition.

**C. Waiver.**

The delay or failure by the Coalition to exercise or enforce any of its rights under this SA/P/R shall not constitute waiver of such rights.

**D. Modification and Severability.**

The SA/P/R may only be modified by a change order agreed to by the Coalition and the Vendor. Should a court determine any provision of this SA/P/R 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 SA/P/R did not contain the provision held to be invalid.

**E. Time is of the Essence.**

Time is of the essence with regard to each and every obligation of Vendor. Each such obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

**F. Background Check. (Where applicable)**

The Coalition may require the Vendor and its employees, agents, representatives and subcontractors to provide fingerprints and be subject to such background screen as determined by the Coalition and conducted by the Florida Department of Law Enforcement or the Federal Bureau of Investigation. The cost of the background screen(s) shall be borne by the Vendor. The Coalition may require the Vendor to exclude the Vendor's employees, agents, representatives or subcontractors based on the background screening results.

**G. E-Verify is required.**

**H. Commodities Logistics. (Where applicable)**

The Following provision shall apply to all SA/P/R's unless otherwise indicated in the contract documents:

- 1) All purchases are F.O.B. destination, transportation charges prepaid.
- 2) Each shipment must be shipped to the address indicated on the face of the SA/P/R and marked to the attention of the individual identified, if any. Each shipment must be labeled plainly with the SA/P/R number and must show the gross, tare, and net weight. A complete packing list must accompany each shipment. This paragraph shall also apply to any third party who ships items against this SA/P/R on behalf of the Vendor.
- 3) No extra charges shall be applied for boxing, crating, packing, or insurance.
- 4) The following delivery schedule shall apply: 8:00 AM – 4:00 PM, Monday through Thursday ONLY, excluding legal holidays.
- 5) If delivery to the specified destination cannot be made on or before the specified date, notify the Coalition immediately.
- 6) The Coalition assumes no liability for merchandise shipped to other than the specified destination.
- 7) Items received in excess of quantities specified may, at Coalition's option, be returned at the Vendor's expense. Substitutions are not permitted, without Coalition approval.

**Warranty of Authority.** The person signing below warrants that he or she is duly authorized to do so and to bind the respective party to these terms and conditions.

<b>SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL</b>	<b>TITLE</b>
<b>APPLICANT ORGANIZATION</b>	<b>DATE SUBMITTED</b>