



The State of Mississippi
Department of Finance and Administration
Office of Purchasing, Travel and Fleet Management

In conjunction with



Request for Proposals

Mississippi Solicitation Number

3120002260

**NASPO ValuePoint Master Agreement for
Fire Trucks and Fire Apparatus**

May 4, 2021

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REQUEST FOR PROPOSAL

Fire Trucks and Fire Apparatus

Solicitation # 3120002260

Section 1: NASPO ValuePoint Solicitation - General Information

1.1. Purpose

The State of Mississippi, Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management (hereinafter referred to as State of Mississippi or OPTFM) is requesting proposals for fire trucks and fire apparatus in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than are obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions. The initial term of the Master Agreement shall be three (3) years. The Master Agreement may be extended beyond the original contract period for two (2) additional one year periods at the State of Mississippi's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance as outlined in Section 3 of the NASPO ValuePoint Master Terms and Conditions. (Attachment A). It is anticipated that this RFP may award up to six (6) National and four (4) Regional Master Agreements with multiple contractors, at the State of Mississippi's discretion. The Regional providers will be based on one (1) award per NASPO region.

This RFP is designed to provide interested Offerors with sufficient information to submit

proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data.

This will be a new Master Agreement for the State of Mississippi and NASPO ValuePoint.

1.2. State of Mississippi, Solicitation Number and State of Mississippi Contract Administrator

The State of Mississippi, Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management is the office issuing this document and all subsequent addenda relating to it. The reference number is Solicitation # **3120002260**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The State of Mississippi Contract Administrator identified below is the single point of contact during this procurement process. Offerors and interested persons shall direct all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, change, clarification, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement to the State of Mississippi Contract Administrator. The State of Mississippi Contract Administrator designated by the State of Mississippi, Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management is:

Billy Beard, Director
State of Mississippi, Department of Administration
Office of Purchasing, Travel and Fleet Management
501 North West Street, Suite 701-A
Jackson, Mississippi 39201
Billy.beard@dfa.ms.gov
PH: 601-359-5171 Fax: 601-576-2740

1.3 Definitions

The following definitions apply to this solicitation. Attachment A also contains definitions of terms used in this solicitation and the NASPO ValuePoint Master Agreement terms and conditions.

“Agency” means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; except a charter school authorized by the Mississippi Charter School Authorizer Board; and except the Mississippi State Port Authority.

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

“Award” means the final execution of the contract document.

“Business Hours” means 8:00 AM thru 5:00 PM. CST

“Close of Business” means 5:00 PM. CST

“Trade Secrets and Confidential Commercial or Financial Information” means records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.

“Contract” means all types of Mississippi agreements, regardless of what they may be called, for the procurement or disposal of commodities, equipment, services, or construction.

“Contractor” means any person having a contract with a governmental body.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Evaluation Committee” means a body appointed to perform the evaluation of Offeror’s proposals.

“Evaluation Committee Report” means a report prepared by the State of Mississippi Contract Administrator and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“Finalist” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“State of Mississippi” means the State of Mississippi conducting this cooperative procurement, evaluation, and award.

“Mandatory” – the terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Master Agreement” means the underlying agreement executed by and between the State of Mississippi, acting on behalf of NASPO ValuePoint, and the Contractor, as now or hereafter amended.

“Minor Technical Irregularities” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“NASPO ValuePoint” means the cooperative purchasing program of the National Association of State Procurement Officials (NASPO).

“Offeror” means the company or firm who submits a proposal in response to this Request for Proposal.

“Other Supporting Materials” means materials Offerors include to enhance their proposal.

“Participating Entity” means a state, or other legal Entity, properly authorized to enter into a Participating Addendum.

“Price Agreement” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services, or construction to a procuring agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“Prime Contractor” means the entity submitting the response to this RFP

“Agency Procurement Officer” means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

“Purchasing Agency” means any governmental body other than the Office of Purchasing, Travel and Fleet Management which is authorized by regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts.

“Proposal” means the official written response submitted by an Offeror in response to this Request for Proposal.

“Request for Proposals” or “RFP” means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” means an offer that conforms in all material respects to the requirements set forth in the Request for Proposals. Material respects of a Request for Proposals include, but are not limited to price, quality, quantity, or delivery requirements.

“Sealed” in terms of a non-electronic submission means, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the State of Mississippi Contract Administrator. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the State of Mississippi Contract Administrator in such cases. The sealed proposal will be used for the public file.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offeror’s company.

“Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.).

“Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

1.4 NASPO ValuePoint Background Information

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges,

school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites www.naspovaluepoint.org/#/home/contracts and www.naspo.org.

1.5 Participating States

In addition to the State of Mississippi conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement:

Hawaii
Iowa
Maryland
Montana
South Dakota
Texas
Virginia

Other entities may become Participating Entities after award of the Master Agreement. State-specific terms and conditions that will govern each state's Participating Addendum may be incorporated into the Participating Addendum after award.

1.6 Anticipated Usage

This is a re-solicitation for the State of Mississippi and NASPO ValuePoint. Annual usage data for the contract period of September 1, 2016 through March 30, 2021 is listed below. No minimum or maximum level of sales volume is guaranteed or implied in awarded agreements made under this RFP.

\$76.36M

1.7 Request for Proposal – located on Mississippi Procurement Portal listed below

https://www.ms.gov/dfa/contract_bid_search/Bid?autoloadGrid=False

Section 2: Solicitation Requirements, Information and Instructions to Offerors

2.1 Schedule of Events

Action	Responsible Party	Due Dates
1. Publish RFP	State of Mississippi	6/21/2021
2. Written Questions due from Vendors	Potential Offerors	7/19/2021
3. Proposal Due	Potential Offerors	8/2/2021
4. Evaluation and Award	Evaluation Committee	8/16/2021
5. Selection of Finalists	Evaluation Committee	8/18/2021
6. Best & Final Offer Request/Due (if requested)	State of Mississippi/Finalist Offerors	8/20/2021
7. Finalize Contractual Agreements	State of Mississippi/Finalist Offerors	8/27/2021
8. Contract Awards	State of Mississippi/Finalist Offerors	8/31/2021
9. Protest Deadline	State of Mississippi	7 days from the award

All times are **Central Standard Time** unless indicated otherwise.

2.2 Explanation of Events

The following items describe the activities listed in the schedule of events shown above.

2.2.1 Registering in State of Mississippi's E Procurement System (MAGIC)

Please note: It shall be the responsibility of each manufacturer to ensure that they have a current profile in the State's e-procurement system. The website to register as a vendor with the State is: <https://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>. If you currently have a State Contract, you will already have a vendor number. If you are unsure of your vendor number, please contact Ramona Jones at Ramona.Jones@dfa.ms.gov or 601-359-9335.

If you have never created a company profile in MAGIC, you will not have a MAGIC User Id or password. In this event, an email should be sent to mash@dfa.ms.gov. Enter "Vendor ID Request" as the email Subject, and include the following information in your email:

- MAGIC Vendor Number
- Vendor Name
- Contact Name

- Contact Email Address
- Contact Phone Number

Current information such as e-mail addresses, contact person(s), phone number(s), etc., must be updated whenever there are any changes to your profile. Also it shall be the responsibility of the manufacturer to ensure that all dealers listed on your dealers' list are registered with their current information (if applicable). If a dealer is not registered, they will not be listed in the State's online ordering and will not receive any orders from State Agencies.

2.2.2 RFP Question and Answer Process

Any inquiries or requests regarding this procurement must be submitted in writing to the State of Mississippi Contract Administrator, by the date and time noted in Section 2.1 (Schedule of Events), in order to be considered. Written questions must be submitted **via email** to the State of Mississippi's Contract Administrator.

Offerors may contact **ONLY** the State of Mississippi's Contract Administrator regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond to any inquiries on behalf of the State of Mississippi.

The identity of potential Offerors will not be published with the answers, but the text of questions will be restated, so Offeror's are cautioned about including context in questions that may reveal the source of questions.

Written responses to written questions will be posted, as indicated in the Schedule of Events, posted to:

https://www.ms.gov/dfa/contract_bid_search/Bid?autoloadGrid=False

2.2.3 Proposal Due Date

Proposals must be received by the posted due date and time as described in the Schedule of Events, Section 2.1 of this RFP. Proposals received after the deadline will be late and ineligible for consideration.

2.2.4 Evaluation and Award

The State of Mississippi Contract Administrator is required to verify each of the proposals submitted complies with the mandatory requirements before submitting the proposals to the evaluation committee for review. The State of Mississippi Contract Administrator will provide the Evaluation Committee with the evaluation criteria for scoring the proposals. The evaluation criteria are taken directly from the RFP.

The quality of the proposals submitted will determine the number of finalists, so Potential Offerors are encouraged to submit their best proposals.

Adhering to the Schedule of Events is important; however, there are times that the dates listed in the Schedule of Events may be subject to change.

Section 3 General Requirements

3.1 Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Cover Letter (Attachment G.). Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section 5 of this RFP.

3.2 RFP Addenda

Formal changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via formal written addenda issued by the State of Mississippi. The State of Mississippi accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the State of Mississippi's e-Procurement System at https://www.ms.gov/dfa/contract_bid_search/Bid?autoloadGrid=False to obtain RFP addenda or other information relating to the RFP.

3.3 Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3.4 Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a procuring agency which may derive from this RFP. **The procuring agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.**

3.5 Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the procuring agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

3.6 Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the cover letter. The State of Mississippi personnel will not merge, collate, or assemble proposal materials.

3.7 Firm Offers

Responses to this RFP, including proposed costs, will be considered firm for (180) days after the proposal due date or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

3.8 Cancellation of Procurement

This RFP may be canceled at any time up until the time of award of the Master Agreement(s) if the State of Mississippi determines such action to be in the collective best interests of Participating States.

3.9 Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the contractor. The State of Mississippi's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

3.10 Legal Review

The State of Mississippi requires that all Offerors agree to be bound by the general requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of State of Mississippi's Contract Administrator.

3.11 Governing Laws and Regulations

This procurement is conducted by the State of Mississippi in accordance with the State of Mississippi Procurement Code §§ 31-7. This code is available at <http://www.lexisnexis.com/hottopics/mscode/>. These regulations are available at <https://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/bureau-of-purchasing-and-contracting/procurement-manual/>

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of Mississippi. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in the State of Mississippi. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in Section 35 of the NASPO ValuePoint Master Agreement Terms and Conditions.

3.12 Basis for Proposal

Only information supplied, in writing, by the State of Mississippi through the Contract Administrator or in this RFP should be used as the basis for the preparation of Offeror proposals.

3.13 Contract Terms and Conditions

The contract between a procuring agency and a contractor will follow the format specified by the State of Mississippi and contain the terms and conditions set forth in the NASPO ValuePoint Master Agreement Terms and Conditions and the State of Mississippi Participating Addendum. However, the procuring agency reserves the right to negotiate provisions in addition to those contained in this RFP with any Offeror. The contents of this RFP, as revised and/or supplemented, and selected portions of the successful Offeror's proposal may be incorporated into and become part of any resultant contract.

The State of Mississippi discourages exceptions from the contract terms and conditions as set forth in the Master Agreement. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the State of Mississippi (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. The State of Mississippi may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Master Agreement are not acceptable to the State of Mississippi and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

3.14 Disclosure of Proposal Contents

Proposals will be kept confidential until negotiations and the award are completed by the

State of Mississippi. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The State of Mississippi Contract Administrator will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

1. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Proposals containing confidential information must be submitted as two separate versions: unredacted (version for evaluation purposes) and redacted (version (information blacked out and not omitted or removed for the public file.
2. Confidential data is restricted to:
 - a. Trade secrets or other proprietary information, including confidential vendor information, or any other information that is required to be confidential by state or federal law.
 - b. PLEASE NOTE: The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the State of Mississippi shall examine the Offeror's request pursuant to the Mississippi Public Records Act of 1983, MS Code 25-61-1 et seq.

3.15 No Obligation

This RFP in no manner obligates the State of Mississippi or any of its agencies to the use of any Offeror's goods or services until or after a valid written contract is awarded and approved by appropriate authorities.

3.16 Right to Accept All or Portion of Proposal

Unless otherwise specified in the solicitation, the State of Mississippi may accept any item or combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it provided a proposal. In the event that the Offeror so restricts its Proposal, the State of Mississippi may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the State of Mississippi and NASPO ValuePoint. The State of Mississippi may otherwise determine at their sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

3.17 Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Cover Letter (Attachment G). Submission of a proposal constitutes acceptance of the Evaluation Factors contained in this RFP.

3.18 Offeror Exceptions to Terms and Conditions

Offerors are cautioned that award may be made on receipt of initial proposals without clarification or an opportunity for discussion, and the nature of exceptions would be evaluated.

3.19 Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Participating Entity and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

3.20 Offeror's Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in Section 1.3.

3.21 Right to Waive Minor Irregularities

The State of Mississippi in its sole discretion reserves the right to waive minor irregularities in the Proposal, which include but are not limited to corrections of deficiencies or clarification of ambiguities that in the judgment of the State of Mississippi do not require a comprehensive proposal rewrite. The State of Mississippi also reserves the right in its sole discretion to waive certain mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and the failure to do so does not materially affect the procurement.

3.22 Change in Contractor Representatives

The Participating Entity reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Participating Entity, adequately meeting the needs of the Agency.

3.23 Notice of Penalties

Mississippi Code 25-4-105 addresses certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable; and penalties as provided for in Sections 25-4-109 and 25-4-111.

3.24 Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the State of Mississippi / Participating Entity written

approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or any contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

3.25 Ownership or Disposition of Proposals and other Materials submitted

All documents submitted in response to the RFP shall become property of the State of Mississippi. After award, the State of Mississippi will maintain one (1) copy of each proposal submitted and shred/destroy all other copies submitted.

3.26 Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the State of Mississippi.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the State of Mississippi / participating Entity's written permission.

3.27 Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section 2.2.2, RFP Question and Answer Process).

3.28 Authority to Debar or Suspend

(1) Authority

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer or the head of a purchasing agency, after consultation with the using agency and the Attorney General, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of two years. The same officer, after consultation with the using agency and the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months

(2) Causes for Debarment or Suspension

The causes for debarment or suspension include the following:

- a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- b) Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Mississippi contractor;
- c) Conviction under State or Federal antitrust statutes arising out of the submission.

Section 4: Response Format and Organization

4.1 Proposal Submission Instructions

Offerors shall submit proposals as outlined in Section 4.3 in response to this RFP. Proposals must be received by the posted due date and time. Proposals received after the deadline will be late and ineligible for consideration.

You may mail or drop off hard copies to the address below on or before the due date and time.

Billy Beard, Director
State of Mississippi Contract Administrator
State of Mississippi, Office of Purchasing, Travel and Fleet Management
501 North West St, Suite 701-A
Jackson, MS 39201
billy.beard@dfa.ms.gov
PH: 601-359-5171

Offerors are solely responsible for ensuring that their Proposals are received by the State of Mississippi in accordance with the solicitation requirements, before the closing date and time, and at the place specified above. The State of Mississippi shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Proposal deliveries made to another location other than to the address identified on the cover sheet of this RFP will be considered non-responsive unless redelivery is made to the address identified on the cover sheet of this RFP before the closing date and time. **Proposals may NOT be submitted by facsimile or email.**

4.2 Force majeure

If the agency is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods or other natural disasters (the “Force Majeure Events”), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening is set forth herein. The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event. Each bidder shall be required to ensure the delivery and receipt of its bid by the agency prior to the new date and time of the bid opening.

4.3 Required Format

Offeror’s proposal **must** be clearly labeled, numbered, and indexed as outlined below in Section 4.4 Proposal Content and Format Requirements. The original copy of each binder shall be clearly marked as such on the front of the binder. Each portion of the proposal (Administrative and Technical Proposal and Cost Proposal) must be submitted in a separate binder and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors shall deliver:

- **Administrative and Technical Proposal** (Binder 1) - one (1) ORIGINAL sealed and five (5) copies of the proposal containing **ONLY** the information listed in Section 4.4 Proposal Content and Format Requirements-Administrative and Technical Proposal.
 - Proposals containing confidential information must be submitted as two separate binders:
 - **Unredacted** version for evaluation purposes - one (1) ORIGINAL
 - Redacted version (information blacked out and not omitted or removed) for the public file - one (1) ORIGINAL must be submitted as an original sealed proposal by mail or physically delivered to the address listed in Section 1.2.
- **Cost Proposal** (Binder 2) - one (1) ORIGINAL sealed and five (5) copies of the proposal containing **ONLY the Cost Proposal**; ORIGINAL and copies of the Cost Proposal will be in separate labeled binders from the Administrative and Technical Proposal.

The original sealed proposal and all copies must be identical. In the event of a conflict

between the submitted proposals, the Original will govern.

An Offeror shall also submit on a USB flash drive one electronic copy of its Proposal in MS Word 2003 or higher format.

Any proposal that does not adhere to the requirements within this section may be deemed non-responsive and rejected on that basis.

4.4 Proposal Content and Format Requirements

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Scope of Work elements.

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Administrative and Technical Proposal (Binder 1):

- A. Table of Contents**
- B. Executive Summary** - The one or two page executive summary is to briefly describe the Offeror's Proposal. This summary should highlight the major features of the Proposal. It must indicate any requirements that cannot be met by the Offeror. The reader should be able to determine the essence of the Proposal by reading the executive summary.
- C. State of Mississippi Terms and Conditions** (Section 6.5 & Attachment B)
 - 1. Cover Letter (Attachment G)
- D. Participating States' Terms and Conditions** (Section 6.6 & Attachment G)
- E. Offeror's Additional Terms and Conditions** (if applicable)
- F. Response to Administrative & Technical Requirements (See Criteria in Table 1)**

Cost Proposal (Binder 2):

All discussion of proposed costs must occur only in Binder #2 on the Cost Response Form (Attachment F).

Section 5: Evaluation and Award

5.1 Discussions with Offerors

In the initial phase of the evaluation process, the State of Mississippi will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

During this time, the State of Mississippi may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Discussions SHALL NOT be initiated by Offerors. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

5.2 Evaluation Point Summary

The following is a summary of evaluation factors with point values assigned to each that will be used in the evaluation of individual potential Offeror proposals.

TABLE 1

Pass/Fail Criteria	Points Available
• Signed & Completed Cover Letter (Attachment G)	Pass/Fail
• Financial Stability (Section 5.3.4)	Pass/Fail
• Proposal Format Requirements (Section 4.4)	Pass/Fail
Administrative & Technical Proposal Criteria	(700 possible total points)
5.3.3. References	100
6.7.1 Offeror Profile	100
6.7.2 Scope of Work	300
6.7.3 Customer Service	150
7.1 & Attachment F (Cost Response Form)	(350 possible total points)
TOTAL	1000 points

5.3 Administrative & Technical Proposal Criteria

5.3.1 Signed Cover Letter (Attachment G)

Pass/Fail only. No points assigned.

5.3.2 Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response. See Section 6.

5.3.3 References (See Table 1)

The Offeror will be required to provide sufficient evidence to prove that they have the

necessary capabilities to provide the commodity specified in this RFP at the time the contract is awarded. The evaluation team may make reasonable investigations, as it deems necessary and proper, to determine the ability of the Offeror to perform the work, and Offeror shall furnish all information that may be requested for this purpose. The OPT reserves the right to reject any proposal if the Offeror fails to satisfy the reference criteria as described in this RFP.

The Offeror must submit at least three (3) references with the following information: (a) name, (b) address, (c) contact name, (d) contact title, (e) telephone number, (f) email, (g) number of units sold, (h) types of units sold.

Lack of a response will be awarded zero (0) points.

5.3.4 Financial Stability (See Table 1)

Financial stability will be based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response. Scoring will be on a Pass/Fail basis. A company receiving a CSC rating of 1-3 will receive a Pass score and a company receiving a CSC rating of 4-5 will receive a Fail score. See Section 6.7.4

5.3.5 Cost (See Table 1)

The State of Mississippi will use a weighted average formula. Discount % points will be awarded based upon the highest proposed discount % with a maximum potential Pricing Point Score of 350 points. The highest discount % Proposal will be awarded the maximum potential score. Lower discount % proposals shall be awarded a percentage of 350 points in relation to the example shown below.

Proposer A offers 15%, Proposer B offers 12%, and Proposer C offers 10%.
Proposer A receives 350 Points
Proposer B receives 280 Points $15/12 = .80$ $.80 \times 350 = 280$
Proposer C receives 235 Points $15/10 = .67$ $.67 \times 350 = 235$
Points will be rounded to the nearest whole number.

5.4 Evaluation Process

5.4.1 Phase 1: Initial Phase

In the initial phase of the evaluation process, the State of Mississippi will review all proposals received by the posted due date and time as described in the Schedule of Events in Section 2.1 of this RFP for compliance with the requirements and specifications stated within the RFP. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

5.4.2 Phase 2: Responsive Proposals

Responsive proposals will be evaluated on the factors in Table 1. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Table 1 will be recommended for award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

5.4.3 Evaluation of Administrative & Technical Factors

Each evaluation team member will independently evaluate each category in the Offeror's Administrative & Technical Factor Responses and assign a score for the appropriate value in Table 1. The assigned score from each evaluator will then be combined and averaged by the total number of evaluators to determine the Administrative & Technical Factor Points to be awarded

Proposal #1

	Scope	References	Profile	Customer Service
Evaluator 1	280	125	150	115
Evaluator 2	300	150	150	150
Evaluator 3	260	75	100	100
	840/3=280	350/3=116.67	400/3=133.3	365/3=121.6

Total for Proposal #1 = 650 Points out of 700

5.5 Best and Final Offers

Best and Final Offers (BAFO) may be requested at the discretion of the evaluation committee. The BAFO may be used for clarification as well as cost. The State of Mississippi may invite one bidder or multiple bidders to submit a (BAFO). Said invitation will establish the time and place for submission of the BAFO.

Negotiations will be conducted only in those circumstances where they are deemed to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the Bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.

5.6 Award of Master Agreement(s)

Award(s) shall be made to the offeror(s) whose proposal is the most advantageous to

the State of Mississippi and NASPO ValuePoint, taking into consideration price and the other evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate State approval.

5.7 Selection of Finalists

The Evaluation Committee will select and the Contract Administrator will notify the finalist Offerors as per schedule Section 2.1, Schedule of Events or as soon as possible.

5.8 Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per Schedule of Events or as soon thereafter as possible. This date is subject to change at the discretion of the State of Mississippi. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror(s) in the time specified, the State of Mississippi reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

5.9 Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the State of Mississippi will award as per the schedule in Section 2.1 Schedule of Events or as soon as possible thereafter. This date is subject to change at the discretion of the State of Mississippi. Awards may be made up to six (6) National and four (4) Regional providers for each line item at the State of Mississippi's discretion. The Regional providers will be based on one (1) award per NASPO region. See Attachment (D) for NASPO regions map.

5.10 Post Award Formalization of the Master Agreement

The State of Mississippi reserves the right during contract negotiation of the Master Agreement to adjust terms and conditions that would not (in the State of Mississippi's judgment) have a material effect on price, schedule, scope of work, or risk to the State of Mississippi and Participating States, with materiality defined in terms of the effect on the evaluation and award. In any event, the State of Mississippi reserves the right to accept contract or pricing changes that are more favorable to the State of Mississippi.

If no Master Agreement is reached with the apparent awardee, the State of Mississippi may negotiate with other Offeror(s) without undertaking a new procurement process or make no award under this RFP.

5.11 Protest

A protest must be submitted to the State of Mississippi's Contract Administrator

identified in Section 1.2 of this RFP and must be received within seven (7) calendar days after the date of the notice of intent to award. Award protests must meet the requirements of State of Mississippi's statutes and rules to be considered. The State of Mississippi will not consider any protests that are received after this deadline.

The State of Mississippi will address all timely submitted protests that are in accordance with their statutes and rules within a reasonable time following State of Mississippi's receipt of the protest and the State of Mississippi will issue a written decision to the Offeror who submitted the protest. Protests that do not include the information required by State of Mississippi statutes and rules may be rejected by State of Mississippi. The State of Mississippi will receive protests in the following forms:

1. Emailed protests with attached letterhead submitted to the State of Mississippi's Contract Administrator identified in Section 1.2 of this RFP.
2. Letter submitted to the State of Mississippi's Contract Administrator identified in Section 1.2 of this RFP.

Protests received after the deadline will not be accepted.

5.12 Debriefings

In accordance with Chapter 3, Section 3.107.18 of the State of Mississippi Procurement Manual, the Agency Procurement Officer is authorized to provide debriefings that furnish the basis of the source selection decision and contract award. Debriefings may only be conducted when utilizing the competitive sealed proposal process as authorized in Chapter 3, Section 3.107.

- (1) At the written request of any offeror who has submitted a proposal, debriefings may be given orally, in writing, or by any other method acceptable to the Agency Procurement Officer. Such debriefings may be given at any time on or after the eighth (8th) day after the agency has awarded the contract. In no case may an offeror request a debriefing more than thirty (30) days after the agency has awarded the contract.
- (2) An offeror's written request for a debriefing should include a list of any questions an offeror may have in order to assist the Agency Procurement Officer or agency staff in preparing for the debriefing.
- (3) A post-award debriefing may include:
 - (a) The agency's evaluation of significant weaknesses or deficiencies in the proposal, if applicable;

- (b) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror;
 - (c) The overall ranking of all proposals, when any such ranking was developed during the source selection;
 - (d) A summary of the rationale for award;
 - (e) Reasonable responses to relevant questions about whether source selection procedures contained in the Request for Proposals and applicable law were followed.
- (4) Post-award debriefings should not include point-by-point comparisons of the debriefed proposal with those of other offerors.
 - (5) Any debriefing should not reveal any information prohibited from disclosure by law, or exempt from release under the Mississippi Public Records Act of 1983, including trade secrets, or privileged or confidential commercial or manufacturing information. Agencies should consult their Public Information Officer or agency legal representative for guidance in complying with the Act prior to conducting debriefings.
 - (6) Debriefings are non-adversarial business meetings. Accordingly, offerors may bring legal representation to any oral debriefing, although it is not necessary. If, however, any offeror has legal representation present during an oral debriefing, the agency must also have its legal representative in attendance. Questioning of agency staff by offerors' legal representative(s) is not permitted.
 - (7) A summary of any debriefing should be included in the contract file.

Section 6: Administrative and Technical Response Requirements

6.1 Mandatory Minimum Administrative Proposal Requirements

This section contains the minimum requirements that must be met in order to be considered for the evaluation phase. All of the items described in this section are non-negotiable. All Offerors must state willingness and demonstrate ability to satisfy these requirements in the proposal submitted for consideration.

6.2 NASPO ValuePoint Master Agreement Acceptance

NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating States Participating Addendums.

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Attachment A, the State of Mississippi specific terms and conditions required in Attachment B, scope of work (Attachment C) and selected portions of the Offerors Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offerors will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment A. Offerors must acknowledge in the Cover Letter they have read and understand all of the terms and conditions as shown in the Master Agreement Attachment A.

6.3 Insurance Deleted and Reserved

6.4 NASPO ValuePoint Administrative Fee and Reporting Requirements

To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Section 7 of NASPO ValuePoint Master Agreement Terms and Conditions.

Offerors shall identify the person responsible for providing the mandatory usage reports in the Letter of Transmittal, item 5. (This information must be kept current during the contract period). Contractor will be required to provide reporting contact within 15 days of Master Agreement execution.

6.5 State of Mississippi Terms and Conditions

Refer to Attachment (B) for the State of Mississippi Terms and Conditions that apply to this solicitation. Offeror shall indicate in its Cover Letter, item 5 that they have read and understand all of the requirements shown in the State of Mississippi Terms and Conditions.

6.6 Participating State Terms and Conditions

Each Participating State may have their own Terms and Conditions and reserves the right to negotiate additional terms and conditions in its Participating Addendums. Offerors shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

6.7 Business Requirements

This section contains business requirements pertaining to the **Fire Truck and Fire**

Apparatus with Related Accessories and Supplies. Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. Offerors must identify in their response how their company meets (or exceeds) all requirements listed in Section 6 of this RFP solicitation.

6.7.1 Offeror Profile

Offerors must provide the following information specific to your company in the format below:

Required Information	Offeror's Response
1. Company's full legal name.	
2. Primary business address.	
3. Describe your company ownership structure (sole proprietor, partnership, corporation, etc.).	
4. Number of employees.	
5. Website. (If available)	
6. Sales contact information.	
7. Have you lost any customers in the past 3 years? What were the circumstances regarding the loss if this customer(s)?	
8. A brief history of your company and the year it was founded.	
9. Provide an Organizational Chart detailing your company's structure and key personnel assigned to each department (i.e. President/CEO, Service Manager, Parts Manager, Sales Manager, etc.).	
10. Provide resumes for employees who will be managing and/or directly providing services under the contract.	

6.7.2 Scope of Work

Offerors must:

Required Information	Offeror's Response
Describe how you will meet each requirement listed below (e.g. personnel, proposed time lines, methodologies to be used, etc.):	
1. Describe how you will plan to market the Master Agreement? This should include , but	

not be limited to: communication plan for targeting State Agencies and governing authorities, advertisement plan, customer education, etc.;	
2. Describe how you will meet each customer delivery needs? This should include, but not be limited to: delivery timeframes, methods of delivery, delivery charge exceptions (i.e. ordering entity fire apparatus pickup), etc.	
3. Describe the training process that will be provided to each ordering entity? This should include, but not be limited to: apparatus overview, pump operations, safety, maintenance, etc.	
4. Describe your company's inspection process? This should include, but not be limited to: pre-delivery inspection, mid-way inspection, final inspection corrections, etc.	

6.7.3 Customer Service

Offerors must provide the following information specific to your company's customer service in the format below:

Required Information	Offeror's Response
1. What are your hours of operation and when are key account people available?	
2. Describe how problem identification and resolution will be handled.	
3. How will you service our account? Describe the system you will use to manage our account.	
4. How do you respond to customer complaints and service issues? Identify your escalation process and the personnel that will handle escalation	
5. How do you assess customer satisfaction?	
6. What are your quality assurance measures and how are they handled in your organization?	
7. Describe your company's problem resolution process.	

6.7.4 Financial Stability

Offerors are required to provide a D&B Comprehensive Insight Plus credit report or Experian ProfilePlus report, indicating the Offeror's current credit score. The Offeror should stamp or write "Trade Secret" or "Confidential" on each page of the Credit Report information that it does not want released. The information will be held in confidence to the extent that law allows. Credit Report must be current and have been established within ninety (90) calendar days prior to proposal opening date.

Credit Reports must be for the exact organization submitting the proposal. The Credit Report cannot be combined or consolidated with the information from any entity other than the company submitting the proposal. If the Offeror's name on the proposal does not match the name on the credit report, it will not be accepted and the Offeror will be found non-responsive for the financial requirement of this proposal.

The mandatory elements of this Section are two-fold: the Offeror must provide a credit score on one of the named reports AND the report provided in response to the RFP must demonstrate a credit score class (CSC) rating of 1 – 3 or a credit ranking score (CRS) rating of 26 – 100.

Failure to provide one of the named reports (or failure to provide one of the designated credit scores) may result in a finding that the offeror is non-responsive.

In addition, Section 7: scoring will be based on a Pass/Fail basis. A company receiving a CSC rating of 1-3 will receive a Pass score and a company receiving a CSC rating of 4-5 will receive a Fail score.

Cost in proposals will be evaluated independently of the Administrative and Technical Factors. Cost proposal must be submitted to the State of Mississippi as a separate document in Offeror's Proposal. **Do not embed cost proposal in the technical proposal response.**

Offeror shall provide detailed costs for all costs associated with the responsibilities and related services, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, and other costs or expenses incidental to the Offeror's performance, per Attachment C.

Delivery Options

The Contractor shall provide the following delivery options as specified below to all purchasing entities. The purchasing entity shall be permitted to select the most cost effective delivery options best meeting their needs.

"We Pay Freight" - this option includes, but not limited to, the following; no additional handling fees, other charges shall be permitted. Purchasing entity shall

make arrangements to have its designated representatives' pick-up the unit.

FOB Destination, Freight Prepaid and Added to the invoice – the Contractor must ship FOB destination, Freight Prepaid and may add only the freight charges incurred to the invoice. No other charges shall be included in the freight charge.

FOB Destination, Freight Prepaid – the Contractor shall make freight arrangements and deliver to any destination within the United States. Freight shall be included in the price per unit for the final destination.

The tax rules with respect to other Participating Entities may vary and are expected to be addressed in the Participating Addenda.

7.1 Price and Rate Guarantee Period

The discount percentage off retail shall be guaranteed for the term of the Master Agreement. Any request for price adjustment during the Master Agreement term will be considered on a case by case basis. Justification must be provided with the request.



ATTACHMENT A

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

I. Definitions

- 1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for three (3) years. The term of this Master Agreement may be amended beyond the initial term for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity's Participating Addendum ("PA");
 - 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
 - 3.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
 - 3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

- 4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2 Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering

document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.

- 4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but

not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

- 4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

- 5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

5.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) with a maximum fee of \$2000 on purchase orders for one (1) truck. For purchase orders of two (2) or more trucks, the maximum fee will be \$1500 per truck due no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

5.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by

Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (e.g., names, addresses, **social security numbers or any other numerical identifier**) may be submitted with any report.

5.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list

of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in

third-party contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

- 5.5 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.
- 5.6 Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.
- 5.7 Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VI. Pricing, Payment & Leasing

- 6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.
- 6.1.1** The discount rate guarantee period is specified in section 7.1 of the RFP.
- 6.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least ninety (90) days prior to the effective date.

6.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

6.1.4 No retroactive adjustments to prices or rates will be allowed.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire 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, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

7.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

7.3 Applicable Rules. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 7.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
- 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
- 7.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
- 7.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
- 7.6.1** The services or supplies being delivered;
- 7.6.2** A shipping address and other delivery requirements, if any;
- 7.6.3** A billing address;
- 7.6.4** Purchasing Entity contact information;
- 7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
- 7.6.6** A not-to-exceed total for the products or services being ordered; and

7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

7.7 Communication. All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

7.8 Contract Provisions for Orders Utilizing Federal Funds. Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VIII. Shipping and Delivery

8.1 Shipping Terms. All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

8.2 Minimum Shipping. The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

8.3 Inside Deliveries. To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

8.4 Packaging. All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
- 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.
- 9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 9.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.
- 9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
- 9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product

is installed and Contractor certifies that the Product is ready for Acceptance Testing.

- 9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.
- 9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
- 9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.
- 9.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

- 10.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.
- 10.2 Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.
- 10.3 Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 10.4 Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

10.5 Warranty Period Start Date. The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

11.3 License of Pre-Existing Intellectual Property. Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

12.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

12.2 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

- 12.2.1.2** specified by the Contractor to work with the Product;
- 12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- 12.2.1.4** reasonably expected to be used in combination with the Product.
- 12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.
- 12.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

- 13.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.
- 13.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's

13.2 Class. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's

termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

- 13.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- 13.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- 13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 13.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

- 14.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- 14.1.2** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- 14.1.3** The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

- 14.2.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.
- 14.2.1.1** Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is

confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive

or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 Injunctive Relief. Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

14.2.4 Purchasing Entity Law. These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

14.2.5 NASPO ValuePoint. The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 Public Information. This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

14.4 Changes in Contractor Representation. The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement

upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 Defaults and Remedies

14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

14.8.1.1 Nonperformance of contractual requirements;

14.8.1.2 A material breach of any term or condition of this Master Agreement;

14.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

14.8.1.5 Any default specified in another section of this Master Agreement.

14.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

14.8.3.1 Any remedy provided by law;

14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;

- 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
- 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
- 14.8.3.5** Suspension of Contractor's performance; and
- 14.8.3.6** Withholding of payment until the default is remedied.
- 14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.
- 14.9 Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.
- 14.10 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 public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.
- 14.11 No Waiver of Sovereign Immunity**

- 14.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 14.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

- 14.12.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.
- 14.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.
- 14.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

14.13 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action

which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

Attachment B: State of Mississippi Terms & Conditions

GENERAL CONDITIONS

ALL BIDS SUBMITTED SHALL BE IN COMPLIANCE WITH ALL CONDITIONS SET FORTH HEREIN. THE BID PROCEDURES FOLLOWED BY THIS OFFICE WILL BE IN ACCORDANCE WITH THESE CONDITIONS. THEREFORE, ALL BIDDERS ARE URGED TO READ AND UNDERSTAND THESE CONDITIONS PRIOR TO SUBMITTING A BID.

1. PREPARATION OF BIDS

- 1.1 Bids shall be submitted through the Office of Purchasing, Travel and Fleet Management's electronic bid system. The Office of Purchasing, Travel, and Fleet Management reserves the right to waive the use of the electronic bid method when deemed necessary. If waived and paper bids are allowed, all prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.
- 1.2 Failure to examine any drawings, specifications, and instructions will be at bidder's risk.
- 1.3 Price each item separately. Unit prices shall be shown. Bid prices must be net.
- 1.4 Specification. It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the bidder.
- 1.5 Information and Descriptive Literature. Bidders must furnish all information requested in the bid specifications. Further, when required, each bidder must submit for bid evaluation cuts, sketches, descriptive literature and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with the Office of Purchasing, Travel and Fleet Management will not satisfy this provision.
- 1.6 Samples. Samples of items, when requested, must be furnished free of expense, and if not destroyed in testing will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within ten (10) days following opening bids. Each individual sample must be labeled with bidder's name, manufacturer's brand name and number, State of Mississippi commodity number, bid number and item reference.
- 1.7 Time of performance. The number of calendar days in which delivery will be made after receipt of order shall be indicated in the bid specifications.

2. SUBMISSION OF BIDS

2.1 When submitting a bid electronically, the authorized signature may be typed or be an electronic signature.

2.1.1 Bids and modifications or corrections received after the closing time specified will not be considered.

3. ACCEPTANCE OF BIDS

3.1 The Office of Purchasing, Travel and Fleet Management reserves the right to reject any and all bids, to waive any informality in bids and unless otherwise specified by the bidders, to accept any items on the bid. The State reserves the right to modify or cancel in whole or in part its Invitation for Bids.

If a bidder fails to state the time within which a bid must be accepted, it is understood and agreed that the Office of Purchasing, Travel and Fleet Management shall have 60 days to accept.

4. ERROR IN BID

4.1 In case of error in the extension of prices in the bid, the unit price will govern. No bid shall be altered or amended after the specified time for opening bids.

5. DISCOUNT PERIOD

5.1 Time in connection with a discount offered will be computed from date of delivery at destination or from the date correct invoices are received, if the latter date is later than the date of delivery. Cash discounts will not be considered in the award process.

6. AWARD

6.1 Contracts and purchases will be made or entered into with the lowest responsible bidder meeting specifications, except as otherwise specified in the bid specifications. Where more than one item is specified in the specifications, the State reserves the right to determine the low bidder either on the basis of the individual item(s) or on the basis of all items included in its Invitation for Bids, or as expressly provided in the State's Invitation for Bids.

6.2 Unless the bidder specified otherwise in the bid, the State may accept any item or group of items of any kind.

6.3 A written purchase order or contract award furnished to the successful bidder within the time of acceptance specified in the Invitation for Bid results in a binding contract without further action by either party. The contract shall consist solely of these General Conditions, the Instructions and Special Conditions, the successful bidder's bid, and the written purchase order or

contract award. The contract shall not be assignable in whole or in part without the written consent of the State.

7. INSPECTION

7.1 Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall be subject to inspection and test at all times and places, and when practicable. During manufacture, the right is reserved to reject articles which contain defective material and workmanship. Rejected material shall be removed by and at the expense of the contractor promptly after notification or rejection. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the State of Mississippi or any subdivision thereof for such materials or supplies as are not in accordance with the specification. In the event necessity requires the use of materials or supplies not conforming to the specification, payment therefore may be made at a proper reduction in price.

8. TAXES

8.1 The State is exempt from federal excise taxes and state and local sales or use taxes and bidders must quote prices which do not include such taxes. Exemption certificates will be furnished upon request. Contractors making improvements to, additions to or repair work on real property on behalf of the State are liable for any applicable sales or use tax on purchase of tangible personal property for use in connection with the contracts. Contractors are likewise liable for any applicable use tax on tangible personal property furnished to them by the State for use in connection with their contracts.

9. GIFTS, REBATE, GRATUITIES

9.1 Acceptance of gifts from bidders is prohibited. No officer or employee of the Office of Purchasing, Travel, and Fleet Management, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the State of Mississippi may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.

9.2 Bidding by state employees is prohibited. It is unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the State of Mississippi during the tenure of his or her office or employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the State.

10. BID INFORMATION

10.1 Bid information and documents may be examined pursuant to the Mississippi Public Records Act of 1983, MS Code 25-61-1 et seq.

11. DEFINITIONS

11.1 The use of the word agency in any Bid Invitation solicitation or specification shall be intended to mean state agencies only. The words “governing authority” when used in any of the above documents shall be intended as meaning county or local entities.

12. PRECEDENCE

12.1 Bids shall be made and the contract shall be entered into in accordance with the General Conditions as hereinafter amended and modified. Should a conflict exist between the General Conditions and the Instructions and Special Conditions, the Instructions and Special Conditions shall take precedence.

13. COMPETITION

13.1 There are no federal or state laws that prohibit bidders from submitting a bid lower than a price or bid given to the U.S. Government. Bidders may bid lower than U.S. Government contract price without any liability as the State is exempt from the provisions of the Robinson-Patman Act and other related laws. In addition, the U.S. Government has no provisions in any of its purchasing arrangements with bidders whereby a lower price to the State must automatically be given to the U.S. Government.

14. WAIVER

14.1 The Office of Purchasing, Travel, and Fleet Management reserves the right to waive any General Condition, Special Condition, or minor specification deviation when considered to be in the best interest of the State.

15. CANCELLATION

15.1 Any contract or item award may be canceled with or without cause by the State with the giving of 30 days written notice of intent to cancel. Cause for the State to cancel may include, but is not limited to, cost exceeding current market prices for comparable purchases; request for increase in prices during the period of the contract; or failure to perform to contract conditions. The Contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the Contractor within a period of 30 days following the date of expiration or cancellation. Cancellation by the State does not relieve the Contractor of any liability arising

out of a default or nonperformance. If a contract is canceled by the State due to a Contractor's request for increase in prices or failure to perform, that Contractor will be disqualified from bidding for a period of 24 months. The Contractor may cancel a contract for cause with the giving of 30 days written notice of intent to cancel. Cause for the Contractor to cancel may include, but is not limited to the item(s) being discontinued and/or unavailable from the manufacturer.

16. SUBSTITUTIONS DURING CONTRACT

16.1 During the term of a contract, if adequate documentation is provided that supports the claim that the contract item(s) are not available, items which meet the minimum specifications may be substituted if approved by the Office of Purchasing, Travel and Fleet Management and the substitutions are deemed to be in the best interest of the State.

17. APPLICATION

17.1 It is understood and agreed by the Bidder that any contract entered into as a result of this Invitation for Bids is solely for the convenience of the state agencies and all purchases made by these agencies for products included under the provisions of the contract shall be purchased from the bidder receiving the award unless exempt by special authorization from the Office of Purchasing, Travel and Fleet Management.

Under the provisions of Section 31-7-7 Mississippi Code of 1972, Annotated, the prices offered herein shall be extended to the governing authorities. However, the governing authorities, by provisions of Section 31-7-12 Mississippi Code, may purchase products covered by state contracts from any source offering an identical product at a price that does not exceed the state contract price.

Employees of the Office of Purchasing, Travel and Fleet Management have acted exclusively as agents of the State for the award, consummation, and administration of the contract and are not liable for any performance or nonperformance by the state agencies that utilize the contract.

18. ADDENDA

18.1 Addenda modifying plans and/or specifications may be issued if time permits. No addendum will be issued within a period of two (2) working days prior to the time and date set for the bid opening. Should it become necessary to issue an addendum within the two (2) day period prior to the bid opening, the bid date will be reset to a date not less than five (5) working days after the date of the addendum, giving bidders ample time to comply with the addendum. When replying to a bid request on which an addendum has been issued, and the specifications require acknowledgement, the bid shall indicate that provisions

of the addendum have been noted and that the bid is being offered in compliance therewith. Failure to make this statement may result in the bid being rejected as not being in accordance with the revised specifications or plans.

19. NONRESPONSIVE BIDS

19.1 Nonresponsive bids will not be considered. A non-responsive bid is considered to be a bid that does not comply with the minimum provisions of the specification. Any bidder found to repeatedly offer alternate products that are not compliant with specifications in an attempt to obtain a contract on the basis of pricing only will be disqualified from bidding for a period of 24 months.

20. SPECIFICATION CLARIFICATION

20.1 It shall be incumbent upon all bidders to understand the provisions of the specifications and to obtain clarification prior to the time and date set for the bid opening. Such clarification will be answered only in response to a written request.

21. BID OPENINGS

21.1 Bid openings will be open to the public. The bid opening will serve only to open and read the bid price on each bid. No discussion will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made either stated or implied at the bid opening.

21.2 If the agency is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as set forth herein. The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event. Each bidder shall be required to ensure the delivery and receipt of its bid by the agency prior to the new date and time of the bid opening.

22. STATEWIDE BIDDING

22.1 It is requested that bids be submitted on the basis of statewide distribution.

Contractors must maintain adequate distribution capabilities and adequate stock of all items to insure prompt delivery.

23. FIRM BID PRICE

23.1 Prices quoted shall be firm for the term of the contract except that the State shall receive the benefit of any price decrease in excess of five (5) percent. The contractor must provide written price reduction information within ten (10) days of its effective date.

The discount quoted shall be firm for the term of the contract. Any price increase request shall be handled as put forth in Section 7.1 of the RFP.

24. CONTRACT EXTENSION

24.1 Automatic contract renewals or extensions are not allowed. Contracts must be extended or renewed with the proper documents signed or approved by the Office of Purchasing, Travel and Fleet Management

24.2 The Office of Purchasing, Travel and Fleet Management reserves the right to extend the term of a contract, when necessary, to continue a source of supply whenever new or replacement contracts are not completed prior to the expiration date. Such extensions are dependent upon the agreement of the Contractor and shall not exceed three (3) months.

25. SUSPENSION AND DEBARMENT

25.1 By submitting a bid, the bidder is certifying that neither the bidder nor any potential subcontractors are debarred or suspended or are otherwise excluded from or ineligible for participation in federal assistance programs.

26. ASSIGNMENT

26.1 The Contractor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the Office of Purchasing, Travel and Fleet Management.

Attachment C: Scope of Work

Scope of Work

The Contractor shall be responsible for manufacturing firefighting vehicles meeting at a minimum the specification requirements as set forth in Attachment C of this RFP for Fire Apparatus. The Contractor shall be responsible for ensuring that all fire fighting vehicles are in compliance with all State and Federal DOT requirements for the State in which the vehicle is being delivered, including but not limited to the following:

- NFPA 1901 – Standard For Automotive Fire Apparatus – 2009 edition;
- NFPA 1906 – Standard for Wildland Fire Apparatus – 2012 edition;
- All State and Federal DOT requirements for fire apparatus and commercial vehicles; and
- Federal Motor Vehicle Safety Standards (FMVSS).

The Contractor shall be responsible for assigning a dedicated representative to assist the purchasing entity with any issue that may arise, including, but not limited to, manufacturer defects, billing, maintenance, service centers, etc.

Vehicle Requirements:

At the time of delivery and/or pick-up by the purchasing entity, the Contractor must ensure the following:

Each fire apparatus must be the latest model of the manufacturer's current standard production. Though not specifically covered herein, all parts necessary to provide a complete and efficient fire apparatus must be furnished with each unit. All parts must conform in design, strength, quality of materials and workmanship to current engineering practices and accepted standards of the industry.

Each fire apparatus must be completely assembled and adjusted per manufacturer specifications. All equipment, including standard and supplemental must be installed as per the manufacturer's specifications.

Each fire apparatus must be fully serviced and complete with all fluids and lubricants (excluding water in tank), filled to the proper levels, with a full tank of fuel and ready for continuous operation at time of delivery.

Each fire apparatus must be furnished with one (1) parts book, one (1) service manual, one (1) operator's manual, and one (1) lubrication guide.

Each fire apparatus, at the final destination point, will be fully inspected by a designated representative of the ordering entity to assure that it meets the minimum specification requirements. If it is determined that the unit is not in accordance with the minimum specification requirements, the Contractor must pick-up, correct any discrepancies and re-deliver to the ordering entity at the Contractor's expense. The timeframe for completion of corrective action must not exceed thirty (30) calendar days from receipt of written notification from designated representative of the purchasing entity.

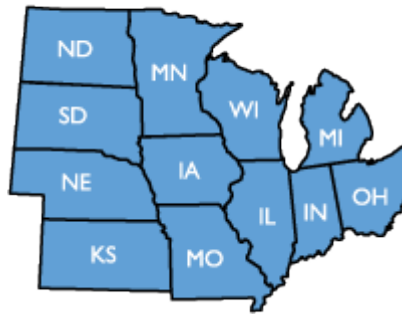
Demonstration units shall not be considered.

Attachment D: NASPO ValuePoint Map of Regions

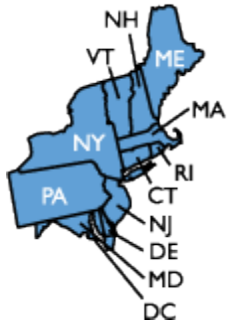
Western Region



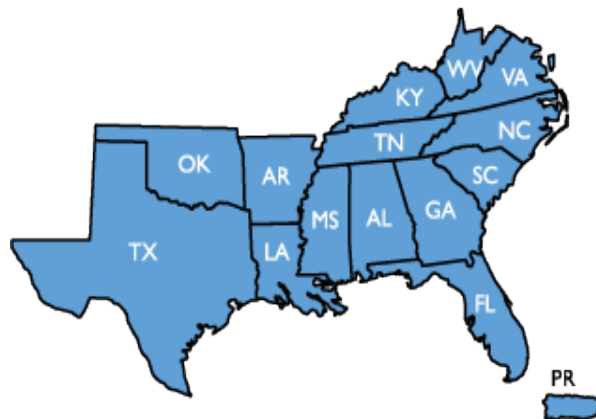
Midwest Region



Eastern Region



Southern Region



Attachment E: Specifications

Minimum Requirements: Bidders must provide pricing for a base model truck that meets the minimum specifications that comply with currently established NFPA 1901 and 1906, Mississippi Motor Vehicle Commission regulations, and NHTSA standards. When requested, bidders must submit complete detailed specifications for the apparatus being offered, as well as all options, to the end user. Bidders are responsible for providing a chassis of sufficient GVWR to safely accommodate all options selected by the customer.

All bidders are to bid under the current NFPA 1901 and 1906 standards, and all addendums that are currently in effect at the time of bidding.

The bidder is to understand that the State of Mississippi and NASPO/ValuePoint does not guarantee any quantity of vehicles will be ordered off this contract. The bidder will further understand that this program operates under a split bid award system which allows the end user authority to purchase from any of the responsive bidders authorized and awarded to do business off this contract. **The end user authority will contract directly and individually with the awarded bidder of their choice for any and all vehicles offered on this contract and any other features, options and equipment items required to meet their individual needs. Customers shall choose from options furnished to them by the manufacturer.**

The pricing sheet below will be used for pricing comparisons only. Proposers should note that purpose of this RFP is just not for a base truck only, however in order to compare costs, the lead state will use the base truck pricing offered by proposers. Upon award of a Master Agreement, proposer's entire equipment line including base and custom models and related accessories will be available for authorized purchasers to select from at the percentage discount negotiated.

**Attachment F
Discount Response Form**

Fire & Emergency Category	% Discount Offered
Aerial	_____
• Ladder 0-94'	
• Ladder 95'+	
• Platform 0-85'	
• Platform 86'+	
• Tiller (Tractor drawn Aerial)	
Pumper	_____
• Custom Pumper	
• Commercial Pumper	
• Rescue Pumper	
• Mini-Pumper	
• Brush Truck	
Tanker	_____
Rescue	_____
• Custom Walk-In	
• Custom Non Walk-in	
• Commercial Walk-in	
• Commercial Non Walk-in	
Wildland	_____
• Type 3	
• Type 6	
ARFF	_____
• Class 3	
• 4 x 4	
• 6 x 6	

Attachment G - Cover Letter Form
RFP #3120002260

Offeror Name: _____ **FED ID#** _____

Items #1 to #5 EACH MUST BE COMPLETED IN FULL. Failure to respond to all five items
MAY RESULT IN THE DISQUALIFICATION OF THE PROPOSAL

1. Entity (Name) and Mailing Address of the submitting organization:

2. Name of person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

3. Name of person authorized by the organization to negotiate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

4. Name of the person authorized by the organization to clarify/respond to inquiries regarding this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

5. Statement of Concurrence:

___ Offeror accepts the State of Mississippi's Terms & Conditions regarding this offer as indicated in Attachment B.

___ Offeror acknowledges that they have read, understand, and accept all of the Terms & Conditions regarding this offer as indicated in Attachment A.

___ Offeror understands they may be required to negotiate additional Participating States Terms and Conditions when executing a Participating Addendum.

___ Offeror concurs that submission of their proposal constitutes acceptance of the Evaluation Factors in this offer.

_____, 2016

Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

APPENDIX H AUTHORIZED DEALERS