

Region 4 Education Service Center (ESC)

Contract # R190303

for

Office Supplies, Related Products and Services

with

Office Depot, Inc.

Effective: June 1, 2019 revised to be effective July 1, 2019



Request for Contract Update

Pursuant to the terms of contract number R190303 and R190502 for Office Supplies, Related Products & Services and Educational Supplies. Contractor must notify and receive approval from Region 4 ESC when there is an update in the contract. No request will be officially approved without the prior authorization of Region 4 ESC. Region 4 ESC reserves the right to accept or reject any request.

Office Depot, Inc. hereby provides notice of the following update on
(Contractor)
this date May 10, 2019.

Instructions: Contractor must check all that may apply and shall provide supporting documentation. Requests received without supporting documentation will be returned. This form is not intended for use if there is a material change in operations, such as assignment, bankruptcy, change of ownership, merger, etc. Material changes must be submitted on a "Notice of Material Change to Vendor Contract" form.

☐ **Authorized Distributors/Dealers**

____ Addition

____ Deletion

____ Supporting Documentation

☐ **Products/Services**

____ New Addition

____ Update Only

____ Supporting Documentation

☐ **States/Territories**

____ Supporting Documentation

☐ **Price Update**

____ Supporting Documentation

☐ **Discontinued Products/Services**

____ Supporting Documentation

☒ **Other** Contract Start Notification

X Supporting Documentation

Notes: Contractor may include other notes regarding the contract update here: (attach another page if necessary).

Office Depot wishes to begin both of the recently awarded contracts: Office R190303 & Educational Supplies R190502 on the same day to provide the most consistent customer experience. We are opting to align with the Educational supplies contract begin date of July 1, 2019. Request letter is attached.

Submitted By: Susan Cummings

Title: Vice President, Public Sector

Email Address: susan.cummings@officedepot.com

☐ **Approved by Email:** Date 5/22/2019

☐ **Denied by Email:** Date _____

Region 4 ESC DocuSigned by:
Robert Zingelmann
0B1D33BB0130490...



May 10, 2019

Robert Zinglemann,
Chief Financial Officer Finance and Operations Services
Region 4 Education Service Center
7145 West Tidwell Road
Houston, TX 77095

RE: Office Supplies, Related Products & Services Contract R190303
Educational School Supplies Contract R190502

Dear Mr. Zinglemann:

Office Depot is honored to have been recently awarded the contracts for Office Supplies R190303, effective June 1, 2019 and Educational School Supplies R190502 effective July 1, 2019. We look forward to once again partnering with Region 4 to bring this world class contract to our valued customers.

So that we can provide a consistent contract transition solution to all our agencies, Office Depot is electing to delay the start of the Office contract to align with the effective date of the School contract, July 1, 2019.

Please let us know if you need any additional details or clarification as it pertains to our plan to shift the start of the new contract R190303 to July 1, 2019 and end the current contract R141703 on June 30, 2019.

Sincerely,

A handwritten signature in dark ink, appearing to read "Susan Cummings", with a stylized flourish at the end.

Susan Cummings
Vice President, Public Sector

cc: Christine Dorantes, OMNIA Partners Public Sector

**Office
DEPOT.**OFFER AND CONTRACT SIGNATURE FORM

The undersigned hereby offers and, if awarded, agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing.

Company Name Office Depot, Inc
Address 6600 North Military Trail
City/State/Zip Boca Raton FL 33496
Telephone No. 561-438-4800
Email Address Susan.Cummings@OfficeDepot.com
Printed Name Susan Cummings
Title Vice President, Public Sector
Authorized Signature [Signature]

Accepted by Region 4 ESC:

Contract No. R190303Initial Contract Term June 1, 2019 to May 31, 2024Faye B. Bryant
Region 4 ESC Authorized Board Member4/23/19
DateFaye B. Bryant
Print NameCarmen T. Moreno
Region 4 ESC Authorized Board Member4/23/19
DateCarmen T. Moreno
Print Name

APPENDIX A

This Contract ("Contract") is made as of June 1, 2019 by and between Office Depot, Inc. ("Contractor") and Region 4 Education Service Center ("Region 4 ESC") for the purchase of Office Supplies, Related Products and Services ("the products and services").

RECITALS

WHEREAS, Region 4 ESC issued Request for Proposals number RFP #19-03 for Office Supplies, Related Products and Services ("RFP"), to which Contractor provided a response ("Proposal"); and

WHEREAS, Region 4 ESC selected Contractor's Proposal and wishes to engage Contractor in providing the services/materials described in the RFP and Proposal;

WHEREAS, both parties agree and understand the following pages will constitute the Contract between the Contractor and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Contractor included, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations are incorporated into the Contract.

WHEREAS, this Contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Contract will provide that any state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies") may purchase products and services at prices indicated in the Contract upon the Public Agency's registration with National IPA.

- 1) Term of agreement. The Contract is for a period of five (5) years. Region 4 ESC shall have the right to renew the Contract for five (5) additional one-year periods or portions thereof. Region 4 ESC shall review the Contract prior to the renewal date and notify the Contractor of Region 4 ESC's intent renew the Contract. Contractor may elect not to renew by providing one hundred eighty days' notice to Region 4 ESC.
- 2) Scope: Contractor shall perform all duties, responsibilities and obligations, set forth in this agreement, and described in the RFP, incorporated herein by reference as though fully set forth herein.
- 3) Form of Contract. The form of Contract shall be the RFP, the Offeror's proposal and Best and Final Offer(s).
- 4) Order of Precedence. In the event of a conflict in the provisions of the Contract as accepted by Region 4 ESC, the following order of precedence shall prevail:
 - i. This Contract
 - ii. Offeror's Best and Final Offer
 - iii. Offeror's proposal

iv. RFP and any addenda

- 5) Commencement of Work. The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives a purchase order for such work or is otherwise directed to do so in writing by Region 4 ESC.
- 6) Entire Agreement (Parol evidence). The Contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.
- 7) Assignment of Contract. No assignment of Contract may be made without the prior written approval of Region 4 ESC. Contractor is required to notify Region 4 ESC when any material change in operations is made (i.e. bankruptcy, change of ownership, merger, etc.).
- 8) Novation. If Contractor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. Region 4 ESC reserves the right to accept or reject any new party. A change of name agreement will not change the contractual obligations of Contractor.
- 9) Contract Alterations. No alterations to the terms of this Contract shall be valid or binding unless authorized and signed by Region 4 ESC.
- 10) Adding Authorized Distributors/Dealers. Contractor is prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under the Contract without notification and prior written approval from Region 4 ESC. Contractor must notify Region 4 ESC each time it wishes to add an authorized distributor or dealer. At Contractor's discretion, purchase orders and payment may be made to Authorized Distributor/Dealer. Pricing provided to members by added distributors or dealers must also be less than or equal to the Contractor's pricing.

11) TERMINATION OF CONTRACT

- a) Cancellation for Non-Performance or Contractor Deficiency. Region 4 ESC may terminate the Contract if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this Contract due to failure by Contractor to carry out any obligation, term or condition of the contract. Region 4 ESC shall issue a written deficiency notice to Contractor for acting or failing to act in any of the following:
 - i. Providing material that does not meet the specifications of the Contract;
 - ii. Providing work or material was not awarded under the Contract;
 - iii. Failing to adequately perform the services set forth in the scope of work and specifications;
 - iv. Failing to complete required work or furnish required materials within a reasonable amount of time;
 - v. Failing to make progress in performance of the Contract or giving Region 4 ESC reason to believe Contractor will not or cannot perform the requirements of the Contract; or
 - vi. Performing work or providing services under the Contract prior to receiving an authorized purchase order.

Upon receipt of a written deficiency notice, Contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of

concern may result in Contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by Contractor under the Contract shall immediately become the property of Region 4 ESC.

- b) Termination for Cause. If, for any reason, Contractor fails to fulfill its obligation in a timely manner, or Contractor violates any of the covenants, agreements, or stipulations of this Contract Region 4 ESC reserves the right to terminate the Contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the Contractor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by Contractor will become the property of the Region 4 ESC. If such event does occur, Contractor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.
- c) Delivery/Service Failures. Failure to deliver goods or services within the time specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested shall constitute grounds for the Contract to be terminated. In the event Region 4 ESC must purchase in an open market, Contractor agrees to reimburse Region 4 ESC, within a reasonable time period, for all expenses incurred.
- d) Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

- e) Standard Cancellation. Either party may cancel this Contract in whole or in part by providing written notice to the other party. The cancellation will take effect six months after the other party receives the notice of cancellation. After the 180th business day all work will cease following completion of final purchase order.
- 12) Licenses. Contractor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by Contractor. Contractor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the Contract. Region 4 ESC reserves the right to stop work and/or cancel the Contract if Contractor's license(s) expire, lapse, are suspended or terminated.
- 13) Survival Clause. All applicable software license agreements, warranties or service agreements that are entered into between Contractor and Region 4 ESC under the terms and

conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Contractor shall survive expiration or termination of the Contract.

- 14) Delivery. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period the Contractor must receive authorization for the delayed delivery. The order may be canceled if the estimated shipping time is not acceptable. All deliveries shall be freight prepaid, F.O.B. Destination and shall be included in all pricing offered unless otherwise clearly stated in writing. Office Depot may institute a Fifty Dollar (\$50.00) minimum order value per delivered order. Orders that do not comply with such minimum order value will be processed subject to a special handling fee. The price set forth in this Agreement includes dock and/or mailroom delivery for orders exceeding \$50.00. Additional freight charges may apply for items exceeding 70lbs in weight and/or 110" in length/width, bulk items, cases of bottled water and other beverage, furniture, Hawaii, Alaska and Puerto Rico orders, special orders and/or rush deliveries.
- 15) Inspection & Acceptance. If defective or incorrect material is delivered, Region 4 ESC may make the determination to return the material to the Contractor at no cost to Region 4 ESC in accordance to the terms and conditions of Contractor's return policy located at www.officedepot.com and incorporated by reference. The Contractor agrees to pay all shipping costs for the return shipment. Contractor shall be responsible for arranging the return of the defective or incorrect material.
- 16) Payments. Invoice are due thirty (30) days from the date of invoice. Contractor shall establish Region 4 ESC's credit limit, which may be lowered (or Contractor may refuse to ship any orders) if at any time: (a) Region 4 ESC is delinquent in making payment to Contractor; (b) Region 4 ESC is in breach of any resulting agreement; or (c) Region 4 ESC's credit standing becomes impaired or reasonably unsatisfactory to Contractor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.
- 17) Price Adjustments. Should it become necessary or proper during the term of this Contract to make any change in design or any alterations that will increase price, Region 4 ESC must be notified immediately. Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the Contract shall be paid without prior approval. All price increases must be supported by manufacturer documentation, or a formal cost justification letter. Contractor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC. It is the Contractor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All price changes must be provided to Region 4 ESC, using the same format as was provided and accepted in the Contractor's proposal.

Price reductions may be offered at any time during Contract. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all users equally; 2) reduction is for a specific period, normally not less than thirty (30) days; and 3) original price is not exceeded after the time-limit. Contractor shall offer Region 4 ESC any published price reduction during the Contract term.

In the event of extenuating market conditions, Region 4 ESC and Contractor may elect to implement an increase on products, goods and materials affected by uncertainties in the marketplace. Requests for extenuating market conditions will follow the US Trade Representative website: <https://ustr.gov>, or other indices, U.S. domestic micro-economic

fluctuations, changes in paper and raw materials, including but not limited to transportation, shipping material, etc. Should the terms of the extenuating market conditions change, the increase will be altered, reduce or eliminated as expediently as possible. Contractor will provide written justification to Region 4 ESC before implementing the increase.

- 18) Audit Rights. Contractor shall, at its sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Contract. Subject confidentiality agreements between Contractor and third parties, and no more than annually, Region 4 ESC, at its expense reserves the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. Region 4 ESC shall have the authority to conduct random audits of Contractor's pricing at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. Any third-party auditor used must be approved by Contractor and must execute a non-disclosure agreement. Contractor may dispute the results of any audit and will refund any overcharges to Region 4 ESC and Region 4 ESC will refund any undercharges to Contractor. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 4 ESC.
- 19) Discontinued Products. If a product or model is discontinued by the manufacturer, Contractor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.
- 20) New Products/Services. New products and/or services that meet the scope of work may be added to the Contract. Pricing shall be equivalent to the percentage discount for other products. Contractor may replace or add product lines if the line is replacing or supplementing products, is equal or superior to the original products, is discounted similarly or greater than the original discount, and if the products meet the requirements of the Contract. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.
- 21) Options. Optional equipment for products under Contract may be added to the Contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.
- 22) Warranty Conditions. Contractor's warranties will be limited to Contractor-branded products only, and for all other products, Contractor will pass through to Region 4 ESC all manufacturer-supplied end-user warranties.
- 23) Site Cleanup. Contractor shall clean up and remove all debris and rubbish resulting from their work as required or directed. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean, safe and unobstructed condition.
- 24) Site Preparation. Contractor shall not begin a project for which the site has not been prepared, unless Contractor does the preparation work at no cost, or until Region 4 ESC includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to:

moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

- 25) Registered Sex Offender Restrictions. For work to be performed at schools, Contractor agrees no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Contractor agrees a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at Region 4 ESC's discretion. Contractor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.
- 26) Safety measures. Contractor shall take all reasonable precautions for the safety of employees on the worksite and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contractor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.
- 27) Smoking. Persons working under the Contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.
- 28) Stored materials. Upon prior written agreement between the Contractor and Region 4 ESC, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Region 4 ESC prior to payment. Such materials must be stored and protected in a secure location and be insured for their full value by the Contractor against loss and damage. Contractor agrees to provide proof of coverage and additionally insured upon request. Additionally, if stored offsite, the materials must also be clearly identified as property of Region 4 ESC and be separated from other materials. Region 4 ESC must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary. Until final acceptance by Region 4 ESC, it shall be the Contractor's responsibility to protect all materials and equipment. Contractor warrants and guarantees that title for all work, materials and equipment shall pass to Region 4 ESC upon final acceptance.
- 29) Funding Out Clause. A Contract for the acquisition, including lease, of real or personal property is a commitment of Region 4 ESC's current revenue only. Region 4 ESC retains the right to terminate the Contract at the expiration of each budget period during the term of the Contract and is conditioned on a best effort attempt by Region 4 ESC to obtain appropriate funds for payment of the contract.
- 30) Indemnity. Contractor shall protect, indemnify, and hold harmless both Region 4 ESC and its administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the Contractor, Contractor employees or subcontractors in the preparation of the solicitation and the later execution of the Contract. Any litigation involving either Region 4 ESC, its administrators and employees and agents will be in Harris County, Texas.
- 31) Marketing. Contractor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement. Any use of Region 4 ESC name and logo or any form of publicity, inclusive of press releases, regarding this Contract by Contractor must have prior approval from Region 4 ESC.

- 32) Certificates of Insurance. Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall endeavor to give Region 4 ESC a minimum of thirty (30) days' notice of any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified.
- 33) Legal Obligations. It is Contractor's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services and shall comply with all laws while fulfilling the Contract. Applicable laws and regulation must be followed even if not specifically identified herein.

- 32) Certificates of Insurance. Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall endeavor to give Region 4 ESC a minimum of thirty (30) days' notice of any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified.
- 33) Legal Obligations. It is Contractor's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services and shall comply with all laws while fulfilling the Contract. Applicable laws and regulation must be followed even if not specifically identified herein.

Tab 1: Draft Contract and Offer and Contract Signature Form (Appendix A)

Tab 1: Draft Contracts and Offer and Contract Signature Form (Appendix A)

APPENDIX A
DRAFT CONTRACT

*This Contract ("Contract") is made as of _____, 201X by and between **Office Depot, Inc.** ("Contractor") and Region 4 Education Service Center ("Region 4 ESC") for the purchase of Office Supplies, Related Products and Services ("the products and services").*

RECITALS

WHEREAS, Region 4 ESC issued Request for Proposals number RFP #19-03 for Office Supplies, Related Products and Services ("RFP"), to which Contractor provided a response ("Proposal"); and

WHEREAS, Region 4 ESC selected Contractor's Proposal and wishes to engage Contractor in providing the services/materials described in the RFP and Proposal;

WHEREAS, both parties agree and understand the following pages will constitute the Contract between the Contractor and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Contractor included, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations are incorporated into the Contract.

WHEREAS, this Contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Contract will provide that any state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies") may purchase products and services at prices indicated in the Contract upon the Public Agency's registration with National IPA.

- 1) Term of agreement. The Contract is for a period of five (5) years. Region 4 ESC shall have the right to renew the Contract for five (5) additional one-year periods or portions thereof. Region 4 ESC shall review the Contract prior to the renewal date and notify the Contractor of Region 4 ESC's intent renew the Contract. Contractor may elect not to renew by providing ~~three hundred sixty five~~ ninety (90) days' notice to Region 4 ESC.
- 2) Scope: Contractor shall perform all duties, responsibilities and obligations, set forth in this agreement, and described in the RFP, incorporated herein by reference as though fully set forth herein.
- 3) Form of Contract. The form of Contract shall be the RFP, the Offeror's proposal and Best and Final Offer(s).
- 4) Order of Precedence. In the event of a conflict in the provisions of the Contract as accepted by Region 4 ESC, the following order of precedence shall prevail:
 - i. This Contract
 - ii. Offeror's Best and Final Offer

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- iii. Offeror's proposal
 - iv. RFP and any addenda
- 5) Commencement of Work. The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives a purchase order for such work or is otherwise directed to do so in writing by Region 4 ESC.
- 6) Entire Agreement (Parol evidence). The Contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.
- 7) Assignment of Contract. No assignment of Contract may be made without the prior written approval of Region 4 ESC. Contractor is required to notify Region 4 ESC when any material change in operations is made (i.e. bankruptcy, change of ownership, merger, etc.).
- 8) Novation. If Contractor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. Region 4 ESC reserves the right to accept or reject any new party. A change of name agreement will not change the contractual obligations of Contractor.
- 9) Contract Alterations. No alterations to the terms of this Contract shall be valid or binding unless authorized and signed by Region 4 ESC.
- 10) Adding Authorized Distributors/Dealers. Contractor is prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under the Contract without notification and prior written approval from Region 4 ESC. Contractor must notify Region 4 ESC each time it wishes to add an authorized distributor or dealer. Purchase orders and payment ~~shall~~ can only be made to the ~~Contractor~~ Authorized Distributor/Dealer unless otherwise approved by Region 4 ESC ~~Contractor~~. Pricing provided to members by added distributors or dealers must also be less than or equal to the Contractor's pricing.
- 11) TERMINATION OF CONTRACT
- a) Cancellation for Non-Performance or Contractor Deficiency. Region 4 ESC may terminate the Contract if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this Contract due to failure by Contractor to carry out any obligation, term or condition of the contract. Region 4 ESC ~~shall~~ may issue a written deficiency notice to Contractor for acting or failing to act in any of the following:
 - i. Providing material that does not meet the specifications of the Contract;
 - ii. Providing work or material was not awarded under the Contract;
 - iii. Failing to adequately perform the services set forth in the scope of work and specifications;
 - iv. Failing to complete required work or furnish required materials within a reasonable amount of time;
 - v. Failing to make progress in performance of the Contract or giving Region 4 ESC reason to believe Contractor will not or cannot perform the requirements of the Contract; or
 - vi. Performing work or providing services under the Contract prior to receiving an authorized purchase order.

Upon receipt of a written deficiency notice, Contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of concern may result in Contract cancellation. Upon cancellation under this paragraph, all goods, materials, work,

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documents, data and reports prepared by Contractor under the Contract shall immediately become the property of Region 4 ESC.

- b) Termination for Cause. If, for any reason, Contractor fails to fulfill its obligation in a timely manner, or Contractor violates any of the covenants, agreements, or stipulations of this Contract Region 4 ESC reserves the right to terminate the Contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the Contractor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by Contractor will become the property of the Region 4 ESC. If such event does occur, Contractor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.
- c) Delivery/Service Failures. Failure to deliver goods or services within the time specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested shall constitute grounds for the Contract to be terminated. In the event Region 4 ESC must purchase in an open market, Contractor agrees to reimburse Region 4 ESC, within a reasonable time period, for all expenses incurred.
- d) Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

- e) Standard Cancellation. Either party ~~Region 4 ESC~~ may cancel this Contract in whole or in part by providing written notice to the other party. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.
- 12) Licenses. Contractor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by Contractor. Contractor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the Contract. Region 4 ESC reserves the right to stop work and/or cancel the Contract if Contractor's license(s) expire, lapse, are suspended or terminated.

Tab 1: Draft Contract and Offer and Contract Signature Form (Appendix A)

- 13) Survival Clause. All applicable software license agreements, warranties or service agreements that are entered into between Contractor and Region 4 ESC under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Contractor shall survive expiration or termination of the Contract.
- 14) Delivery. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period the Contractor must receive authorization for the delayed delivery. The order may be canceled if the estimated shipping time is not acceptable. All deliveries shall be freight prepaid, F.O.B. Destination and shall be included in all pricing offered unless otherwise clearly stated in writing. Office Depot shall institute a Fifty Dollar (\$50.00) minimum order value per delivered order. Orders that do not comply with such minimum order value will be processed subject to a special handling fee. The pricing set forth in this Agreement includes dock and/or mailroom delivery for orders exceeding \$50.00. Additional freight charges may apply for items exceeding 70 lbs. in weight and/or 110" in length/width, bulk items, cases of bottled water and other beverages, furniture, Hawaii, Alaska and Puerto Rico orders, special orders and/or rush deliveries.
- 15) Inspection & Acceptance. If defective or incorrect material is delivered, Region 4 ESC may make the determination to return the material to the Contractor at no cost to Region 4 ESC in accordance to the terms and conditions of Contractor's return policy located at www.officedepot.com and incorporated by reference. The Contractor agrees to pay all shipping costs for the return shipment. Contractor shall be responsible for arranging the return of the defective or incorrect material.
- 16) Payments. Invoices are due twenty (20) days from the date of invoice. Contractor shall establish Region 4 ESC's credit limit, which may be lowered (or Contractor may refuse to ship any orders) if at any time: (a) Region 4 ESC is delinquent in making payments to Contractor; (b) Region 4 ESC is in breach of any resulting agreement; or (c) Region 4 ESC's credit standing becomes impaired or reasonably unsatisfactory to Contractor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.
- 17) Price Adjustments. Should it become necessary or proper during the term of this Contract to make any change in design or any alterations that will increase price, Region 4 ESC must be notified immediately. Core Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the Contract shall be paid without prior approval. All Core price increases must be supported by manufacturer documentation, or a formal cost justification letter will be submitted to Region 4 ESC for approval. Contractor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC. Core price changes shall be implemented after thirty (30) day notice to Region 4 ESC. Region 4 ESC shall respond to the proposed price increase by the end of the thirty (30) day notice, and to the extent that Region 4 ESC does not respond within that time period, their silence shall be deemed acceptance of the proposed price change. It is the Contractor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All Core price changes must be provided to Region 4 ESC, using the same format as was provided and accepted in the Contractor's proposal.

In the event of extenuating market conditions, Contractor reserves the right to adjust Region 4 ESC's prices commensurately

Price reductions may be offered at any time during Contract. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all users equally; 2) reduction is for a specific period, normally not less than thirty (30) days; and 3) original price is not exceeded after the time-limit. Contractor shall offer Region 4 ESC any published price reduction during the Contract term.

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- 18) **Audit Rights.** Contractor shall, at its sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Contract. Subject to confidentiality agreements between Contractor and third parties, and no more than annually, Region 4 ESC, at its expense Region 4 ESC reserves the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. Region 4 ESC shall have the authority to conduct random audits of Contractor's pricing at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, ~~in the event that Region 4 ESC is made aware of any pricing being offered that is materially inconsistent with the pricing under this agreement, Region 4 ESC shall have the ability to conduct an extensive audit of Contractor's pricing at Contractor's sole cost and expense.~~ Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. Any third-party auditor used must be approved by Contractor and must execute a non-disclosure agreement. Contractor may dispute the results of any audit and will refund any overcharges to Region 4 ESC and Region 4 ESC will refund any undercharges to Contractor. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 4 ESC.
- 19) **Discontinued Products.** If a product or model is discontinued by the manufacturer, Contractor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model ~~and if the discount is the same or greater than the discontinued model.~~
- 20) **New Products/Services.** New products and/or services that meet the scope of work may be added to the Contract. ~~Pricing shall be equivalent to the percentage discount for other products.~~ Contractor may replace or add product lines if the line is replacing or supplementing products, is equal or superior to the original products, ~~is discounted similarly or greater than the original discount,~~ and if the products meet the requirements of the Contract. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.
- 21) **Options.** Optional equipment for products under Contract may be added to the Contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.
- 22) **Warranty Conditions.** ~~All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing. Contractor's warranties will be limited to Contractor-branded products only, and for all other products, Contractor will pass through to Region 4 ESC all manufacturer-supplied end-user warranties.~~
- 23) **Site Cleanup.** Contractor shall clean up and remove all debris and rubbish resulting from their work as required or directed. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean, safe and unobstructed condition.
- 24) **Site Preparation.** Contractor shall not begin a project for which the site has not been prepared, unless Contractor does the preparation work at no cost, or until Region 4 ESC includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.
- 25) **Registered Sex Offender Restrictions.** For work to be performed at schools, Contractor agrees no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work

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- at any time when students are or are reasonably expected to be present. Contractor agrees a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at Region 4 ESC's discretion. Contractor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.
- 26) Safety measures. Contractor shall take all reasonable precautions for the safety of employees on the worksite and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contractor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.
 - 27) Smoking. Persons working under the Contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.
 - 28) Stored materials. Upon prior written agreement between the Contractor and Region 4 ESC, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Region 4 ESC prior to payment. Such materials must be stored and protected in a secure location and be insured for their full value by the Contractor against loss and damage. Contractor agrees to provide proof of coverage and additionally insured upon request. Additionally, if stored offsite, the materials must also be clearly identified as property of Region 4 ESC and be separated from other materials. Region 4 ESC must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary. Until final acceptance by Region 4 ESC, it shall be the Contractor's responsibility to protect all materials and equipment. Contractor warrants and guarantees that title for all work, materials and equipment shall pass to Region 4 ESC upon final acceptance.
 - 29) Funding Out Clause. A Contract for the acquisition, including lease, of real or personal property is a commitment of Region 4 ESC's current revenue only. Region 4 ESC retains the right to terminate the Contract at the expiration of each budget period during the term of the Contract and is conditioned on a best effort attempt by Region 4 ESC to obtain appropriate funds for payment of the contract.
 - 30) Indemnity. Contractor shall protect, indemnify, and hold harmless both Region 4 ESC and its administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the Contractor, Contractor employees or subcontractors in the preparation of the solicitation and the later execution of the Contract. Any litigation involving either Region 4 ESC, its administrators and employees and agents will be in Harris County, Texas.
 - 31) Marketing. Contractor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement. Any use of Region 4 ESC name and logo or any form of publicity, inclusive of press releases, regarding this Contract by Contractor must have prior approval from Region 4 ESC.
 - 32) Certificates of Insurance. Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall endeavor to give Region 4 ESC a minimum of thirty (30) days' notice prior to any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified.
 - 33) Legal Obligations. It is Contractor's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services and shall comply with all laws while fulfilling the Contract. Applicable laws and regulation must be followed even if not specifically identified herein.



Tab 1: Terms and Conditions Acceptance Form (Appendix B)

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APPENDIX B
TERMS & CONDITIONS ACCEPTANCE FORM

Signature on the Offer and Contract Signature form certifies complete acceptance of the terms and conditions in this solicitation and draft Contract except as noted below with proposed substitute language (additional pages may be attached, if necessary). The provisions of the RFP cannot be modified without the express written approval of Region 4 ESC. If a proposal is returned with modifications to the draft Contract provisions that are not expressly approved in writing by Region 4 ESC, the Contract provisions contained in the RFP shall prevail.

Check one of the following responses:

- ☐ Offeror takes no exceptions to the terms and conditions of the RFP and draft Contract.

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)



Offeror takes the following exceptions to the RFP and draft Contract. All exceptions must be clearly explained, reference the corresponding term to which Offeror is taking exception and clearly state any proposed modified language, proposed additional terms to the RFP and draft Contract must be included:

(Note: Unacceptable exceptions may remove Offeror's proposal from consideration for award. Region 4 ESC shall be the sole judge on the acceptance of exceptions and modifications and the decision shall be final.)

NOTE: All page references pertain to the page the exception item resided on in the original RFP as published.

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
2. c. viii./Page 14	Past litigation, bankruptcy, reorganization, state investigations of entity or current officers and directors.	As a large global company, Office Depot is frequently involved in litigation in the ordinary course of business. Any material litigation is disclosed in our public filings set forth on the SEC's public website. There are no matters which would adversely affect our ability to perform under this contract if selected as a vendor.	
1.2 Last paragraph/Page 16	Marketing, Sales and Administrative Support. Administrative Fee of 3% of the greater of the Contract Sales under the Master Agreement and Guaranteed Contract Sales under this RFP.	Office Depot is offering an Administrative Fee of 1.202% on Contract Sales. Technology products and truckload paper are excluded from the Fee.	

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2.1/Page 18	Corporate Commitment	(2) the Master Agreement is Supplier's primary "go to market" strategy for Public Agencies. Office Depot strikes (2).	
2.2/Page 18	Pricing Commitment	Office Depot strikes this Section. In customer scenarios where a cooperative contract is in use, Office Depot offers competitive pricing to all customers, in the aggregate, based on several factors, including, but not limited to, the total volume of spend, customers' unique service level requirements, buying patterns, product mix, and Office Depot's cost to purchase products. However, in this scenario, Office Depot is unable to guarantee that one particular customer's pricing is as favorable as any other customer's pricing at the SKU level.	
2.3/Page 18	2.3 Sales Commitment	Supplier commits to aggressively market the Master Agreement <u>as its go to market strategy in this defined sector</u> and that its sales force will be trained, engaged and committed to offering the Master Agreement to Public Agencies through OMNIA Partners nationwide. Office Depot strikes 'as its go to market strategy in this defined sector'.	
3.3 K./Page 21	Marketing and Sales	State the amount of Supplier's Public Agency sales for the previous fiscal year. Provide a list of Supplier's top 10 Public Agency customers, the total purchases for each for the previous fiscal year along with a key contact for each. This information is Proprietary and Confidential.	
3.3 M./Page 21	Marketing and Sales	Supplier will guarantee each year under the Master Agreement for the initial three years of the Master Agreement ("Guaranteed Contract Sales"). Office Depot strikes this section in its entirety.	
3.3 N./Page 21	Marketing and Sales	Strike this Section. "Even though it is anticipated many Public Agencies will be able to utilize the Master Agreement without further formal solicitation, there may be circumstances where Public Agencies will issue their own solicitations. The following options are available when responding to a solicitation for Products covered under the Master Agreement. i. Respond with Master Agreement pricing (Contract Sales reported to OMNIA Partners). ii. If competitive conditions require pricing lower than the standard Master Agreement not-to-exceed pricing, Supplier may respond with lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales are reported as	

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		<p>Contract Sales to OMNIA Partners under the Master Agreement.</p> <p>iii. Respond with pricing higher than Master Agreement only in the unlikely event that the Public Agency refuses to utilize Master Agreement (Contract Sales are not reported to OMNIA Partners).</p> <p>iv. If alternative or multiple proposals are permitted, respond with pricing higher than Master Agreement, and include Master Agreement as the alternate or additional proposal. Detail Supplier's strategies under these options when responding to a solicitation."</p>	
Appendix A Draft Contract #25/Page 5	Registered Sex Offender Restrictions	<p>Registered sex offender restrictions – if Region 4 ESC agrees that Office Depot representatives delivering product on site does not qualify as "working when students are or are reasonably expected to be present", then Office Depot can agree to the terms of this section. If not, then delete this section.</p> <p>Office Depot employment practices make every effort to ensure that we do not employ known sex offenders. We expect and hold our subcontractors to the same level of employment standards.</p>	