



GOBIERNO DE PUERTO RICO  
DEPARTAMENTO DE EDUCACIÓN

**COMMONWEALTH OF PUERTO RICO DEPARTMENT OF EDUCATION**  
(BEN #157779)

**RFP NO: SF (OC) 2011-017**

**REQUEST FOR PROPOSALS FOR E-RATE FY2012 INTERNAL CONNECTIONS**

Date Issued:	February 9, 2012
Questions Due:	February 14, 2012
Pre-Proposal Conference:	February 17, 2012 at 10:00 AM
Letters of Intent Due:	March 2, 2012
Proposals Due:	March 9, 2012 at 10:00 AM
Eligible Services Start Date:	July 1, 2012 <i>(Subject to E-Rate Funding Approval)</i>

**PROPOSALS MUST BE RECEIVED BY 10:00 A.M. ON MARCH 9, 2012**  
**LATE PROPOSALS WILL NOT BE ACCEPTED**

**VENDORS SHALL DELIVER EIGHT (8) COPIES OF PROPOSALS**

- **ONE (1) SIGNED ORIGINAL SET, AND**
- **SEVEN (7) COPIES ON PAPER, CD, DISK OR JUMP DRIVE**

**PROPOSALS SHALL BE ADDRESSED AND DELIVERED TO:**

Jorge Toro Mc Cown  
E-Rate Director  
Commonwealth of Puerto Rico Department of Education  
Legal Division  
150 Federico Costas, 1<sup>st</sup> Floor  
San Juan, P.R. 00919  
Email: toromj@de.gobierno.pr  
Phone: (787) 773-4053

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## 1 GENERAL INVITATION

The Commonwealth of Puerto Rico Department of Education ("the "PRDE" or "Department") is requesting proposals pursuant to **RFP No. SF (OC) 2011-117** entitled "**Request for Proposals for E-Rate FY2012 Internal Connections**" (hereinafter, this "RFP"). The services described in this RFP shall be performed on behalf of the Department of Information Technology. This RFP is governed by Public Law 7040 dated October 5, 2005 and the PRDE regulation for the Procurement, Sale and Bid of Goods and Non-Personal Services. Vendors are invited to submit proposals for one, several or all of the services requested in this RFP.

**THIS RFP, APPLICABLE DEPARTMENT STANDARDS, RESPONSES TO VENDOR QUESTIONS, RFP AMENDMENTS (IF ANY) AND OTHER NOTICES PERTAINING TO THIS RFP WILL BE POSTED AT [HTTP://DDE.PR/ERATE](http://DDE.PR/ERATE). VENDORS ARE STRONGLY ENCOURAGED TO CHECK THE DESIGNATED WEBSITE ON A REGULAR BASIS THROUGHOUT THE SOLICITATION PERIOD FOR UPDATES.**

### 1.1 PRDE Rights

The Department is not obligated to award any contracts pursuant to this RFP, nor is the Department obligated to pay for any costs incurred in the preparation and submission of proposals. Moreover, no vendor shall have any rights against the Department arising at any stage of the solicitation from any negotiations that take place, or from the fact that the Department does not select a vendor for presentations or negotiations.

Further, the Department reserves, without limitation, the right to:

- A. Reject any or all of the proposals;
- B. Issue one or more subsequent RFPs for the same services;
- C. Amend or cancel the entire RFP;
- D. Extend the deadline for submitting proposals
- E. At its sole discretion, reduce the scope of services if in the best interest of the Board;
- F. Appoint an evaluation committee to evaluate proposals and make vendor selections;
- G. Seek the assistance of outside technical experts to review proposals;
- H. Seek the assistance E-Rate experts to assist with E-Rate program questions, processes, eligibility, and cost allocations during the procurement process;
- I. Invite one or more vendors for presentations and negotiations after review of proposals;
- J. Check vendor references and investigate the qualifications of any vendor under consideration, require confirmation of information furnished by vendors, and require additional evidence of qualifications to perform the services described in this RFP;

- K. Investigate the qualifications of any subcontractors proposed by vendors;
- L. Confirm vendor understanding of, and experience in, the E-Rate program;
- M. Establish a short list of proposers for discussions/clarifications after review of written proposals;
- N. Negotiate with any, all, or none of the proposers;
- O. Solicit best and final offers (BAFO) from all, some or none of the proposers;
- P. Award a contract to one or more proposers;
- Q. Accept other than the lowest priced proposal;
- R. Waive informalities and irregularities in Proposals;
- S. Award a contract without discussions or negotiations;
- T. Renegotiate or revise the contract based upon SLD/USAC rule changes prior to and/or after the award of the contract;
- U. Disqualify proposals upon if there is evidence of collusion with intent to defraud or other illegal practices on the part of any proposers;
- V. Reduce the scope of any awarded services;
- W. If any vendor selected for award refuses to execute the contract arising from this procurement, the Department shall have the right to order the execution of the Proposal Guarantee in order to cover the difference between the vendor's cost and the cost proposed by the next qualified vendor, as well as to cover other damages and direct expenses of the Department;
- X. Refrain from applying for E-Rate funding for any services proposed under this RFP; and
- Y. Exercise any other right or take any other action allowed by law.

## 1.2 Procurement Schedule and Milestones

### 1.2.1 Timeline

The PRDE anticipates that the following schedule will be followed throughout the procurement process:

**RFP Table 1**

Event	Date
Release and Publication of the RFP on Website; Posting of Form 470	February 9, 2012
Deadline for submittal of formal RFP questions	February 14, 2012
Pre-Proposal Conference	February 17, 2012
Deadline for submittal of Letters of Intent ( <b>Mandatory</b> )	March 2, 2012
Deadline for submittal of proposals to the PRDE	March 9, 2012
Formal presentations to PRDE	TBD, if Required
Eligible services start date ( <b>Subject to E-Rate Funding Approval</b> )	July 1, 2012

### 1.2.2 RFP Questions

Questions may be submitted in writing via letter or email and must be received by 5:00 p.m. on February 14, 2012. Questions received by the deadline will be distributed at the Pre-Proposal Conference. The responses will also be posted at <http://dde.pr/erate>.

Questions received after the deadline will not be answered.

### 1.2.3 Pre-Proposal Conference

All vendors interested in submitting proposals are invited to attend the Pre-Proposal Conference to be held on February 17, 2012. The meeting will be held at 10:00 AM, at 150 Federico Costas, 1<sup>st</sup> Floor.

### 1.2.4 Letter of Intent

Vendors that plan to submit a proposal in response to this RFP are required to submit a letter stating their intent ("Letter of Intent") to submit one or more proposals in response to this RFP. The Letter of Intent must be delivered to the PRDE by the deadline indicated in Table 1. A sample Letter of Intent is attached to this RFP as Exhibit A.

**The filing of a Letter of Intent is a mandatory prerequisite under Puerto Rico procurement rules for submission of a proposal under this RFP.**

## 1.3 PRDE Contact Person for RFP Information

During the evaluation period, except where explicitly established within this RFP, the PRDE E-Rate Director for this procurement process **shall be the sole point of contact between vendors and the Department** (the evaluation period is defined as the period of time starting on the date of release and publication of the RFP, and ending on the date when the corresponding contracts are signed by the parties).

During the evaluation period, any vendor that contacts or attempts to contact an officer or employee of the PRDE other than the E-Rate Director regarding this procurement process shall be deemed in violation of the conditions established herein, and **may be subject to immediate disqualification**. All relevant PRDE officers and personnel have been made aware of this condition, and are prepared to take action should such a situation arise, without any notice or warning to vendors in violation of this proscription. Vendors should ensure that all personnel and subcontractors are made aware of, and abide by this procurement condition.

All RFP-related communications, questions and requests for clarification are to be directed to the E-Rate Director named below, in writing:

Jorge Toro Mc Cown, E-Rate Director  
 Commonwealth of Puerto Rico Department of Education  
 Legal Division  
 150 Federico Costas, 1<sup>st</sup> Floor  
 San Juan, P.R. 00919  
 Email: toromj@de.gobierno.pr  
 Phone: (787) 773-4053

#### 1.4 About the PRDE

The PRDE is the governmental agency that directly runs and operates Puerto Rico's public school system. Unlike most states, the PRDE acts both as a State Educational Agency (SEA), and as a single Local Educational Agency (LEA). Information concerning the PRDE school system is set forth in Table 2 and Table 3 Below:

**Table 2**

THE PRDE SCHOOL SYSTEM (Approximate Counts)	
Students:	600,000
Schools:	1,483
Teachers:	44,000
Employees (including teachers):	70,000
Educational Regions:	7
School Districts (within the Regions):	28

**Table 3: Regions and Districts (School Count Estimates)**

REGION	DISTRICTS	# OF SCHOOLS	REGION	DISTRICTS	# OF SCHOOLS
<b>ARECIBO</b>	Arecibo	51	<b>MAYAGUEZ</b>	Aguadilla	61
	Camuy	39		Cabo Rojo	48
	Manati	44		San Sebastian	57
	Vega Alta	47		Mayaguez	52
		<b>181</b>			<b>218</b>
<b>BAYAMON</b>	Bayamon	67	<b>PONCE</b>	Ponce	73
	Corozal	29		Santa Isabel	63
	Orocovis	29		Utua	41
	Toa Baja	50		Yauco	59
		<b>175</b>			<b>236</b>
<b>CAGUAS</b>	Barranquitas	44	<b>SAN JUAN</b>	Carolina	45
	Cidra	52		Guaynabo	42
	Guayama	50		San Juan I	52
	Gurabo	61		San Juan II	78
		<b>207</b>			<b>217</b>
<b>HUMACAO</b>	Canovanas	52			
	Fajardo	40			
	Las Piedras	58			
	Yabucoa	59			
		<b>209</b>			

## MAP OF PRDE SCHOOL REGIONS



### 1.5 RFP Organization. This RFP is organized into the following sections:

- A. **Section 1 – General Invitation.** This section provides background and general information related to the RFP process and the Department. It identifies the PRDE as the issuing agency, provides a procurement schedule, and assigns procurement communications responsibilities on each party's side, throughout the procurement process.
- B. **Section 2 – E-Rate Program.** This section provides an overview of the E-Rate program, and certain key definitions and compliance requirements.
- C. **Section 3 – General Terms and Conditions.** This section outlines the general terms and conditions for doing business with the Department as shall be set forth in the contracts between the Department and any vendors awarded services under this RFP.
- D. **Section 4 – Specific Terms and Conditions.** This section provides specific vendor requirements pertaining to the delivery of, and invoicing for, services provided by the vendor to the Department under the E-Rate program.
- E. **Section 5 – The PRDE Network.** This section provides vendors with diagrams and information concerning the PRDE networks.
- F. **Section 6 – Scope of Services – Internal Connections.** This section describes certain services requested by the Department.
- G. **Section 7 – Submittal Requirements.** This section provides instructions and describes requirements for vendors in preparing and submitting. Vendors must comply with all of the guidelines established in this section.
- H. **Section 8 – Evaluation Criteria and Vendor Selection.** This section describes the proposal evaluation and vendor selection process to be followed in connection with this RFP.

## 2 E-RATE PROGRAM

### 2.1 General Overview.

The Federal Universal Service Discount Program for Schools and Libraries, commonly referred to as the “educational rate program” (“E-Rate”) was established pursuant to an amendment to the Telecommunications Act of 1996. The primary objective of the E-Rate program is to provide funding for telecommunications services for eligible schools and libraries, particularly those in rural and economically disadvantaged areas. The Universal Services Administration Corporation (“USAC”), Schools and Libraries Division (“SLD”), with the oversight of the Federal Communications Commission (“FCC”), administers the program. E-Rate funds are intended to provide the conduits for voice, video, and data flow within and among eligible organizations; they are not intended to provide data content or end user equipment and software. Eligible equipment and services include:

- Wiring and physical network components necessary to enable data transmission among schools and libraries.
- Basic conduit access to the Internet, including necessary wiring, network components, ISP services and email.
- Leased, tariffed, contracted or month-to-month telecommunications services from eligible providers that are used to transmit information electronically among sites.
- Servers and operating systems necessary to manage networks.
- Internal wiring and components necessary to expand data access within a school or library (e.g. wiring to individual classrooms).

The E-Rate program facilitates funding by subsidizing between 20% and 90% of the cost of eligible products and services to eligible institutions. For a school, the discount is based on the percentage of students in that school that qualify free or reduced-price meals under the National School Lunch Program. The PRDE’s FY2012 E-Rate Discount is expected to be 90%.

Key E-Rate definitions and applicable E-Rate Compliance requirements are set forth on Exhibit B.

### 2.2 PRDE Billed Entity Number.

The PRDE’s Billed Entity Number is: 157779

### **3 GENERAL TERMS AND CONDITIONS**

#### **3.1 Changes or alternatives.**

The specifications, terms, conditions and instructions in this RFP represent the terms and conditions under which the awards will be evaluated. Those vendors that cannot comply with one or many of these terms, conditions and instructions, may submit alternatives. The Department reserves the right to revoke its approval for an award of a contract for any reason, including but not limited to, if a vendor, in the Department's sole opinion, submits substantially different general and specific terms and conditions from for the contract that were not disclosed in vendor's response.

#### **3.2 Proposal Guaranty (Bid Bond).**

Vendors are required to include a proposal guaranty bond in an amount equal to 20% of the total proposal. The bond must be issued by a surety company authorized to do business in the Commonwealth of Puerto. The bond may also be in the form of an irrevocable letter of credit issued by a financial institution authorized to do business in the Commonwealth of Puerto Rico, or a money order or certified check issued. Money orders and certified checks must be issued to the Commonwealth of Puerto Rico Secretary of Treasury.

#### **3.3 Service Warranty.**

The vendor shall represent and warrant in the contract that it can and will perform, or cause the services to be performed, in strict accordance with the provisions and requirements of the contract. The services will be performed in a timely, professional and workmanlike manner, in accordance with all applicable industry and professional standards. Such services shall be in compliance with all applicable laws, rules, regulations or orders. If the Department notifies the vendor, or if the vendor becomes aware of any non-performance, error or defect covered by the foregoing warranties, the vendor shall, at its own expense, promptly (but in no event later than thirty (30) days after written notification by the Department) correct such non-performance, error or defect. Installation services, or any portion thereof, will be automatically warranted as provided herein. The vendor will assign to the Department any third-party warranties vendor receives in connection with any installations performed under the contract.

#### **3.4 State Taxes.**

The prices quoted by the vendor shall include all applicable state taxes.

#### **3.5 Document Signatures.**

Vendor proposals and contracts are to be signed on behalf of the vendor by an authorized representative of the bidding entity, stating signer's official relation to, or position with, the vendor. Signatures shall be written in ink. Signatures with rubber stamps, typewriter, computerized or in pencil will not be acceptable.



### **3.6 Government Obligation.**

The Government will not be considered to be obligated with regard to any award until a contract is signed.

### **3.7 Registry of Bidders.**

The Department reserves the right to exclude from consideration any vendor that is not in the Single Bidder Registry.

### **3.8 Performance Guaranty.**

The vendors that are awarded contracts pursuant to this RFP shall be required to submit a performance bond by a surety company authorized to do business in the Commonwealth of Puerto Rico in an amount up to 60% of the maximum total proposal. The performance bond may also be in the form of an irrevocable letter of credit issued by a financial institution authorized to do business in the Commonwealth of Puerto Rico, or a money order or certified check issued. Money orders and certified checks must be issued to the Commonwealth of Puerto Rico Secretary of Treasury.

### **3.9 Contract Requirement.**

Each vendor agrees that if approved as a provider for the services, the vendor will enter into written contract(s) with the Department pertaining thereto prior to the deadline for the PRDE to file its FY2012 E-Rate applications. The contract will contain, among other terms, the general and specific terms and conditions contained in this Section 3 and in Section 4 of this RFP. All general and specific terms and conditions are subject to change by the Department's legal counsel. In the event the Department and any vendor fail to enter into a contract, the vendor's approval for award will be revoked by the Department.

### **3.10 Contract Term.**

The Department intends to award a fifteen (15) month contract, with no renewal options for the installation services requested under this RFP. The term of the contract shall commence July 1, 2012, subject to E-Rate funding approval by the SLD/USAC ("Effective Date") and end September 30, 2013 (June 30, 2013 being referred to herein as the "Service Delivery Deadline" and the period between the Effective Date and the services Delivery Deadline being referred to herein as the "Term"). The Department shall have the right to extend or abbreviate the Term if such extension or abbreviation is necessary to make the Term of the contract coincide with the "funding year" or "implementation period" as defined by the FCC/SLD/USAC. If such extension of the Term of the contract is needed as described above and is authorized by the Department, the parties agree to negotiate in good faith a written amendment extending the term of the contract.

### **3.11 Service Provider Compensation.**

Compensation for services performed during the Initial Term shall only be for the Non-Discounted Portion of E-Rate Eligible services and the cost of any ineligible E-Rate



services and, in any event, shall not exceed the maximum compensation authorized by the Department. Payment of compensation shall be based on actual services performed during the Initial Term of the contract. The Department shall not be obligated to pay for any services not performed in compliance with the contract. In the event of early termination of the contract, the Department shall only be obligated to pay the compensation due up to the date of termination. In no event shall the Department be liable for any costs incurred or services delivered after the effective date of termination as provided herein or the service Delivery Deadline.

### 3.12 Contract Termination.

- a. Termination for Convenience. If at any time during the Term of the contract, the Department determines, in its sole discretion, that the services provided by vendor are no longer in its best interest, the Department may terminate the contract on thirty (30) calendar day's written notice to vendor.
- b. SPIN Change. If the Department determines that it is in the Department's best interest to retain another vendor to perform the services awarded to the vendor, due to a breach of contract or the inability of the vendor to provide the services, the Department may request a service provider change by filing a change of the service Provider Identification Number ("SPIN") with the SLD/USAC, at any time during the Term of the contract. Moreover, the Department may request a SPIN change as may be permitted under The E-Rate rules in effect at the time of the change request. Vendor agrees that it will cooperate with the Department in regard to any transition of services to another service provider as a result of a SPIN change.
- c. Suspension of Services. Ten (10) days after written notice from the Department to the vendor, the Department may request that vendor suspend installations in whole or part. The vendor shall promptly resume performance of installations upon written notice from the Department and upon such equitable extension of time as may be mutually agreed upon in writing by the Department's Chief Information Officer or their designee, and the vendor. Responsibility for any additional costs or expenses incurred by vendor as a result of resuming performance of installations shall be assigned by mutual agreement of the parties.
- d. Vendor Events of Default. Events of default ("Events of Default") include, but are not limited to, the following:
  1. Any material misrepresentation by vendor in its response to this RFP;
  2. Breach of any material agreement, representation or warranty made by vendor in the contract;
  3. Failure of vendor to perform in accordance with or comply with the terms and conditions of the contract or the E-Rate program rules;
  4. Failure of vendor to pay any non-tax debt owed to the federal government or the FCC in a timely manner, as required by 47 C.F.R. §1.1910, which

implemented the requirements of the Debt Collection Improvement Act of 1996;

5. Default by vendor under any other agreement vendor may have with the Department;
6. The directors or officers of the vendor are indicted for the commission of any felony or any misdemeanor that implies corruption or moral depravation, or for any crime against the public treasury, faith or function or that involves public property or funds;
7. If any license, permit, franchise or authorization needed by the vendor to carry out its obligations hereunder is suspended, revoked or expired;
8. If the termination of the contract is necessary for the protection of the public interest; or
9. An assignment by the end or for the benefit of creditors or consent by vendor to the appointment of a trustee or receiver or the filing by or against vendor of any petition or proceeding under any bankruptcy, insolvency or similar law.

### **3.13 Department Remedies.**

The occurrence of any Event of Default which vendor fails to cure, or cause to be cured, within thirty (30) calendar days after receipt of written notice given in accordance with the terms of the contract and specifying the Event of Default or which, if such Event of Default cannot be reasonably cured within thirty (30) calendar days after notice, vendor fails to commence, or cause to be commenced, and continue diligent efforts to cure or cause said Event of Default to be cured, in the sole opinion of the Department, the Department may declare the vendor in default, and the vendor written notice of the Department's intent to terminate the contract, effective as of the date specified in the notice. After giving written notice to the vendor, the Department may invoke any or all of the following remedies:

- a. Take over and complete the services or any part thereof, either directly or through others. Vendor shall be liable to the Department for any excess costs incurred by the Department. Any amount due the vendor under the contract or any other agreement vendor may have with the Department may be offset against amounts claimed due by the Department in exercising this remedy;
- b. Terminate the contract, effective at a time specified by the Department, in whole or in part, as to any or all of the services yet to be performed and/or if required, select a new vendor and request a SPIN change with the SLD/USAC;
- c. Suspend services during the thirty (30) day (or longer) cure period if the default results from an action or failure to act by vendor which affects the safety or welfare of students or the Department staff;
- d. Seek specific performance, an injunction or any other appropriate equitable remedy;
- e. Receive from vendor any and all damages, including money damages, incurred as a result or in consequence of, an Event of Default;

- f. Withhold all or part of vendor's compensation under the contract and notify the SLD/USAC to withhold payments that are due or future payments that may become due under the contract; and
- g. Seek any available remedies in law, equity, or by statute if vendor fails to pay any non-tax debt owed to the federal government or the FCC in a timely manner, as required by 47 C.F.R. §1.1910, which implemented the requirements of the Debt Collection Improvement Act of 1996.

### **3.14 No Department Waiver.**

No delay or omission, or series of delays or omissions, by the Department to exercise any right under the contract shall be construed as any type of waiver of any right of the Department to declare an Event of Default in the future. The remedies under the terms of the contract are not intended to be exclusive of any other remedies provided, and each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. The parties acknowledge that this right is solely for the benefit of the Department and if the Department permits the vendor or any of its subcontractors to continue to provide services despite one or more Events of Default, the vendor is not relieved of any responsibilities, duties or obligations under the contract.

### **3.15 Turnover of Documents and Records.**

Upon demand by the Department following termination of the contract for any reason, or following the expiration of the contract by its terms, vendor shall turn over to the Department or its designee within ten (10) business days of demand, all materials, supplies, equipment owned or purchased by the Department, completed or partially completed work, analyses, data, computer disks, documents and any other information relating in any way to the contract or the performance or furnishing of services, whether prepared by the vendor or its subcontractors. The vendor shall cause its subcontractors to undertake the same obligations agreed to by vendor under the contract.

### **3.16 Work Quality Assurance.**

The vendor is responsible for the quality of the work and activities of each of its staff and subcontractors, including without limitation, compliance with the terms of the contract and E-Rate requirements. The vendor shall retain and utilize sufficient resources to assure the most effective and efficient performance of services and shall utilize professionals licensed to practice the applicable profession, as required by law or by the contract. The vendor shall use efficient business administration methods and perform the services in the best way and in the most expeditious and economical manner consistent with the best interests of the Department, so as to ensure, among other things, that the services are performed at a reasonable cost to the Department and that the services performed by other entities or persons in connection with the contract are also efficiently and cost-effectively delivered.

### 3.17 Audit and Document Retention.

The vendor shall furnish the Department with such information as may be requested relative to the delivery and cost of services. The vendor shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to vendor's services under the contract for at least five (5) years after the last day of the delivery of E-Rate eligible services under the contract. All such information shall be subject to inspection and audit by the Department, the FCC/SLD/USAC or their agents or representatives. Pursuant to 47 CFR 54.516, the vendor shall be subject to audits and other investigations to evaluate vendor's compliance with the statutory and regulatory requirements of the E-Rate program, including those requirements pertaining to what services are purchased, what services are delivered, and how services are being used. The vendor shall assume responsibility for its subcontractors' compliance with the FCC/SLD/USAC requirements on document retention and auditing. The vendor shall include, in all of its subcontractor agreements for services, provisions requiring subcontractors to maintain the above-described records and allowing the Department or FCC/SLD/USAC or their contractors the same right to inspect and audit said records.

### 3.18 Confidential Information, Dissemination of Information, Ownership, Survival.

- a. Confidential Information. During the performance or delivery of services to the Department, the vendor may have access to or receive certain information that is not generally known to others ("Confidential Information"). The vendor will not use or disclose any Confidential Information or any finished or unfinished originals, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, construction documents, processes, data, data studies, briefs, drawings, maps, files, records, computer printouts, papers, notes, designs, equipment descriptions, or other materials prepared or generated as a result of the contract ("Work Product") without the prior written consent of the Department. The vendor shall use at least the same standard of care in the protection of the Confidential Information of the Department as vendor uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.
- b. Dissemination of Information. The vendor shall not disseminate any information obtained in the performance or delivery of services for the Department to a third party without the prior written consent of the Department. Vendor shall not issue publicity news releases or grant press interviews during or after the performance or delivery of the services, except as may be required by law or with the prior written consent of the Department. If vendor is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information or Work Product which may be in the vendor's possession, the vendor shall immediately give notice to the Department and its legal counsel, with the understanding that the Department shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. The vendor will not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is

quashed or withdrawn, or the time to produce is otherwise extended. The vendor will cause its personnel, staff and subcontractors to undertake the same obligations of confidentiality agreed to by vendor under the contract.

- c. Ownership. The vendor agrees that, to the extent permitted by law, any Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ *et seq.* To the extent any Work Product does not qualify as a "work for hire," The vendor irrevocably grants, assigns, and transfers to the Department all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All intellectual property, Confidential Information, and Work Product shall at all times be and remain the property of the Department. The vendor will execute all documents and perform all acts that the Department may request in order to assist the Department in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product. All of the foregoing items shall be delivered to the Department upon demand at any time and in any event, shall be promptly delivered to the Department upon expiration or termination of the contract within ten (10) business days of demand. In addition, the vendor shall return the Department's data in the format requested by the Department. If any of the above items are lost or damaged while in vendor's possession, such items shall be restored or replaced at vendor's expense.
- d. Injunctive Relief. In the event of a breach or threatened breach of sections (a), (b) and/or (c) above, the vendor acknowledges and agrees that the Department would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, the vendor agrees that the Department shall be entitled to immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that the Department may have in equity, or by law or statute.
- e. Survival. The provisions of the contract pertaining to Confidential Information, dissemination of information and ownership shall survive the termination or expiration of the contract.

### **3.19 Representations and Warranties of the Vendor.**

The vendor represents and warrants that the following shall be true and correct as of the date of the contract and shall continue to be true and correct (as may be modified from time to time subject to Department approval) during the Term of the contract:

- a. Financially Solvent. The vendor, and each of its subcontractors, is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all services and perform all obligations under the vendor's proposal(s) and contract. The vendor also warrants that neither it nor any of its subcontractors owe any non-tax debt to the federal government including but not limited, to the FCC.

- b. Compliance with Laws. The vendor agrees to comply with all aspects of the Federal False Claims Act which, in general, prohibits: (i) knowingly presenting, or causing to be presented to the Government of the United States a false claim for payment; (ii) knowingly making, using, or causing to be made or used, a false record or statement to get a false claim paid or approved by the Government of the United States; (iii) conspiring to defraud the Government of the United States by getting a false claim allowed or paid; (iv) falsely certifying to the United States the type or amount of property to be used; (v) certifying receipt of property on a document without completely knowing that the information is true; (vi) knowingly buying property of the Government of the United States from an unauthorized officer of the Government of the United States, and, (vii) knowingly making, using, or causing to be made or used a false record to avoid or decrease an obligation to pay or transmit property to the Government of the United States.
- c. Good Standing. The vendor and each of its subcontractors are not in default or have not been deemed by the Department to be in default under any other agreement with the Department during the five (5) year period immediately preceding the date of the contract.
- d. Good Standing with FCC. The vendor and each of its subcontractors, if any, has not been (a) debarred by the FCC or (b) disciplined by the FCC for any breach of its orders, rules, or regulations. The vendor or its subcontractors agree to promptly notify the Department if, at any time during the duration of the contract, the vendor or its subcontractors have not paid any non-tax debt owed to the federal government or the FCC in a timely manner, as required by 47 C.F.R. §1.1910, which implemented the requirements of the Debt Collection Improvement Act of 1996. If vendor or any of its subcontractors is under investigation by the FCC for any alleged breach of its orders, rules or regulations, vendor waives any rights to confidentiality to any records or materials subject to investigation by the FCC. Upon written request of the Department, vendor will turn over to the Department any documents or materials related to any investigation by the FCC as described above. In all of its agreements for services with its subcontractors, vendor shall include contract provisions which allow the Department the same right to inspect the same records that are subject to an investigation by the FCC.
- e. Code of Ethics. The vendor agrees to comply, and to cause each of its subcontractors to comply, with the dispositions of the Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives from Executive Agencies of the Commonwealth of Puerto Rico of Law 84 of June 18, 2002. In conformity with the laws and the norms that govern the contracting of services, the vendor is aware and warrants that no services will be rendered under the contract until it has been signed by both parties. Vendor further agrees and warrants that no services will be rendered under the contract after it has expired or been terminated. Services rendered in violation of this clause will not be paid, and any officer of the Department that requests and accepts services from the vendor in violation of this clause, is without legal authority to so.
- f. Authorization. The vendor has taken all action necessary for the approval and execution of the contract, and execution by the person signing on behalf of vendor



is duly authorized by vendor and has been made with complete and full authority to commit vendor to all terms and conditions of the contract which shall constitute valid, binding obligations of the vendor.

- g. Intellectual Property. That in performing the services, neither the vendor nor any of its subcontractors will violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party, and will not improperly use any third party's confidential information; and shall have, without encumbrance, all ownership, licensing, marketing and other rights required to furnish all materials that it furnishes to the Department under the contract and can grant or assign all rights granted or assigned to the Department pursuant to the contract.
- h. No Legal Actions Preventing Performance. As of the date of the contract, vendor has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its knowledge threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect vendor's ability, or the ability of its subcontractor(s) to perform its obligation under the contract.
- i. No Conflict with Other Government Contracts. The vendor represents and warrants that the services to be rendered to the Department pursuant to another contract, if any, subscribed with the Commonwealth of Puerto Rico are not in conflict with the services to be rendered under the contract.
- j. Unemployment Insurance and Social Security. Vendor certifies that it has paid unemployment insurance, disability, and chauffeurs social security, in all applicable cases; or, that it has a payment plan for payment of those obligations and is complying with such plan.

### **3.20 No Other Rights Limited.**

Nothing in the foregoing warranties will be construed to limit any other rights or remedies available to the Department under the law and the contract.

### **3.21 Gifts and Gratuities Prohibited.**

No gift, gratuity, offer of employment or other item of value was offered or made by the vendor or to the best of vendor's knowledge, by or to any subcontractors, or any of its employees, agents or subcontractors as an inducement for the award of services under the contract. The vendor and each of its subcontractors, is and shall remain in compliance with the FCC's rules governing the conduct of service providers participating in the E-Rate program.

### **3.22 Employment Restrictions.**

During the Term of the contract, and during one (1) full year following the termination or expiration of the same, neither of the contracting parties shall hire as an employee or full time contractor or subcontractor, any employee of the other party.

### **3.23 Manufacturer Warranty.**

Vendor shall assign to the Department the benefits of any manufacturer warranty of the products and shall cooperate with the Department in securing any and all remedies of such warranty for the benefit of the Department.

### **3.24 Independent Contractor.**

It is understood and agreed that the relationship of vendor to the Department is and shall continue to be that of an independent contractor. Neither vendor nor any of vendor's staff, agents, employees or subcontractors shall be entitled to receive Department employee benefits. It is further understood and agreed that the Department shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for vendor, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by vendor shall be the sole responsibility of vendor. The vendor agrees that neither vendor nor its staff or subcontractors shall represent themselves as employees or agents of the Department. The vendor shall provide the Department with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including, but not limited to, a social security number or a federal employer identification number.

### **3.25 Indemnification.**

The vendor agrees to defend, indemnify and hold harmless the Department, and its respective Department members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and, expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of the vendor, its officials, agents, employees and/or subcontractors in the performance of the contract.

The vendor shall, at its own cost and expense, appear, defend and pay all attorney fees and other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Department in any such action, the vendor shall, at its own expense, satisfy and discharge such obligation of the Department. The Department shall have the right, at its own expense, to participate in the defense of any suit, without relieving the selected vendor(s) of any of its obligations hereunder. The Department retains final approval of any and all settlements or legal strategies, which involve the interest of the Department.

If vendor, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Department may (without further notice to vendor)



retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of vendor, subject to the right of vendor to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Department in these circumstances shall be borne by vendor and vendor shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the Department was represented by counsel retained by the Department pursuant to this paragraph, or while vendor was conducting the defense.

The indemnifications set forth herein shall survive the expiration or termination of the contract.

### **3.26 Non-Liability of Department Officials.**

The vendor agrees that no Department member, employee, agent, officer or official shall be personally charged by vendor, its members if a joint venture, or any subcontractors with any liability or expense under the contract, or be held personally liable under the contract to vendor, its members if a joint venture, or any subcontractors.

### **3.27 Insurance Requirements.**

The vendor, at its own expense, shall procure and maintain insurance for all operations under the contract, whether performed by vendor or by subcontractors. The vendor shall submit to the Department satisfactory evidence of insurance coverage with its proposal(s). The minimum insurance requirements are described on Exhibit C.

### **3.28 Non-Discrimination.**

During the Term of the contract and any extension or renewal thereof, the vendor shall not fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, handicap, marital status, parental status, military discharge status, or national origin; or to limit, segregate, or classify employees or applicants for employment from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, handicap, marital status, parental status, military discharge status, or national origin. It is also an unlawful employment practice for vendor or any of its members to subject any Department employee, applicant, participant, student or volunteer to unwelcome sexual advances, requests for sexual favors or conduct of a sexual nature when submission to or rejection of such conduct is: (i) made either explicitly or implicitly a term or condition of such person's employment, participation or receipt of services; (ii) is used as a basis for a decision affecting the individual's employment, participation or receipt of services; or (iii) has the purpose of creating an intimidating, hostile, or offensive working or learning environment.

### **3.29 Assignment of Contract.**

The contract shall be binding on the parties and their respective successors and assigns; provided, however, vendor may not assign the contract or any of its obligations imposed thereunder without the prior written consent of the Department.

### **3.30 Entire Agreement; Amendments.**

The contract, including all attachments and referenced documents, constitutes the entire agreement of the parties with respect to the matters contained therein. No modification of or amendment to the contract shall be effective unless such modification or amendment is in writing and signed by both parties.

### **3.31 Continuing Obligation to Perform.**

In the event of any dispute between vendor and the Department, vendor shall expeditiously and diligently proceed with the performance of all of its obligations under the contract with a reservation of all rights and remedies it may have under or pursuant to the contract at law or in equity.

### **3.32 Survival/Severability.**

All express representations and warranties made or given in the contract shall survive the completion of services by the vendor or its subcontractors, or the termination of the contract for any reason. If any provision or part of the contract is held to be unenforceable, the contract shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the contract shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

### **3.33 Governing Law.**

The contract shall be construed in accordance with the laws and regulations of the Commonwealth of Puerto Rico and the United States of America, and any action related to the contract shall be venued solely in San Juan, Puerto Rico and the parties hereby irrevocably submit to the jurisdiction of its corresponding forum.

### **3.34 Conflict of Interest**

In the performance of its services under the contract, the vendor agrees to act in a professional and ethical manner, which includes neither having nor representing any adverse interests to the Department. "Adverse Interests" include the representation of clients that may have or could have interests contrary to the Department or contrary to the public policy of the Department of Education. This duty includes the continuous obligation of disclosing to the Department any relationship of the vendor with clients or third persons that may constitute a conflict of interest. It shall be understood that there exists a conflict of interests when, in the compliance of any duty to third parties, the vendor would have to



undertake any acts detrimental to the best interests of the Department, or when for the benefit of another prior, present or potential client, the vendor would have to promote something to which it would otherwise have to be opposed, in favor of the Department. Conflict of interest shall also consist of any conduct which is described or recognized as such in the laws and regulations of the Commonwealth of Puerto Rico. In any case that the Department determines that the vendor has a conflict of interest, it will give written notice to the vendor of such conflict and will give the vendor thirty (30) days to resolve the same. Failure to resolve such conflict will result in the termination of the contract.

### **3.35 Joint and Several Liability.**

In the event that vendor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by vendor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

### **3.36 Tax Obligations.**

Vendors shall be responsible for complying with all applicable federal and local tax laws and regulations.

### **3.37 Non-appropriation.**

Expenditures not appropriated by the Department in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event sufficient funds are not appropriated in a subsequent fiscal year by the Department for performance under the contract, the Department shall notify vendor and the contract shall terminate on the last day of the fiscal period for which funds were appropriated. In no event shall the Department be liable to vendor for any amount in excess of the current appropriated amount.

### **3.38 Force Majeure.**

Neither the vendor nor the Department shall be responsible for any failure to perform due to causes beyond either's respective reasonable control (each a "Force Majeure"), including but not limited to, acts of God, riots, embargoes, terrorist acts, acts of civil or military authorities, disruptions in the flow of data to or from networks, denial of or delays in processing of export license applications, accidents, strikes, fuel crises or power outages.

## 4 SPECIFIC TERMS AND CONDITIONS

### 4.1 Pre-Proposal Conference.

A Pre-Proposal Conference will be held as indicated in Table 1 for vendors interested in submitting proposals. Vendors are strongly encouraged to review this RFP very carefully prior to attending the meeting. Responses to questions submitted by the deadline indicated in Table 1 shall be provided at the Pre-Proposal Conference. In order to fully benefit from the participation in the Pre-proposal conference, vendors are advised to include Spanish-speaking personnel in their attending team, if needed.

Vendors are responsible for all of their costs associated with their participation in the Pre-Proposal Conference.

### 4.2 E-Rate Resource.

Vendor must retain the services of an E-Rate consultant or have a designated employee familiar with E-Rate program rules, forms and processes, who will conduct periodic reviews of the vendor's processes and forms and assist the Department with Beneficiary Audits and ensuring the vendor is full compliance with SLD/USAC and FCC requirements.

### 4.3 E-Rate Funding.

It is anticipated that a portion of the compensation authorized under the contract will be funded by the E-Rate program. Vendor shall institute a two-tiered billing system and shall be required to recover up to ninety percent (90%) of its compensation for such eligible E-Rate services directly from the SLD/USAC in accordance with the rules and procedures established by the FCC and the SLD/USAC.

The PRDE shall only be responsible for the Non-Discounted Portion of E-Rate eligible services and the cost of Ineligible E-Rate services, the total of which shall not exceed the PRDE's Total Cost. The PRDE shall have no liability for the payment of certain invoices, costs, charges or fees billed by vendor or its subcontractor(s) as described in this Section. If the SLD/USAC denies funding for all or any portion of the invoices, costs, charges and/or fees of Eligible E-Rate services, the PRDE has the option of discontinuing the receipt of any services for which funding was denied by the SLD/USAC any time following ten (10) days' written notice to the vendor. In the event of suspension or discontinuation of services or termination or expiration of the contract, the PRDE shall only be responsible for the Non-Discounted Portion of E-Rate Eligible services and any expenses incurred which (i) do not exceed the PRDE's Total Cost; (ii) have the prior written approval of the PRDE; and (iii) are for orders placed prior to the date of such suspension or discontinuation of services, termination or expiration of the contract.

#### **4.4 SLD/USAC Procedure.**

The SLD/USAC will specify in the FCDL the approved discount level and the approved funding amount of any services. Once the FCDL has been issued and the installations have begun, the PRDE will then submit FCC Form 486 to the SLD/USAC. The SLD/USAC will subsequently issue a Form 486 Receipt Notification Letter to both the PRDE and the vendor. The PRDE will separately notify vendor when to begin the eligible E-Rate installations after the FCDL is issued. Form 486 cannot be filed before receipt of the FCDL from the SLD/USAC.

The PRDE will notify vendor of its intent to order all or a portion of the services covered by one or more of the approved funding commitments included in the FCDL.

#### **4.5 E-Rate Representations and Warranties by Vendor.**

Vendor represents and warrants that it shall provide the SLD/USAC with truthful and accurate information about its invoices promptly upon request by the SLD/USAC. Vendor also represents and warrants that it has carefully identified components of the services that are Eligible E-Rate services. Further, through internal audit and review of the services rendered during the Term of the contract, Vendor represents and warrants that it will ensure that the services being provided through the E-Rate Program are limited to Eligible E-Rate services.

Notwithstanding the foregoing, the vendor is solely responsible and liable for compliance with all SLD\USAC procedures and requirements by its subcontractors, including but not limited to SLD\USAC requirements for submitting Form 474. Vendor is also solely liable for repayment to the SLD\USAC of E-Rate discount funding paid improperly as a result of vendor's failure to follow SLD\USAC procedures and requirements and/or improper billing by the vendor. The PRDE is not liable for any delays in payment by the SLD\USAC to vendor.

#### **4.6 E-Rate Invoices.**

The following requirements apply if the FCC Form 474 (Service Provider Invoice) process is being used.

- a. The service provider will invoice the undiscounted portion of installations directly to the Department. This percentage will be paid by the Department to the service provider at such time as it is funded by USAC. The service provider will invoice the SLD or USAC the remaining discounted percentage of the contracted amount, pursuant to the procedures set forth immediately below.
- b. When the Department purchases are made using available E-Rate funding, the service provider will be required to submit FCC Form 474 to the Department after services and/or equipment have been delivered, installed and are operational, but before any submission to USAC for reimbursement. As described in more detail below, the service provider must show the full amount of the invoice and then show the appropriate percentage due from the Department and from SLD or USAC.



- c. Invoices related to FCC Form 474 must:
- Contain all goods and services provided by the service provider and must reflect all charges to both the Department and USAC. This invoice must contain a comprehensive itemization of all charges by service type, product, or job itemization and clearly set forth the appropriate percentage of payments due from USAC and the Department, respectively.
  - Itemize all E-Rate eligible goods and/or services being procured per the corresponding the Department purchase order. Ineligible goods and/or services should not be included on FCC Form 470 and should be invoiced separately.
  - Be submitted to and reviewed by the Department prior to submission of the FCC Form 474 to USAC. The Department will review all service provider E-Rate invoices within 10 business days from their receipt by the Technology E-Rate Team. The service provider will only be permitted to submit the FCC Form 474 to USAC after receiving written approval from Department.
  - Be free of variances between items delivered and items billed. If variances are found, the Department will notify the service provider of such variances and that the invoice has not been approved. Corrected invoices must be re-submitted via the FCC Form 474 process previously described.
- d. The service provider shall include the following information on all invoices submitted to the Department for E-Rate eligible equipment and/or services:
- Date of invoice
  - Date(s) of installations
  - Service Provider Identification Number (SPIN)
  - PRDE's Billed Entity Number
  - Purchase Order number
  - Funding Request Number ("FRN")
  - Service provider's signature on invoice attesting to the accuracy and completeness of all charges
  - Detailed description of equipment installed and materials supplied that matches the Department's contract specifications, Form 470 and Form 471 descriptions of same
  - Clear, concise breakdown of amount(s) to be billed to USAC (discounted portion of eligible charges) and amount(s) to be billed to the District (non-discounted amount of eligible charges)
  - Invoice on service provider's letterhead or on a service provider-generated form
  - Proper E-Rate discount percentage as set forth by the applicable FRN and USAC Funding Commitment Decision Letter