

Early Learning Coalition of Indian River, Martin, and Okeechobee Counties, Inc. (ELCIRMO)

Purchase Order (PO) Terms and Conditions

Certified Minority Business Enterprises (CMBE) reporting – The ELCIRMO is dedicated to supporting, tracking, and increasing its small minority business enterprise spending as s. 287.0943, F.S. requires. The Contractor shall report spending with these subcontractors with each invoice submitted for payment to the following address, with a copy to the ELCIRMO Contract Administrator.

Conduct of business – federal/state laws govern – The laws of the State of Florida shall govern the PO. Each party shall perform its obligations herein in accordance with the terms and conditions of this PO/contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the PO. Further, the Contractor hereby waives any and 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 ELCIRMO.

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. PO/Contract Scope of Work

Confidentiality and safeguarding information – Contractor shall ensure public records that are exempt or confidential/exempt from public records disclosure requirements are not disclosed except as authorized by federal and state laws, including but not limited to sections 1002.72 and 1002.97, F.S. Contractor shall be provided additional specific instructions by the ELCIRMO if applicable.

Conflict of interest/related party activities – Section 1002.84(20), F.S. prohibits ELCIRMO (or an ELC's subrecipient) from entering into contracts with employees, governing board members, or relatives of either group without prior approval from the Florida's Office of Early Learning and a valid vote of approval by two-thirds of the ELCIRMO's governing board (or the governing board of an ELCIRMO's subrecipient). Impacted employees/board members must disclose this conflict of interest in advance of the board's vote and impacted governing board members must abstain from the voting process.

Convicted/discriminatory vendors – Neither it, nor any person or affiliate of the vendor has been convicted of a public entity crime as defined in Section 287.33, F.S. and has not been placed on the convicted or discriminatory vendor list at the federal or state levels.

Cooperation with Inspector General – Pursuant to s. 20.055(5), F.S., the Contractor and any subcontractor(s) used to provide the scoped goods/services understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor shall provide any type of information the Inspector General deems 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 PO/contract. The Contractor shall retain such records for five (5) years after the expiration date of the PO/contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at <http://dos.myflorida.com/library/archives/records-management/general-records-schedules/>), whichever is longer.

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 the ELC 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.

Debarment and suspension – If this PO relies on federal funds, in accordance with Federal Executive Order 12549 and 2 CFR Part 376 regarding Debarment and Suspension, the Contractor shall agree and certifies 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 PO's scoped transaction(s).

Filing and payment of taxes – None of the federal/state grant funds made available to the ELCIRMO may be used to enter into a PO/contract or any other agreement with any corporation that has any unpaid Federal tax liability. Acceptance of these PO/contract terms indicates the Contractor is aware of and currently complies with requirements for full and timely payment of any federal taxes.

Florida Abuse Hotline reporting – Any employee of the Contractor shall comply with s. 39.201, F.S., and 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).

Funding availability/annual appropriation – The ELCIRMO's performance and obligation to pay under this PO is contingent upon an annual appropriation by the Legislature. In the event funds become unavailable, are withdrawn or redirected by federal/state program funders, the ELCIRMO may terminate the PO upon no less than twenty-four (24) hours written notice to the Contractor. In the event the PO is terminated for lack of funding, the ELC shall pay the Contractor for documented and verifiable costs reasonably incurred to the extent such funds are appropriated and available for the PO's scoped

transaction(s). The ELCIRMO shall be the final authority as to the availability of appropriated funds.

Financial consequences – Section 215.971(1)(c), F.S. requires inclusion of financial consequences in the event of a Contractor's failure to perform the scoped transaction(s). If the Contract fails to meet and comply with the deliverables established in this PO/contract, the ELC will prorate any payments pending and/or request a refund of payment in a proportionate amount equal to the goods/services not received.

Invoice Due Date – Invoices shall be submitted after the delivery of goods or services. For services, invoices are due the 15th day of month following the month in which services were performed. Failure to submit invoices and required documentation within the specified timeframe could result in forfeiture of payment. For service contracts, the invoice must contain at a minimum, dates of service, description of the work performed, location, reference to the individual that completed the task and number of hours. Invoices shall be submitted electronically to elcinvoices@elcirmo.org.

Invoices for services rendered for the calendar month of June and September NOT submitted within 20 calendar days of the immediate subsequent month (July and October respectively) will not be paid in accordance with the period of availability of funding of source contracts.

No lobbying – In accordance with sections 11.062 and 216.347, F.S., no funds from the PO/contract may be used for lobbying the state Legislature, the judicial branch or any state Agency. Acceptance of these PO/contract terms indicates the Contractor is aware of and currently complies with the described lobbying activity restrictions. The Contractor shall require all subcontracts 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.

Payment audit (records of costs will be available upon request) – Records of costs incurred under terms of the PO shall be maintained and made available to the ELC upon request at all times during the period of the PO, 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 the ELCIRMO for audit.

Payment and fees – The ELCIRMO shall not be obligated to pay for costs incurred related to the PO/contract prior to its effective date or after the ending date specified.

Payment made after written "agency" acceptance – The Contractor will be paid upon submission of properly certified invoice(s) to the ELCIRMO after delivery and acceptance of commodities or contractual services is confirmed in writing by the ELC. Invoices shall contain sufficient detail for audit thereof and shall contain the PO and the Contractor's Federal Employer Identification Number or Social Security Number.

Payment timeframe - timely payments – Section 215.422, F.S., provides that entities have five (5) working days to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. **Services** – Invoices for services rendered will be paid within 45 days of receipt of a proper invoice and required supporting documentation. 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 obtaining timely payments from an entity may be contacted at 850-413-5516, or vendors may call the State Comptroller's Hotline at 1-800-848-3792.

Public records – If the vendor meets the definition of "Contractor" in Section 119.0701(1)(a), F.S., the Contractor shall comply with state public records requirements. All Contractor records for the scoped transaction(s) are available for public inspection unless expressly exempt from Sec 24(a) of the State Constitution and s. 119.07(1), F.S. The Contractor shall keep and maintain records ordinarily and necessarily required by the ELC to perform the scoped transaction(s) of this PO/contract.

The PO/contract may be unilaterally canceled by the ELCIRMO for refusal by the Contractor to allow public access to records related to this PO/contract and/or for failure to keep and maintain records as described herein.

Public access/public records requests – If a public records request is received, the Contractor must provide notice to the ELCIRMO within one (1) business day pursuant to Chapter 119, F.S. The Contractor shall email to the address shown a copy of all documents provided to the public records requestor by the end of the day such records are sent to the requestor.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PO/CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Early Learning Coalition of Indian River, Martin,
and Okeechobee Counties.
10 SE Central Parkway
Stuart, FL
34994
<http://www.elcirmo.org/>

Waiver – The delay or failure by the ELC to exercise or enforce any of its rights under the PO shall not constitute waiver of such rights.

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APPLIES TO PURCHASE OF SERVICES:

Background checks – The ELCIRMO may require the Contractor and its employees, agents, representative, and subcontractors to provide fingerprints and be subject to such background check as directed by the ELCIRMO. The cost of the background check(s) shall be borne by the Contractor. The ELC may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results.

Independent Contractor – The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the ELCIRMO. The ELCIRMO is not bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under this PO/contract.

Purchase of American-Made Equipment and Products – The Contractor shall to the greatest extent practicable purchase all American made equipment and products with funds made available by this PO/contract. (P.L. 103-333, the USDOL, USDHHS, USDOE, and Related Agencies Appropriations Act of 1995, section 507).

Rights to Inventions – Pursuant to s. 286.021, F.S., if a discovery or invention arises or is developed in connection with the use of federal/state funds, the ELCIRMO will refer it to Florida's Office of Early Learning (FOEL) and the 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 PO/contract are hereby reserved to the state of Florida. The Contractor shall refer any such discovery to the ELC. In addition, the Contractor is subject to applicable federal regulations governing patents and inventions, including governmentwide regulations issued by the 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." See [Rights to Inventions](#) for complete details.

APPLIES TO PURCHASES OF \$2,000 OR MORE:

Copeland Anti-Kickback Act – applies to purchases of \$2,000 or more. – If this PO relies on federal funds, the Contractor must comply with federal labor laws including the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c). These requirements apply to agreements that include salaries for laborers and for all contracts for repairs, improvements or other construction activities. The Contractor and any subcontractors is prohibited from inducing, by any means, any person employed in the construction, completion or repair of work, to give up any part of the compensation to which he/she is otherwise entitled. The Contractor shall report all suspected or reported violations to the ELC.

Davis Bacon Act, as amended – applies to purchases of \$2,000 or more. – If this PO relies on federal funds, the Contractor must comply with federal labor laws including the Davis- Bacon Act (40 U.S.C. 276a, et seq.), as supplemented by USDOL regulations (29 CFR Part 5).

- Under this Act, contractors must to pay wages to laborers and mechanics at a rate not less than the locally prevailing minimum wages and fringe benefits for similar work projects in the area.
- Contractors are required to pay wages not less than once a week.
- Contractors are required to post/display the applicable wage determination(s) at the site of work in a location in clear view of everyone.
- USDOL determines and sets the prevailing wage rates.
- The Contractor shall report all suspected or reporting violations to USDOL.

APPLIES TO PURCHASES OF \$3,000 OR MORE:

E-Verify – applies to purchases of more than \$3,000. – In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Agency of Homeland Security's E-Verify system, <https://www.uscis.gov/e-verify>, to verify the employment eligibility of all new employees hired during the term of the PO for the services specified. The Contractor shall also include a requirement in subcontracts that the subcontractor(s) shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the PO term.

APPLIES TO PURCHASES OVER \$10,000:

Equal Employment – applies to purchases of more than \$10,000. – This contractor (and subcontractor(s)) shall abide by the requirements of implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. See [USDOL OFCCP](#) for more details. These federal 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, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

Procurement of recovered materials – applies to purchases of \$10,000 or more. – The Contractor shall use to the maximum extent possible products designated as Biobased products (green, recycled, renewable). Information about this requirement and these products is available at <http://www.biopreferred.gov>. The Contractor shall report to <http://www.sam.gov>, with a copy to the ELC Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30. This report should be submitted not later than (i) October 31 of each year during PO/contract performance.

Termination for Cause (breach of terms) – applies for purchases over \$10,000. – In the event of termination of the Contract by the ELC for cause or breach of listed terms and conditions, the Contractor shall be liable for the ELC's expenses for additional managerial and administrative services required to complete or obtain the services or items from another contractor. Additional details are described in Section 23 of PUR 1000 [DMS PUR1000 link](#).

Termination for Convenience – applies for purchases over \$10,000. – The ELCIRMO, by written notice to the Contractor, may terminate the contract in whole or in part when the ELCIRMO determines in its sole discretion that it is in the state's best interest to do so. 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 PO/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 ELCIRMO, the Contractor shall:

- Stop work under the PO/contract on the date of and to the extent specified in the notice.
- Complete performance of the work not terminated by the ELC.
- Take such action as may be necessary, or as the ELC may specify, to protect and preserve any property related to the PO/contract which is in the possession of the Contractor and in which the ELC has or may acquire an interest.
- Transfer, assign, and make available to the ELC all property and materials belonging to the ELC, upon the effective date of termination of the PO/contract. No extra compensation will be paid to the Contractor for its services in connection with such transfer or assignment.
- Meet all the public records law requirements specified under the Public Records sections of these terms and conditions.

APPLIES TO PURCHASES OVER \$100,000:

Byrd Anti-Lobbying Certification – applies to purchases over \$100,000. – If this PO relies on federal funds, the Contractor must comply with federal laws that restrict lobbying including the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]). The Contractor shall also file the certification form required (see [ACF Certification regarding Lobbying](#)) by 49 CFR part 20, "New Restrictions on Lobbying."

Each tier (Contractor) certifies to the tier above (ELCIRMO) that it will not and has not used the PO/contract funds to pay for any federal-level lobbying activities. Prohibited activities include any person or organization paid 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. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with respect to this PO/contract. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Clean Air and Federal Water Pollution Control Act – applies to purchases over \$150,000.

– Pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, the Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended and the Federal Water Pollution Control Act. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Contract Manager – applies to purchases of \$100,000 or more. – A contract manager may be required for POs/contracts that receive \$100,000 or more from the ELC. Contact information is provided by the ELC if applicable.

Contract Work Hours and Safety Standards Act – applies to purchases of \$100,000 or more.

– If this PO relies on federal funds, the Contractor must comply with federal labor laws including the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). These requirements apply to agreements that include salaries for laborers and for all contracts for repairs, improvements, or other construction activities. The Contractor and any subcontractors shall compute wages on a 40-hour week schedule and pay employees for extra hours worked. None shall be forced to work in unsanitary, hazardous, or dangerous conditions or surroundings.

Drug Free Workplace – applies to purchases of services of more than \$100,000. – If this

PO/contract relies on federal funds, pursuant to the Drug-Free Workplace Act of 1988, the Contractor attests and certifies that the Contractor will provide a drug-free workplace compliant with 41 USC 81. This requirement applies to the purchase of services performed in part or entirely in the United States. This requirement will not apply to purchases of commercial goods.

Additional online instructions to determine coverage for a specific contract or grant are available by contacting USDOL. [USDOL drug-free workplace advisor](#)