

**ODP Business Solutions, LLC Clarifications/Exceptions to CoreTrust
Town of Delight, Arkansas
for
26COR-067 Printing Services & Promotional Items**

ODP Business Solutions, LLC ("ODP") believes that the clarifications/exceptions below present a very minor departure from Bid #26COR-067 ("Bid") and are not cause for ODP's Bid response to be found non-responsive. If for any reason you find any of the below to be a material departure from the Bid documents, we are happy to enter into good faith negotiations with you to endeavor to find a reasonable solution to satisfy the requirement(s).

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

Best Value Solicitation document

<u>Page</u>	<u>Clarification/Exception</u>
6	<u>Section B – Lead Agency Requirements</u> <u>2. Payment and Invoice Provisions</u> <u>B., bullets 9 & 10</u> ODP does not provide list price on its invoices. NTE List Price is N/A because this bid is for custom print.
7	<u>Section B – Lead Agency Requirements</u> <u>3. Force Majeure</u> <u>Extreme Market Volatility</u> <u>ODP strikes the following:</u> "In the event of extreme and unforeseen volatility in the marketplace, defined as circumstances outside the control of the Supplier that materially affect pricing or availability of supply across the broader industry, the Lead Agency may, at its sole discretion, make an equitable adjustment to contract terms or pricing. Any such adjustment shall be supported by documentation demonstrating the cause and impact of the volatility and approved in writing before taking effect." <u>ODP inserts the following:</u> "In the event of any extraordinary changes in the market, defined as circumstances outside the control of the Supplier that affect pricing or availability of supply, including but not limited to tariffs and costs impacted by raw materials or supply and demand, ODP will have the right to adjust pricing immediately upon providing written notice to reflect such price increases."
20	<u>Mandatory Affirmative Action Language</u> <u>N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)</u> <u>N.J.A.C. 17:27</u> See the attached Strategic Supplier Network Commitment document.

45	<u>13.2.2 Cost Proposal Workbook</u> <u>Minimum Ordering Quantities & Sustainability Fee</u> ODP shall institute a Sixty-five Dollar (\$65.00) minimum order value per delivered order. Orders that do not comply with such minimum order value will be processed subject to a special handling fee of Nine Dollars and Ninety-Five Cents (\$9.95). Additional freight charges may apply for items exceeding certain attributes regarding weight and/or dimensions, bulk items, Hawaii, Alaska and Puerto Rico orders, special orders and/or rush deliveries.
45	<u>13.2.3 Contract Price List Updates</u> <u>A. Annual/Renewal Price Adjustments</u> ODP inserts the following: “Notwithstanding anything herein to the contrary, in the event of any extraordinary changes in the market, defined as circumstances outside the control of the Supplier that affect pricing or availability of supply, including but not limited to tariffs and costs impacted by raw materials or supply and demand, ODP will have the right to adjust pricing immediately upon providing written notice to reflect such price increases.”
45	<u>13.2.3 Contract Price List Updates</u> <u>B. Right of Review and Audit</u> ODP strikes this section in its entirety. ODP inserts the following: “Subject to confidentiality agreements between ODP and third parties, and no more than annually, Customer, at its expense, may audit ODP’s books and records to determine whether ODP extended the correct pricing. Any third-party auditor used must be approved by ODP and must execute a non-disclosure agreement.”
45	<u>13.2.3 Contract Price List Updates</u> <u>C. Types of Updates Permitted:</u> <u>•Permanent Pricing Escalation/De-escalation (Annual/Renewal)</u> ODP strikes the following: “The awarded Supplier must provide supporting documentation such as industry cost indices (e.g., BLS Producer Price Index), raw material cost data, and any other supporting documentation requested to support the justification of changes.”
45 & 46	<u>13.2.3 Contract Price List Updates</u> <u>C. Types of Updates Permitted:</u> <u>•Temporary Pricing Escalation/De-escalation</u> ODP strikes the following: “The Lead Agency reserves the right to accept or reject such requests based on their merit. The awarded Supplier must provide a justification for the temporary price change, provide assurance that discounts as-bid and awarded

	remain firm, and detail for how long the temporary adjustment will remain in effect. Such pricing changes must be approved by the Lead Agency prior to implementation. The awarded Supplier shall submit formal requests, in writing, for temporary pricing escalation or de-escalations for extenuating circumstances at least 30 day in advance to CoreTrust, on behalf of the Lead Agency.”
48	<u>13.3.2 Customer Service, Billing and Invoicing</u> <u>Invoicing to Participating Entities should include the following:</u> <u>Bullet 12</u> ODP does not provide list price on its invoices.
49	<u>13.3.4 Reporting Capabilities and Third-Party Audits</u> ODP strikes the following: “The Contractor shall obtain a third-party firm at no additional cost to Lead Agency to conduct external price audits on this contract. The Contractor shall contract with a third-party firm (to be approved by Lead Agency) to conduct a quarterly random sampling (a minimum of 500 items per quarter) of contract items to confirm the accuracy of contract price or percentage discount and final sell price. Specifically, the third-party firm will confirm the prices displayed on the Contractor’s website are equal to or less than the contract terms. The third-party firm shall provide a quarterly report to Lead Agency indicating a Price Accuracy Percentage Rate of 98% or higher. The Price Accuracy Percentage Rate shall be calculated using the following formula: the total sum of the contract price for 500 products sampled divided by the total sum of the purchase price for 500 products. Example: \$5,050 divided by \$4,900 = 103%. At a minimum, the quarterly report will identify items not in compliance with the contract terms, provide the date of the audit, and screenshots of the items on the Contractor’s website that were not in compliance with the contract terms. If Lead Agency deems it is in the best interest of Lead Agency, Lead Agency reserves the right to increase the frequency of the Third-Party Audit.” ODP inserts the following: “Subject to confidentiality agreements between Supplier and third parties, and no more than annually, Lead Agency, at its expense, may audit Supplier’s books and records to determine whether Supplier extended the correct pricing. Any third-party auditor used must be approved by Supplier and must execute a non-disclosure agreement.”
53 & 54	<u>13.6 Data Protections and Data Breach</u> <u>13.6.1 Location of Data; CONUS or OCONUS</u> ODP clarifies that it has an IT services agreement with HCL that provides an extension of services by team members residing in India. They access all ODP data via ODP’s virtual desktops and they work varying hours.
54	<u>13.6. Data Protections and Data Breach</u>

	<u>13.6.2 Data Breach – Required Contractor Actions</u> ODP amends the second sentence to read as follows: “If no such agreement is in place, then the default agreement shall be notification of all confirmed Security Incidents involving Participant Entity personally identifiable information (PII) that may have a direct impact on the Participating Entity by phone immediately upon detection to the Participating Entity’s representative.” ODP will only notify on breaches involving PII, not all security incidents.
54	<u>13.6. Data Protections and Data Breach</u> <u>13.6.3 Cyber Security Plan & Protocols</u> ODP can provide: Information Security Posture Statement, ODPBS SOC2 Report, and PCI DSS Attestation of Compliance (if NDA is signed prior).
65	<u>5. Evaluation Process and Criteria</u> <u>F. Pricing Information</u> <u>2. Value</u> ODP strikes Section 5.F.2. as it is inconsistent with Section 13.2.2. ODP agrees to the language set forth in Section 13.2.2; therefore, all references to best or most favored pricing guarantees that are inconsistent with the language set forth in Section 13.2.2 shall be deleted.
65	<u>5. Evaluation Process and Criteria</u> <u>F. Pricing Information</u> <u>3. Maximum Price.</u> ODP strikes Section 5.F.3. as it is inconsistent with Section 13.2.2. ODP agrees to the language set forth in Section 13.2.2; therefore, all references to best or most favored pricing guarantees that are inconsistent with the language set forth in Section 13.2.2 shall be deleted.
67	<u>D. Fingerprint & Criminal Background Checks</u> ODP will not have “direct” contact with students, and therefore, this section is not applicable. To the extent that this section is applicable, ODP does not share its employees’ personal identifiable information. However, upon receipt of award, ODP will run background checks as required by any State Department and will provide to the College attestations certifying that the background checks have been run on the employees who will be performing the work and that such persons have not been convicted of a violent or serious felony.
72	<u>7. Affirmative Socioeconomic Steps</u> Please see attached Strategic Supplier Network Commitment document.

Section I – Form of Master Agreement
Master Cooperative Purchasing Agreement

<u>Page</u>	<u>Clarification/Exception</u>
78	<u>3. Pricing</u> <u>b. Restrictions</u> Notwithstanding anything herein to the contrary, in the event of any extraordinary changes in the market, defined as circumstances outside the control of the Supplier that affect pricing or availability of supply, including but not limited to tariffs and costs impacted by raw materials or supply and demand, ODP will have the right to adjust pricing immediately upon providing written notice to reflect such price increases
79	<u>4. Term; Termination</u> <u>C. Effect Of Termination</u> ODP adds the following after the word “Information” and before the word “shall” in the first sentence of Section 4 c.: “, <i>except for automatically generated computer back-up or archival copies generated in the ordinary course of Receiving Party's, as that term is defined below, information systems policies, provided that receiving party shall make no further use of such copies</i>”
80	<u>7. Insurance</u> ODP strikes the second to the last sentence of this section and replaces it with the following: “<i>Written notice shall be provided to Lead Agency and CoreTrust at least thirty (30) days prior to the cancellation, non-renewal, and/or material modification of any such policies. Supplier shall submit to CoreTrust within ten (10) calendar days after the Effective Date, upon request from any Program Participants and prior to furnishing Products & Services, valid certificates evidencing the effectiveness of the foregoing insurance policies.</i>”
80	<u>8. Audit</u> ODP strikes this Section 8 and replaces it with the following: “<i>Lead Agency, whether directly or through an independent auditor or accounting firm, at its sole cost and expense, may, no more than one time per 12-month basis, perform audits of Supplier non-confidential and non-proprietary materials, including inspection of books, records, and computer data relevant to Supplier’s provision of Products & Services to Program Participants pursuant to this Master Agreement, to ensure that pricing, inventory, quality, process, and business controls are maintained; provided, such inspections and audits shall be conducted upon reasonable written notice to Supplier and in a manner not unreasonably interfering with Supplier’s ordinary business operations.</i>”
80	<u>9. Miscellaneous</u> ODP adds the following paragraph: “<i>Adjustments. In the event of any extraordinary changes in the market, including but not limited to tariffs and costs impacted by raw</i>

	<i>materials or supply and demand, Supplier will have the right to adjust the pricing of the Products immediately upon providing written notice to CoreTrust to reflect such price increases.”</i>
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Section K – Form of Administration Agreement
Administration Agreement

<u>Page</u>	<u>Clarification/Exception</u>
87	<u>1 Party Obligations</u> <u>c. Supplier</u> <u>ii. Sales Commitment</u> ODP strikes the following sentence: <i>“Where Supplier has an existing contractual relationship for Products & Services with a state, Supplier shall notify such state of the Cooperative Program and transition the state to the pricing, terms, and conditions of a CoreTrust master agreement upon the state’s request; provided, regardless of whether the state decides to transition to such master agreement, Supplier shall offer such master agreement to all Organizations located within the state.”</i> This language could potentially conflict with the language in other public sector cooperative agreements.
88	<u>2. Term; Termination</u> <u>a. Term</u> ODP strikes Section 2.a. in its entirety. The Term of the Administrative Agreement shall be coterminous with the Master Agreement and any renewals thereof.
88	<u>2. Term; Termination</u> <u>b. Termination</u> ODP clarifies: The initial term and renewals of the resulting contract shall be mutually agreed upon. Each party shall have the right to terminate the resulting contract, at any time, without cause, by providing ninety (90) days prior written notice to the other party. If termination for cause is contemplated, the defaulting party shall receive thirty (30) days’ notice and the opportunity to cure prior to termination.
88	<u>3. Fees</u> <u>a. Administrative Fee</u> ODP strikes the following: <i>“Supplier shall pay CoreTrust the Administrative Fee for the preceding calendar month no later than thirty (30) days following the end of such calendar month.”</i> ODP shall pay CoreTrust the Administrative Fee on a quarterly basis and within thirty (30) days after the expiration of each calendar quarter.

88	<u>5. Representations & Warranties</u> <u>b. By Supplier.</u> ODP strikes the following: <i>“v) its sales force shall be compensated, including sales incentives, for sales to Participating Agencies under the master agreement in a consistent or better manner compared to sales to Organizations if Supplier were not awarded such master agreement;”</i>
90	<u>8. Definitions</u> ODP strikes the following: <i>“(a) “Administrative Fee” means an amount equal to three percent (3%) of the total sales price of all Products & Services purchased by the Participating Agencies and billed by Supplier (excluding taxes).”</i> ODP add the following: <i>“(a) ‘Administrative Fee’ means an amount equal to three percent (3%) of the Actual Spend of Participating Agencies and billed by Supplier. ‘Actual Spend’ shall mean the aggregate paid-for purchases from ODP by Participating Agencies under a Master Agreement, net of taxes, shipping costs, returns, discounts, credits, any incentives amortized for the applicable period, rebates actually paid, incentives actually paid, employee purchases under any type of purchasing program, postage, shipping and mailing services, technology items, non-code and special order furniture, paper, gift cards and warranties.”</i>