

Region 4 Education Service Center (ESC)

Contract # R190903

for

Software Solutions and Services

EC America, Inc.

Effective: January 1, 2020

The following documents comprise the executed contract between Region 4 Education Service Center and EC America, Inc., effective January 1, 2020:

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

- 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. Purchase orders and payment can only be made to the Contractor unless otherwise approved by Region 4 ESC. 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 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, 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. Region 4 ESC may cancel this Contract in whole or in part by providing written notice. 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.

- 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.
- 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. 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. 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.

- 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. 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. 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.
- 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 give Region 4 ESC a minimum of ten (10) 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.

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 EC America, Inc.

Address 8444 Westpark Drive, Suite 200

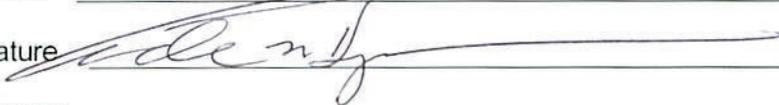
City/State/Zip McLean, VA 22102

Telephone No. 571-384-2829

Email Address Adam.Hyman@immixGroup.com

Printed Name Adam Hyman

Title Director, Government Programs

Authorized signature 

Accepted by Region 4 ESC:

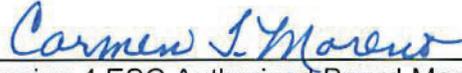
Contract No. R190903

Initial Contract Term January 1, 2020 to December 31, 2022


Region 4 ESC Authorized Board Member

12-17-2019
Date

Margaret S. Bass
Print Name


Region 4 ESC Authorized Board Member

12/17/19
Date

Carmen T. Moreno
Print Name

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.)

If an offer is made with modifications to the contract provisions that are not expressly approved in writing, the contract provisions contained in the RFP shall prevail.)

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC’s use)
RFP Page 10, Section 22 (Samples)	Upon request, samples shall be furnished, free of cost, within seven (7) days after receiving notice of such request. By submitting the proposal Offeror certifies that all materials conform to all applicable requirements of this solicitation and of those required by law. Offeror agrees to bear the costs for laboratory testing, if results show the sample does not comply with solicitation requirements. Submissions may no longer be considered for failing to submit samples as requested.	Because we are providing commercially-available hardware and software, there would be no samples that require laboratory testing. Rather, evaluations of the software may be provided. Additionally, because the products are commercial items, conformance should be to the manufacturer’s documentation or as otherwise mutually agreed between the parties. Accordingly, we propose the following modifications, with deleted language struck through in red and added language in blue: Upon request, samples evaluation software shall be furnished, free of cost, within seven (7) days after receiving notice of such request as mutually agreed between Contractor and Participating Agency . By submitting the proposal Offeror certifies that all materials conform to all applicable requirements of this solicitation and of those required by law the manufacturer’s documentation for such materials . Offeror agrees to bear the costs for laboratory testing, if results show the sample does not comply with solicitation requirements. Submissions may no longer be considered for failing to submit samples as requested.	ACCEPTED
RFP Page 12, Section IV.2 (Not to Exceed Pricing)	Contractor must allow for lower pricing to be available for similar product and service	It is unclear what objective factors would apply to determine whether a product or service is “similar” enough to require equal or lower pricing. Also, our	

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
	purchases.	<p>pricing is based on discounts from each manufacturer's commercial price list. Because manufacturers typically offer the same discounting for the items in the same product families, we could establish that as an objective factor in determining whether items are similar enough to require equal or lower pricing.</p> <p>Accordingly, we propose the following modifications, with deleted language struck through in red and added language in blue:</p> <p>"Contractor must allow for lower pricing the same discounting to be available for similar products and services offered by the same manufacturer under the same product categories purchases.</p>	
Contract Page 4, Section 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.	<p>Shipping of hardware products varies by manufacturer and may be subject to configuration or other requirements that would make 7-day shipping of hardware infeasible.</p> <p>Accordingly, we propose adding the following language in blue:</p> <p>Conforming software Products shall be shipped within 7 days of Receipt of Purchase Order and conforming hardware Products shall be shipped within 30 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.</p>	ACCEPTED
Contract Page 4, Section 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. 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.	<p>For revenue recognition purposes, we would like to more clearly define acceptance.</p> <p>Accordingly, we propose adding the following language in blue, which we have in several contract vehicles, including the GSA Schedule:</p> <p>The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the applicable manufacturer's documentation. Therefore, items delivered shall be deemed accepted upon physical delivery to Region 4 ESC's designated receiving facility, or for software, once the software is made available to Region 4 ESC via electronic download by provision of a license key, link to a website, FTP site, or similar site from which Region 4 ESC can electronically download or otherwise access the software. Region 4 ESC reserves the right to inspect or test any equipment that has been delivered. 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. 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. Region 4 ESC may require repair or replacement of nonconforming equipment at no increase in contract price. Region 4 ESC must exercise its post-acceptance rights (1) within the applicable warranty period; and (2) before any</p>	ACCEPTED

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
		substantial change occurs in the condition of the item, unless the change is due to the defect in the item.	
Contract Page 4, Section 16 (Payments)	Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.	<p>Because we are providing software, hardware, and services, it is unclear what would constitute "satisfactory performance" of each.</p> <p>Accordingly, we propose striking this section in its entirety and replacing with the following:</p> <p>Payment for hardware, software, and maintenance/support as a product shall be made after delivery. Payment for services other than maintenance/support as a product shall be made after performance in accordance with the applicable services terms of this contract. In any event, payment shall only be made upon receipt of a properly completed invoice.</p>	ACCEPTED
Contract Page 5, Section 20 (New Products/Services)	Pricing shall be equivalent to the percentage discount for other products.	<p>This should be consistent with the pricing requirement under RFP Page 12, Section IV.2 (Not to Exceed Pricing).</p> <p>Accordingly, we propose deleting this sentence in its entirety and replacing with the following language in blue:</p> <p>Contractor must allow for the same discounting to be available for products and services offered by the same manufacturer under the same product categories.</p>	ACCEPTED
Contract Page 5, Section 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.	<p>Because the manufacturer will perform most of any services, the labor warranty should be in accordance with the manufacturer's standard warranty, unless otherwise agreed to in writing.</p> <p>Accordingly, we propose the following modifications, with deleted language struck through in red and added language in blue:</p> <p>All supplies, equipment and services shall include manufacturer's minimum standard warranty, including manufacturer's standard and one (1) year labor warranty, unless otherwise agreed to in writing.</p>	ACCEPTED
Contract Page 6, Section 31 (Marketing)	Contractor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement.	<p>Region 4 ESC's use of our logo should be consistent with any usage guidelines we provide to Region 4 ESC.</p> <p>Accordingly, we propose adding the following language in blue:</p> <p>Contractor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement, provided Region 4 ESC's use of Contractor's logo is in accordance with any usage guidelines provided by Contractor.</p>	ACCEPTED
Contract Page 6, Section 32 (Certificates of Insurance)	Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall give Region 4 ESC a minimum of ten	It may not be operationally feasible to provide 10 days' prior written notice of any change to or cancellation to our insurance policies. However, we can provide notice with 30 days of such changes or cancellations. Additionally, the insurance requirements are not specified, so we propose	

Section/Page	Term, Condition, or Specification	Exception/Proposed Modification	Accepted (For Region 4 ESC's use)
	<p>(10) days' notice prior to any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified.</p>	<p>subcontractors be required to maintain the coverage in their standard COIs unless additional coverage is mutually agreed between the parties.</p> <p>Accordingly, we propose the following modifications, with deleted language struck through in red and added language in blue:</p> <p>Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall give notify Region 4 ESC a minimum of ten (10) days' notice prior to within 30 days of any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified set forth in their standard COIs, unless additional coverage is mutually agreed between the parties.</p>	<p>ACCEPTED</p>