

PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)
Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT
EVENFLO COMPANY, INC.
Washington Contract Number: 01910
(hereinafter "Contractor")
And
State of Utah
(hereinafter "Participating Entity")

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1. **Scope:** This addendum covers the WSCA Breast Pumps Contract lead by the State of Washington, for members of WSCA or NASPO, for use by Participating Entity's programs, including Women, Infants & Children Programs office.

2. **Participation:** Use of specific WSCA or NASPO cooperative contracts by other agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Participating Entity Modifications or Additions to Master Price Agreement:**

(These modifications or additions apply only to actions and relationships within the state in which the Participating Entity is located.)

State of Utah Additional Terms and Conditions for WSCA Participating Addendums

The following terms and conditions will be added to the Participating Addendum for the State of Utah:

1) **AUTHORITY:** Provisions of this Addendum are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

2) **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

3) **RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

4) **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multi-Step Process.

4.1 **Status Verification System**

A. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with UCA Section 63G-11-103.

B. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

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- C. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
D. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-11-103.

4.2 Indemnity Clause for Status Verification System

A. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

B. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

5) **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

6) **TAXES:** Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

7) **POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

8) **REPORTS AND FEES:** The Contractor agrees to provide quarterly administrative fee in the form of a Check or EFT payment. The fee will be payable to the Participating Entity for an amount equal to 0.1% of the net sales (net of any returns, credits, or adjustments) under this Addendum for the period. The Contractors WSCA pricing to the Participating Entity may be adjusted to offset for the equivalent fee amount. Payment(s) shall be made in accordance with the following schedule:

| <u>Period End</u> | <u>Fee Due</u> |
|-------------------|----------------|
| June 30 | July 31 |
| September 30 | October 31 |
| December 31 | January 31 |
| March 31 | April 30 |

The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the Participating Entity during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The report will be provided in secure electronic format and/or submitted electronically to the state contact listed in this Addendum.

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9) **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.

10) **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives the STATE express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

11) **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).

12) **INDIVIDUAL CUSTOMERS:** Each State agency and each political subdivision, as a State Entity, that uses this will be treated as if they were individual Customers. Each agency and each political subdivision will be responsible for their own charges, fees, and liabilities. The Contractor will apply the charges to each State Entity individually.

Rev 041310

4. [Purposefully left blank.]

5. Primary Contacts: The primary contact individuals for this participating addendum are as follows
(or their named successors):

Lead State Contract Administrator

Name: Melissa Cox, Contracts Specialist
Address: Department of General Administration, Office of State Procurement
210 11th Ave SW Rm 201
Olympia, WA 98504-1101
Voice: (360) 902.7439
Fax: (360) 586.2426
E-mail: mcox@ga.wa.gov

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Contractor

Name: Susan Vogtsberger
Address: Evenflo Company, Inc.
Ameda Breastfeeding Products
475 Half Day Road, Suite 200,
Lincolnshire, IL 60069
Voice: (847) 964-2628

Fax: 847-793-0169
E-mail: Susan.Vogtsberger@ameda.com

Participating Entity

Name: David R. Gill
Address: Room 3150 State Office Building
Capitol Hill Complex
Salt Lake City, Utah 84114
Telephone: 801-538-3254
Fax: 801-538-3882
E-mail: dgill@utah.gov

6. [Purposely left blank.]

7. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract #01910" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, monthly payment (if appropriate), itemized list of items being purchased, & rates of the service being used

8. Price Agreement Number: All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: [insert appropriate number] and the Lead State price agreement number: 01910.

This Participating Addendum and the Master Price Agreement number 01910 (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements,

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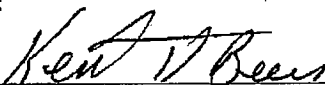
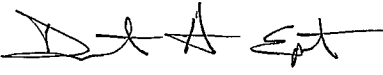
whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution
 by both parties below.

| | |
|--|---|
| Participating Entity: State of Utah | Contractor: EVENFLO, Inc. |
| By:  | By:  |
| Name: Kent D. Beers <i>DREW 1/10/11</i> | Name: DUSTIN EPSTEIN |
| Title: Purchasing Director | Title: VICE PRESIDENT |
| Date: 11 January 2011 | Date: 1/17/11 |

[Additional signatures as required by Participating Entity]