

Florida International University (FIU)

Contract # PUR-05407

for

Office Supplies and Products

with

ODP Business Solutions, LLC

Effective: June 20, 2022

The following documents comprise the executed contract between the Florida International University and ODP Business Solutions, LLC effective June 20, 2022:

- I. Vendor Contract and Signature Form
- II. Supplier's Response to the RFP, incorporated by reference

FIU CONTRACT# PUR-05407

COVER AGREEMENT

THIS COVER AGREEMENT (the “Agreement”) is made and entered into on the last date signed below (the “Effective Date”), by and between **THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES** (“FIU”) and **ODP BUSINESS SOLUTIONS, LLC**, a Delaware limited liability company, whose address is 6600 North Military Trail, Boca Raton, FL 33496, who is authorized to do business in the State of Florida (the “Contractor”).

RECITALS

WHEREAS, FIU requested solicitation responses for Competitive Solicitation E-ITN No. 2022-00057 (the “ITN”) to provide the following goods and/or services: Office Supplies and Products (the “Services”);

WHEREAS, the Contractor submitted a solicitation response for the ITN to provide and perform the Services (“Solicitation Response”), along with a Best and Final Offer (“BAFO”), which was accepted by FIU; and

WHEREAS, this Cover Agreement, the ITN, the Solicitation Response, and the BAFO shall be known, collectively, as the “Contract.”

NOW, THEREFORE, in consideration of the mutual promises and agreements made herein and intending to be legally bound hereby, the parties hereto agree as follows:

1. Term. The Contract commences on the Effective Date and (as detailed on Section 1.1 of the ITN – Statement of Objective), will continue for an initial term of five (5) years (the “Initial Term”), and may be renewed in writing by the parties for an additional two (2) one-year terms (each, a “Renewal Term”) (collectively, the Initial Term and the Renewal Term(s) shall be known as the “Term”).

2. Contractual Precedence. The Contractor will provide to FIU the Services pursuant to the terms and conditions described in the following: this Cover Agreement, the Competitive Solicitation ITN No. 2022-00057, including the Standard Provisions, attached hereto together as Exhibit I and incorporated herein by reference; the Contractor’s Solicitation Response, attached hereto as Exhibit II and incorporated herein by reference; and if applicable, the Contractor’s Best and Final Offer, attached hereto as Exhibit III and incorporated herein by reference (all of which constitute, collectively, part of the Contract). In the event of conflict between or among terms and conditions contained in the foregoing documents with regards to the Services, such documents shall govern in the following order of precedence:

- a. first, this Cover Agreement;
- b. second, the Standard Provisions of the Competitive Solicitation ITN No. 2022-00057;
- c. third, the Contractor’s Best and Final Offer;

- d. fourth, the Contractor's Solicitation Response; and
- e. fifth, the Competitive Solicitation ITN No. 2022-00057, excluding the Standard Provisions.

3. Notices. Any notices required under the Contract shall be sent via U.S. Mail, return receipt requested, or by personal hand delivery, to the parties at the following addresses:

Notices to Contractor:

ODP Business Solutions, LLC
6600 North Military Trail
Boca Raton, FL 33496
Attention: Vice President

Notices to FIU:

Florida International University
Procurement Services Department
11200 S.W. 8th Street, CSC 411
Miami, FL 33199
Attn: Executive Procurement Director

With copy to:

ODP Business Solutions, LLC
6600 North Military Trail
Boca Raton, FL 33496
Attention: Office of the General Counsel

With copy to:

Florida International University
Office of the General Counsel
11200 S.W. 8th Street, PC 511
Miami, FL 33199

Notices to Administrator:

Omnia Partners, Public Sector
840 Crescent Center Drive, Suite 600
Franklin, TN 37067
Attention: President

4. No counterparts; facsimile signatures allowed. The Contract may not be executed in counterparts. It may be signed electronically and such electronic signatures shall constitute an original for all purposes. This Contract shall be considered signed if/when a party's signature is delivered by hand, mail, or e-mail transmission of a ".pdf" format date file, including via DocuSign. Such signature via DocuSign shall be treated in all respects as having the same force and effect as an original signature.

5. Authority. Contractor represents and warrants that the Contract has been duly authorized, executed and delivered by and on behalf of Contractor and constitutes the valid, binding and enforceable agreement in accordance with the terms hereof. If the Contract is signed by Contractor's agent, such agent warrants that he/she is duly authorized to act for and on behalf of Contractor, that he/she is authorized to enter into the Contract and that the agent and Contractor shall be jointly and severally liable for any breach of the Contract or of the representation.

6. Entire Agreement. The Contract, along with the Exhibits and any other appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent that said parties have

not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in the Contract, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of the Contract.

7. Clarifications/negotiated points are as follows:

a. Section 3.2 (Payment Terms) of the Standard Provisions, is hereby modified and amended as follows:

- (i) the reference to “forty (40) days of receipt of a proper invoice” is hereby deleted in its entirety and replaced with “thirty (30) days of date of the invoice.”
- (ii) the last sentence is hereby deleted in its entirety and replaced with the following sentence in lieu thereof:

“Subject to confidentiality agreements between Contractor and third parties, and no more than annually, FIU, at its expense, may audit Contractor’s books and records to determine whether Contractor extended the correct pricing. 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 FIU (and FIU will refund any undercharges to Contractor). Other conditions may apply. Notwithstanding the foregoing, nothing contained herein will prevent parties from complying with the requirements of Chapter 119.”

b. Section 3.4 (Insurance) of the Standard Provisions is hereby modified and amended as follows:

- (i) the following sentence “Unless previously authorized by FIU, the policies required above shall be issued on a “first dollar” basis with no deductible or self-insured retention” is hereby deleted in its entirety.
- (ii) the following sentence “FIU, upon request, reserves the right to obtain a copy of the policies requested above” is hereby deleted in its entirety.

c. Section 3.5 (Worker’s Compensation) of the Standard Provisions is hereby modified and amended as follows:

- (i) the following sentence “Successful Respondent will agree that any release or settlement entered into by Respondent under a workers’ compensation claim shall include, in its settlement and release the State of Florida, the Florida Board of Governors, the FIU Board of Trustees, FIU, and their officers, employees, and agents” is hereby deleted in its entirety.

- d. **Section 3.26 (Export Control) of the Standard Provisions is hereby deleted in its entirety.**

- e. **Section 3.28 (Warranties) of the Standard Provisions is hereby modified and amended by adding the following at the end of the aforementioned Section:**

“Contractor’s aforementioned warranties will be limited to Office Depot-branded products only, and for all other products, Contractor will pass through to FIU all manufacturer-supplied end-user warranties.”

- f. The parties acknowledge and agree that requirements outlined in **Section 3.34 (Subcontractors) of the Standard Provisions** are not applicable for those vendors who are generally involved in the day-to-day business operations of Contractor, including, but not limited to, third party logistics vendors, delivery carriers, and customer service providers. Furthermore, FIU acknowledges and agrees that Contractor, without obtaining written consent from FIU, may subcontract duties under any resulting contract to those vendors who are generally involved in the day-to-day business operations of Contractor, including, but not limited to, third-party logistics vendors, delivery carriers, and customer service providers.

- g. **Section 3.35 (Termination for Cause) of the Standard Provisions, is hereby modified and amended as follows:**

(i) the following phrase “and Successful Respondent shall be liable to FIU for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract” is hereby deleted in its entirety.

(ii) the following phrase “[a]dditionally, FIU may require Successful Respondent to transfer title and deliver immediately to FIU in the manner and to the extent directed by FIU, such partially completed work, including, where applicable, reports, working papers and other documentation, as Successful Respondent has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated” is hereby deleted in its entirety.

- h. **Section 3.36 (Termination for Convenience) of the Standard Provisions is hereby deleted in its entirety and replaced with the following:**

“Either party may terminate the Contract for its convenience, by written notice to the other party at least ninety (90) days before the effective date of termination, if that party determines that termination is in its best interest. Contractor shall be

paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall either party be entitled to recover lost profits.”

- i. **Section 3.40 (Information Technology) of the Standard Provisions is hereby deleted in its entirety.**
- j. **Section 3.53 (Assignment/Modification of Contract) of the Standard Provisions is hereby deleted in its entirety and replaced with the following:**

“Neither party may assign this Agreement without the prior written consent of the other party, except that Contractor (i) may assign this Agreement to any of its subsidiaries or affiliates at any time, or (ii) may assign this Agreement in connection with the transfer or sale of all or substantially all of its business related to this Agreement.”

- k. **Service Vendor (Individual Trade) Insurance Language is hereby modified and amended as follows:**
 - (i) Contractor’s policies are primary and non-contributory to the extent that an indemnity is owed under the Contract.
 - (ii) the following sentence “Unless previously authorized by FIU, the policies required above shall be issued on a “first dollar” basis with no deductible or self-insured retention” is hereby deleted in its entirety.
 - (iii) the following sentence “The policies shall carry an endorsement to provide thirty (30) days prior written notice to FIU in the event of cancellation or reduction in coverage or amount” is hereby deleted in its entirety and replaced with: “Contractor will provide thirty (30) days written notice to FIU in the event of cancellation.”
 - (iv) the following sentence “FIU, upon request, reserves the right to obtain a copy of the policies requested above” is hereby deleted in its entirety.

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IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date firstwritten above.

FOR THE CONTRACTOR:

ODP BUSINESS SOLUTIONS, LLC

DocuSigned by:
BY: Brian Abromovage
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Brian Abromovage VP, BSD

NAME & TITLE:

DATE:
6/20/2022

FOR FIU:

**THE FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES**

BY: Kenneth Jessell Interim University President

NAME & TITLE:

DATE:

Approved as to
form and legality
[Signature]
F.I.U. Attorney

Date: 6-9-22