



OETC Volume Price Agreement

Section I. OETC-18I-STEAM-Shmoop

This agreement is made and entered into by the Organization for Educational Technology and Curriculum (OETC), 471 High Street SE, Suite 10-Creekside, Salem, OR 97301 and Shmoop.

A. Contractor Information

Shmoop University, Inc.
Company Name

PO Box 0935
Street Address

20-8941531
Tax Identifier

Los Altos, CA 94023-0935
City, State ZIP

B. Contract Details

Effective Date: November 7, 2018

Termination Date: November 6, 2021

Renewal Options: Up to three (3) additional years

Manufacturer(s) Awarded: Shmoop

Payment Terms: Net 30

Days Required for Delivery: 30 Days

Minimum Order: None

Freight Terms: Freight on Board Destination (FOB)

Administrative Fee: Five Percent (5%)

Section II. Intent and Purpose

The intent and purpose of this agreement is to establish a contractual relationship with technology equipment manufacturers, software and service providers to provide, warrant, and offer maintenance services on all products proposed in their response to the ITB issued by OETC on behalf of its public K-20 membership.

The Contractor, or its designated Fulfillment Agents, shall provide delivery, support, warranty and maintenance for all products and services covered in this agreement.

The Contractor agrees to take responsibility for the product and pricing updates, warranty and maintenance of all products furnished under this agreement.

The Contractor is responsible for the timeliness and quality of all services provided by individual Fulfillment Agents.

Section III. Order of Precedence

1. Terms and Conditions of this agreement.
2. Exhibits and amendments to this agreement.
3. Any terms and conditions on OETC's or an OETC member's purchase order.

Section IV. Terms and Conditions

A . General Terms and Conditions.

1. **Contract Coordinator.** The Contract Coordinator identified in Exhibit 1 (Form B) is to be the sole point of contact with regard to contractual matters, disputes, concerns or other issues arising from this Contract.

Contractor may update the Contract Coordinator by submitting a new version of Exhibit 1 (Form B) to the OETC Contract Administrator.

2. **Contract Period.** The term for the contract awarded pursuant to this solicitation will be for a three (3) year period effective from the date of contract execution.
3. **Contract Renewal.** At OETC's discretion, OETC may automatically renew this contract up to three (3) additional years. OETC will provide notice to the Contractor in the event OETC elects to renew or not renew the contract.
4. **Administrative Fee.** The OETC Administrative Fee is set in §1B.

For OETC Member orders placed directly with Contractor or its Fulfillment Agents, the OETC Administrative Fee shall be submitted quarterly by the Contractor and is based on sales of products and services (less any charges for taxes or shipping) resulting from this Contract. The

quarterly submission must include the OETC Member name, date of purchase and amount purchased.

For OETC Member orders placed directly by OETC the OETC Administrative Fee will be collected by OETC at the time of sale.

Contract Awardee and/or its Fulfillment Agents may apply to the OETC Contract Administrator for a one-time OETC Administrative Fee reduction for large orders with a dollar value over \$1,000,000.

5. Notice.

- a. **Form of Notice.** All notices, requests, claims, demands and other communications between the parties shall be in writing.
- b. **Method of Notice.** All notices shall be given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, (iv) by facsimile, or (v) by electronic mail] to the address of the OETC Contract Administrator or Contractor's Contract Coordinator or such other address as either party may specify in writing.
- c. **Receipt of Notice.** All notices shall be effective upon
 - i. Receipt by the party to which notice is given, or
 - ii. On the fifth (5th) day following mailing, whichever occurs first.
- d. **Receipt of Notice for Email.** If notice is delivered by email, notice shall be effective when the recipient, by an email sent to the email address for the sender stated in this section or by a notice delivered by another method in accordance with this section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section.

B. Pricing and Products.

1. **Lowest Possible Price.** OETC or an OETC Member shall pay the lower of the prices contained in Exhibit 1, and any subsequent pricing updates.

Any pricing promotions, General Price Reduction, or Per Transaction Multiple Unit Discount offered by Contractor or its Fulfillment Agents must be offered to OETC Members on the OETC Contract.

Only General Price Reduction price decreases will apply to all subsequent OETC Member orders.

If Contractor or its Fulfillment Agents fails to offer a pricing promotion, General Pricing Reduction, or Per Transaction Multiple Unit Discount, or if pricing is found to not be the lowest possible price for Consortium Members as offered by Contractor and its Fulfillment Agents, this agreement may be immediately suspended, re-bid, or pricing adjusted to affirm this requirement.

2. **Maintaining Exhibit 1 - Price Schedule.** All pricing changes and product additions, deletions or updates must be submitted on the OETC Pricing Template. This is an Excel template. No other format will be accepted.

It is the responsibility of the Contractor to maintain an accurate price list for the lifetime of the contract including marking existing products as discontinued and submitting a complete and accurate price list every six months, or more frequently if needed.

All changes to the price list must be submitted 30 days prior to taking effect.

3. **Price Increases.** Pricing may not increase greater than 3% over a single calendar year, and increases must be approved by the Consortium Contract Administrator prior to taking effect.
4. **Discontinued Items.** Discontinued items must be marked on the OETC Pricing Template and submitted to help@oetc.org to be removed from the contract. If an OETC member purchases a product that is no longer available, but was not designated so by the Contractor, it will be the responsibility of the Contractor to ship an equivalent or better product at the price of the purchased, discontinued product.
6. **Adding New Products.** Contractor may make model changes, add new products, and product upgrades or services using the Pricing Template. The pricing for these changes shall incorporate comparable pricing discount levels approved by the OETC Contract Administrator for similar Products and Services.

These products and services may be added to the awarded contract at the same percentage off of Manufacturer's Suggested Retail Price specified in the ITB Response, or at a greater discount.

7. **Travel Costs.** If applicable, on-site services pricing shall include travel costs to the metropolitan areas of any OETC member in the contiguous U.S. (e.g., Portland, Seattle, Boise, Spokane, Eugene). Pricing for on-site services outside these areas may be billed at fixed or actual rate. The rate may be negotiated with individual OETC members at the time of sale.

C. Fulfillment Agents

1. **Fulfillment Agents Allowed.** Contractor may assign its fulfillment rights and obligations of this Agreement to one or more Fulfillment Agents.
2. **Adding or Removing Fulfillment Agents.** Contractor may propose adding or removing fulfillment agents throughout the lifetime of this Agreement by submitting a revised version of Exhibit 1 (Tab #5) to OETC's Contract Administrator.
3. **OETC Approval Required.** Proposed additions must be approved by OETC's Contract Administrator before taking effect.

D. Payment Terms and Options

1. **Payment Terms.** All purchase orders received by OETC or its members will be on Net 30 terms unless otherwise agreed upon.

2. **Invoice with shipment.** Vendors may not submit an invoice for payment until the order is fulfilled either electronically or F.O.B Destination.
3. **Leasing.** Individual OETC Members may enter into lease agreements for the products covered in this Contract.

E. Delivery and Returns

1. **Freight on Board.** All deliveries shall be F.O.B. Destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor as long as the Contractor designates the carrier, until delivery to the identified ship-to address, at which time responsibility shall pass to the OETC Member except as to latent defects, fraud and Contractor's warranty obligations.
2. **Shipping costs.** All items must be bid Freight On Board Destination (hereinafter FOB). This does not include hardware items being shipped to Alaska or Hawaii. Actual shipping costs will apply to items shipped Alaska or Hawaii.
3. **Delivery.** Delivery of ordered product should be completed within thirty (30) calendar days after receipt of an order, unless otherwise agreed to by OETC and the OETC Member.
4. **Risk of Loss.** Whenever an OETC Member does not accept product due to missing, damaged, defective, incorrect order the Contractor is responsible for the return shipping cost of returned product. The Contractor shall bear all risk of loss or damage with respect to returned product due to missing, damaged, defective and incorrect order, except for loss or damage directly attributable to the negligence of OETC or OETC Member.
5. **Returns.** Product without defect and in original packaging may be returned with proper notification of Selected Reseller by OETC within sixty (60) days of receipt of shipment. For defective product, manufacturer's warranty has precedence.
6. **Restocking Fees.** No restocking fees are permitted on any returns, defective or otherwise.
7. **Failure to Fulfill.** If a product is purchased by an OETC member from a valid price list and cannot be fulfilled for any reason by the Contractor or its designated Fulfillment Agents, an equivalent or better product will be substituted at no-additional cost to the OETC Member.

F. Amendments, Scope and Termination

1. **Indemnification.** Contractor and its Fulfillment Agents shall fully indemnify, hold harmless and defend (collectively "indemnify" and "indemnification") OETC and its directors, officers, employees, agents, and Members (collectively, "Indemnified Parties") from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable

attorney's fees and costs), whether or not involving a third party claim, which arise out of or relate to

- a. Any breach of any representation or warranty of Contractor or its Fulfillment Agents contained in this Agreement, or
 - b. Any breach or violation of any covenant or other obligation or duty of Contractor or its Fulfillment Agents under this Agreement or under applicable law, in each case whether or not caused by the negligence of OETC or any other Indemnified Party and whether or not the relevant claim has merit.
2. **Cancellation.** OETC may cancel this Contract for a failure to perform or uphold any of the terms and conditions outlined in this agreement. Additionally OETC may cancel a contract if the consortium's cumulative annual sales are less than \$100,000 per calendar year.
 3. **Amendments.** Contract amendments shall be negotiated by OETC whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and OETC as required by law.
 4. **Entire Agreement.** This agreement contains all the terms agreed to by the parties relating to its subject matter. It replaces all previous discussions, understandings, and agreements.
 5. **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 Contract, 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.
 6. **Severability.** If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both OETC and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section V. Definitions

Administrative Fee. The fee paid by Contractor to cover the cost of OETC's internal and external sales and marketing efforts, as well as management of the contract for its entire duration. This includes but is not limited to: customer service, order support, and management of Contractor's page within in the OETC Store.

Contractor. The organization or entity who wins an Request for Proposal and signs a contract with OETC. Contractor is responsible for all terms and conditions set forth in this agreement.

FOB Destination. Shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.

FOB Inside Delivery. Special Shipping arrangements, such as inside delivery, may include additional fees payable by the OETC Member. Any FOB inside delivery must be annotated on the OETC Member's Purchase Order.

Force Majeure. 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 OETC's Member states or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; 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.

Fulfillment Agent(s). A designee by the Contractor to take orders on behalf of the Contract Holder. Often if the contract holder is a manufacturer, the manufacturer names channel partners as its fulfillment agents. These can be modified throughout the life of the contract.

General Price Reduction. General price reductions are submitted on OETC's Price Template and apply to all OETC members for any and all quantities.

Manufacturer. A company that, as one of its primary business function, designs, assembles owns the trademark/patent and markets branded technology equipment, software or services.

MSRP. Manufacturer Suggested Retail Price. If Manufacturer has a MSRP for Education that is lower than standard MSRP, than OETC presumes all reference to MSRP refer to Education MSRP.

OETC Contract Administrator. The point of contact at OETC for all questions and changes related to the terms and conditions of this Agreement, including cancellation and extensions. Unless otherwise specified OETC's Executive Director is the Contract Administrator.

Per Transaction Multiple Unit Discount. A contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by an OETC Member.

Premium Savings SKU. Deeply discounted standard configurations available to Purchasing Entities using the OETC Contract. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals. OETC reserves the right to expand and modify the PSP throughout the life of the contract.

Services. Broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contract Vendors may offer, but OETC Members do not have to accept, limited professional services related ONLY to the equipment and configuration of the equipment purchased through the resulting contracts. Each oetc member determines restrictions and negotiates terms for services.

Warranty. The Manufacturer's general warranty tied to the product at the time of purchase.

Section VI. Attachments

Attachment A: Suspension and Debarment Certification

Fulfillment Agent(s) and Contact(s)

Pricing

Section VII. Contract Signature Page

The undersigned hereby agrees to the specifications, terms and conditions of this request for proposals.

The undersigned acknowledges their authority to submit this proposal on behalf of the firm listed below and bind it to comply with these specifications, terms and conditions if any contract is awarded through this ITB process.

Furthermore, the undersigned certifies conformity to applicable Federal laws, Oregon Revised Statutes, and Oregon Administrative Rules concerning public contracts, and that this proposal is made without connection with any person, firm or corporation making a proposal for the same goods or services, and is in all respects fair and without collusion or fraud.

Shmoop

Name

Title

Signature

Date

Organization for Educational Technology and Curriculum

Zach Jensen

Name

Contracts Manager

Title

Signature

November 7, 2018

Date



Attachment A: Suspension and Debarment Certification

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

1. The Respondent certifies to the best of its knowledge and believe that it and its principals:
 - 1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 1.2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 1.3. Are not presently indicted of or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. 1.2 of this certification; and
 - 1.4. Have not within a three-year period preceding this response had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the Respondent is unable to certify to any of the statements in this certification, Respondent shall attach an explanation to this proposal.

Business Name: Shmoop University, Inc.

Date: 09/26/2018

By: Ellen F. Siminoff, CEO
Name and Title of Authorized Representative

Ellen F. Siminoff
Signature of Authorized Representative

Form E - Fulfillment Agent
OETC-18I-STEAM

Fulfillment Agent 1 Information

Company Name	Shmoop University, Inc.
Street Address	P.O. Box 0935
City, State, ZIP Code	Los Altos, CA, 94023-0935
Allowed Territories	Worldwide

Sales and Support Contact

Name	Kelsey Olson	Email	kelsey@shmoop.com
Title	Director of Partnerships and Services	Phone Number	(855) 574-6667

Remit To / Payment Contact

Name	Ellen Siminoff	Email	billing@shmoop.com
Title	CEO	Phone Number	(855) 574-6667

Allowed Territories

Worldwide

Category Percent off of MSRP (Required)*

OETC-18I-STEAM

Manufacturer	Category	Bidder's Choice Category Description	% off Education MSRP	\$100,000 - \$499,999	\$500,000 - \$999,999	\$1,000,000+
Shmoop University, Inc.	Curriculum	Curriculum	93%	94%	95%	96%
			\$20/student/year	\$18/student/year	\$15/student/year	\$10/student/year